



December 21, 2023

Jay A. Steinberg
Nevada Environmental Response Trust
35 East Wacker Drive, Suite 690
Chicago, IL 60601

Re: **Tronox LLC (TRX) Facility**
Nevada Environmental Response Trust (Trust) Property
NDEP Facility ID #H-000539
Nevada Division of Environmental Protection (NDEP) Response to *Remedial Investigation Report for OU-1 and OU-2, Revision 1* and Associated Response to NDEP Comments

Dated: August 15, 2023

Dear Mr. Steinberg,

The NDEP has received and reviewed the Trust's above-identified Deliverable and provides comments in Attachment A. A revised Deliverable addressing the comments outlined in Attachment A should be submitted by February 29, 2024. The Trust should additionally provide an annotated response-to-comments letter as part of the revised Deliverable.

Please contact the undersigned with any questions at wdong@ndep.nv.gov or 702-668-3929.

Sincerely,

Dong Weiquan

Weiquan Dong, P.E.
Bureau of Industrial Site Cleanup
NDEP-Las Vegas City Office

WD:AP

EC:

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Marcia Scully, Metropolitan Water District of Southern California
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Mark Paris, Landwell
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Todd Tietjen, SNWA
Warren Turkett, Colorado River Commission
William Frier, U.S. Environmental Protection Agency, Region 9
Zeitel Sentz, de maximus

Attachment A

| Initial Agency Comment (2/9/22) | NERT’s First Response (6/9/22) | Agency Comment on NERT’s First Response (8/31/22) | NERT’s Second Response (8/15/23) | Agency Comment on NERT’s Second Response (12/21/2023) |
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| <p>6.0) NDEP suggests that NERT include California’s PHG of 1 µg/L for perchlorate and California’s MCL for total chromium of 50 µg/L in drinking water as a TBC criterion for remedial action objectives (RAOs) given that RAOs “focus on achieving the Trust’s overarching objective of protecting the Las Vegas Wash and downstream interests over a long-time frame (i.e., greater than five years)” and “help achieve out- of- state MCLs at</p> | <p>Pursuant to the Interim Consent Agreement, NERT must perform the RI consistent with the NCP. Under CERCLA, to qualify as an ARAR, a requirement either has to be applicable or relevant and appropriate. To be applicable, the requirement must be a promulgated federal or state standard that addresses the contaminant in a specific location. To be relevant and appropriate, the requirement must be a promulgated federal or state standard that isn’t applicable to the specific circumstances, but sufficiently similar and the use would be well suited for the particular site. A TBC is not promulgated, but is typically equivalent to final agency guidance and most often used when there isn’t an ARAR for a particular situation or to interpret federal/state law. With regard to total chromium, the chemical specific ARAR is the federal MCL, which has been adopted by Nevada. A California MCL is a promulgated standard and, therefore, would be an ARAR and not a TBC; however, it would not be an ARAR for the NERT site as the specific location (i.e., the point of compliance for a California drinking water standard) would be when the water leaves the municipal water purveyor in California, not a remediation project in Nevada. With regard to perchlorate, there isn’t a chemical specific ARAR, but there is a TBC, the Interim Drinking Water Health Advisory and federal preliminary remediation goal of 15 ug/L. For California’s perchlorate PHG to be a TBC, it must be equivalent to a final agency action. It is our understanding that a PHG is not close to a final action as there are still technical and economic analysis that need to be performed and to the extent there is a final agency action, it will be in the form of a California MCL, which</p> | <p>The Nevada Division of Environmental Protection (NDEP) and the U.S. Environmental Protection Agency (EPA) directs Nevada Environmental Response Trust (NERT) to use California’s current MCLs of 6 µg/L for perchlorate and 50 µg/L for total chromium as Applicable or Relevant and Appropriate Requirements (ARARs) and California’s Public Health Goal (PHG) for perchlorate of 1 µg/L and California’s proposed MCL of 10 ug/L for hexavalent chromium as TBCs for RAOs at the California state line. Further, NDEP and US EPA and Metropolitan Water District of California have examined and conclude that using other states MCLs and health goals for ARAR and TBC for the RAO at the state boundary to be consistent with the Comprehensive Environmental Response,</p> | <p>Acknowledging that the purpose of the Revised Report is to present environmental data for OU-1 and OU-2, Section 4 has been revised to clarify that the RAOs and ARARs/TBCs presented are only for OU-1 and/or OU-2, and all references to OU-3 have been removed. After further discussions between NERT and NDEP, NDEP has concurred with the Trust’s determination that resolution of this comment is more appropriate in</p> | <p>Acknowledging NERT’s objection, the lead and non-lead Agencies jointly direct the NERT to update Section 4 to clarify that each of the following are To Be Considered (TBC) criteria for this cleanup: the current California MCL of 6 µg/L for perchlorate, the current California MCL of 50 µg/L for total chromium, the California Public Health Goal (PHG) of 1 µg/L for perchlorate, and the California proposed MCL of 10 µg/L for hexavalent chromium. The agencies have reviewed and concluded that the use of regulatory levels from other states as TBCs is consistent with the Comprehensive Environmental Response, Compensation, and Liability Act and the National Contingency Plan. Furthermore, removal of discussion of TBCs from this document and deferring the designation of TBCs or Applicable Relevant and Appropriate Requirements (ARARs) until the OU-3 RI Report, as NERT suggested, is not a viable path forward. The Agencies acknowledge the natural interconnection between NERT’s various Operable Units via groundwater flow. The remedial decisions made in OU-1 and OU-2 will necessarily impact OU-3 and ultimately the loading of contaminants to the Las Vegas Wash and the Colorado River. It is therefore</p> |

Attachment A

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| <p>downstream state boundaries.”</p> | <p>would not be applicable to a remediation project in Nevada. While NERT does not agree that the California MCL and PHG are TBCs, NERT can update the last paragraph of Section 4.1 to reflect the current status of California’s regulation of perchlorate and chromium.</p> | <p>Compensation, and Liability Act and the National Contingency Plan.</p> | <p>the forthcoming RI Report for OU-3.</p> | <p>appropriate for the NERT and the Agencies to consider downstream interests when considering possible remedies in all Operable Units. In the context of this report focused on OU-1 and OU-2, the designation of these regulatory levels as TBCs requires the NERT to explicitly consider these values throughout the upcoming Feasibility Study and follow all applicable guidance related to doing so. Through this comment, the Agencies do not require the NERT to revise the other ARARs and RAOs as presented in this RI Report for OU-1 and OU-2, Revisions 0 or 1.</p> |
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