

OFFICE OF THE NEVADA ENVIRONMENTAL RESPONSE TRUST TRUSTEE

Le Petomane XXVII, Inc., Not Individually, But Solely as the Nevada Environmental Response Trust Trustee
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February 13, 2024

Mr. Alan Pineda, P.E.
Bureau of Industrial Site Cleanup
Nevada Division of Environmental Protection
375 E. Warm Springs Road, Suite 200
Las Vegas, Nevada 89119

RE: Remedial Investigation Report for OU-1 and OU-2
Nevada Environmental Response Trust
Henderson, Nevada

Dear Mr. Pineda:

The Nevada Environmental Response Trust (NERT) is pleased to present the Remedial Investigation Report for OU-1 and OU-2, Revision 2 for Nevada Division of Environmental Protection (NDEP) review. This report has been revised in accordance with NDEP's comments dated December 21, 2023 and January 11, 2024. Additionally, the report was further updated to acknowledge submittal of the revised Baseline Health Risk Assessment for OU-1, Baseline Health Risk Assessment for OU-2, Refined Screening Ecological Risk Assessment for OU-1, and Refined Screening Ecological Risk Assessment for OU-2 in 2023 and NDEP's subsequent approval of these documents in late 2023 and early 2024. Since only the text and Figures 4-1 and 4-2 have changed, NERT is not resubmitting the remaining figures, tables, or appendices for NDEP review.

If you have any questions or concerns regarding this matter, feel to contact me at (702) 960-4309 or at steve.clough@nert-trust.com.

Office of the Nevada Environmental Response Trust



Stephen R. Clough, P.G., CEM
Remediation Director
CEM Certification Number: 2399, exp. 3/24/25

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Initial NDEP Comments (2/9/22)	NERT's First Response (6/9/22)	NDEP Comment on NERT's First Response (8/31/22)	NERT's Second Response (8/15/23)	NDEP Comment on NERT's Second Response (12/21/23 and 1/11/2024)	NERT's Third Response (2/13/23)
<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 downstream state boundaries."</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</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, Compensation, and Liability Act and the National Contingency Plan.</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.</p> <p>After further discussions between NERT and NDEP, NDEP has concurred with the Trust's determination that resolution of this comment is more appropriate in the forthcoming RI Report for OU-3.</p>	<p>12/21/23 Comment</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.</p> <p>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 appropriate for the NERT and the Agencies to consider downstream interests when considering possible remedies in</p>	<p>12/21/23 Comment: Section 4 has been updated as directed by NDEP and EPA.</p> <p>1/11/24 Comment: The requested paragraph has been re-inserted; however, the paragraph was split between Subsections 4.2 and 4.3 consistent with the revised Section 4 organization.</p>

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	<p>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 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>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> <p>1/11/2024 Comment</p> <p>Please re-insert the following paragraph into the main body of the text in Section 4.1:</p> <p>"In addition, while acknowledging that other sources are contributing contaminants to Las Vegas Wash and Lake Mead (such as the AMPAC site), any remedial action selected through issuance of the NERT ROD will mitigate only NERT's contribution to the Las Vegas Wash and Lake Mead, and thus help achieve out-of-state MCLs at downstream state boundaries, namely, California's MCL for perchlorate of 6 µg/L (California Code of Regulations [CCR] Title 22, Section 64431); California's MCL for total chromium of 50 µg/L (CCR Title 22, Section 64431); other MCLs for COPCs originating at the Site (CCR Title 22, Division 4, Chapter 15 and Arizona Administrative Code Title 18, R-18-4-104, R-18-109)."</p>	