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NCBC GULFPORT
5090.3a

PROPOSED CONSENT ORDER REGARDING HANDLING OF POTENTIALLY HAZARDOUS
DIOXIN CONTAMINATED SOIL WITH TRANSMITTAL NCBC GULFPORT MS
1/18/1994
NCBC GULFPORT



DEPARTMENT OF THE NAVY

NAVAL CONSTRUCTION BATTALION CENTER

GULFPORT, MISSISSIPPI 39501-5000

IN REPLY REFER TO

6260
Ser 16/
January 18, 1994

Jerry Banks
Chief, RCRA Section, MDEQ
Office of Pollution Control
P.O. Box 10385
Jackson, MS 39289-0385

Dear Mr. Banks:

Per your discussions with Stephen Beverly, Assistant Counsel for the Southern Division Naval Facilities Engineering Command, enclosed is a proposed consent order offered to solidify our understanding of the methodology for handling potentially dioxin contaminated soils on NCBC. This is not to be construed as an acknowledgement that the site in its current condition constitutes and imminent and substantial to the health and welfare of personnel or the environment.

Point of contact in my command is Lieutenant Daphne L. Putzier, (601)871-2626. I look forward to hearing from you on this issue.

Sincerely,

A handwritten signature in cursive script, appearing to read "S. Beverly", written in black ink.

Encl: Agreed Order

Copy to: Stephen A. Beverly
Southern Division
Naval Facilities Engineering Command



BEFORE THE MISSISSIPPI COMMISSION
ON ENVIRONMENTAL QUALITY

MISSISSIPPI COMMISSION ON
ENVIRONMENTAL QUALITY

Complainant

v.

ORDER No. _____

U.S. DEPARTMENT OF THE NAVY
NAVAL CONSTRUCTION BATTALION CENTER
GULFPORT

Respondent

AGREED ORDER

COMES NOW, the Mississippi Commission on Environmental Quality ("MDEQ"), as Complainant, and the U.S. Department of the Navy, Naval Construction Battalion Center, Gulfport ("NCBC Gulfport") as Respondent, in the above captioned cause and without an evidentiary hearing thereon or any final adjudication of fact or law do both agree as follows:

1.

The Respondent is subject to Section 17-17-1 of the Mississippi Code Annotated (Supp. 1992) and those administrative regulations promulgated thereunder by MDEQ under the provisions of § 6001 of the Resource Conservation and Recovery Act ("RCRA") as amended.

2.

The purpose of this Order is to ensure that the environmental impacts associated with the placement of ash resulting from the past incineration of dioxin contaminated soils onto a site known as "Area A" onboard NCBC Gulfport are thoroughly investigated so that appropriate remedial alternatives may be developed to deal with that ash for the protection of public health, welfare and the environment; (2) to establish a procedural framework and schedule for implementing those agreed upon investigative efforts as determined necessary to properly assess the level of contamination present at Area A, and; (3) to facilitate the cooperation, exchange of information and participation of the parties in all future site investigative efforts.

3.

Herbicide Orange¹ ("HO") a formulated 50-50 mixture of the active ingredients 2, 4-dichlorophenoxyacetic acid (2,4-D) and 2, 4, 5-trichlorophenoxyacetic acid (2, 4, 5-T) was stored by



the United States Air Force ("USAF") at three sites (identified hereinafter as "Areas A, B & C") onboard NCBC Gulfport, until its use was suspended by the Department of Defense ("DOD") in 1977. In 1984 after having completed preliminary site monitoring and remedial characterization studies the USAF solicited proposals from various hazardous waste remediation contractors to demonstrate technologies for the removal of dioxin contamination from soils. The first verification testing of an ENSCO Corporation Mobile Waste Processor (MWP-2000) was conducted in December 1986 to provide preliminary effectiveness data to EPA Region IV. A trial burn to establish thermal destruction and removal efficiency (DRE) of the unit was performed in May 1987 followed by EPA Region IV issuance of a RCRA RD&D permit to conduct full-scale treatment of the contaminated soil.

4.

Under EPA RD&D Permit MS2 170 022 626, initial remedial efforts were undertaken until November of 1988 with approximately 15,000 cubic yards of contaminated soil being excavated from Areas A, B, and C and incinerated based upon a cleanup criteria of 1.0 part per billion (ppb). The resulting ash was placed upon approximately one-third of Area A. The USAF remediated the contaminated soils to a level of 1.0 ppb because there was no precedence for the cleanup criteria to be higher than 1.0 ppb and because existing land-ban restrictions only prohibited disposal of wastes having a dioxin concentration greater than 1.0 ppb. All adjacent areas surrounding the three former storage sites were and are non-residential.

5.

At the completion of ash incineration, the USAF submitted a Delisting Petition to Headquarters, Environmental Protection Agency ("HQ/EPA") for delisting of the ash as a RCRA hazardous waste. Draft sampling and analysis plans for the ash and groundwater were developed under an USAF contract and were submitted to HQ/EPA in February 1992 to supplement operational data which was presented in the original delisting petition. In May of 1992, HQ/EPA completed its review and advised the USAF that the delisting petition was incomplete. In September 1992 representatives of NCBC Gulfport, MDEQ, and EPA Region IV met to discuss the status of the ash delisting petition and its impact on future site remedial efforts. At that meeting, EPA Region IV confirmed that additional ash and groundwater sampling would need to be performed to support ash delisting approval. A follow-on meeting was held on 5 April of 1993 between USAF, MDEQ, and EPA Region IV officials at which agreement was reached on the following:

- a. That further information on groundwater quality needed to be obtained by NCBC Gulfport for review by MDEQ and EPA before a decision could be made as to final disposition of the ash or development of a remediation strategy for Area A.

b. That MDEQ would serve as lead oversight agency for future groundwater sampling and analysis activities with review and concurrence by EPA Region IV.

6.

On 29 September 1993, a contaminate assessment contract was awarded by the Department of the Navy ("Navy") for certain follow-on investigative activities and associated document preparation efforts associated with assessing the Area A ash piles as well as the groundwaters underlying that site. On 18 January 1994, NCBC Gulfport submitted to MDEQ a draft Groundwater Monitoring Workplan which is currently under review. Through execution of a separate Memorandum of Agreement ("MOA") between the Navy and the USAF the following additional activities will be funded through Air Force Defense Environmental Restoration Account (DERA) appropriations:

- a. The development of an ash and groundwater sampling plan
- b. The Installation of six groundwater monitoring wells
- c. Ash pile sampling and analysis
- d. One (1) year quarterly groundwater sampling and analysis
- e. Final delisting petition addendum report

7.

The following terms are agreed to between NCBC Gulfport and MDEQ as to those actions which shall hereafter be undertaken by NCBC Gulfport in regards to assessing current dioxin contamination levels associated with the prior placement of the incinerated ash on Area A onboard that facility:

a. In accordance with the following schedule, NCBC Gulfport shall undertake appropriate investigative activities leading to the production and submittal of the below identified documentation associated with its assessment of RCRA Appendix IX contaminant levels in the ash piles located upon and groundwaters lying underneath Area A as follows:

<u>Document / Activity</u>	<u>Date</u>
1. Submission of draft Final GW monitoring workplan -	14 Mar 94
2. Submission of 1st Quarter GW Sampling Report - ¹	14 Aug 94
3. Submission of ash sampling analysis report -	15 Aug 94
4. Submission of 2nd-Quarter GW Sampling Report -	28 Nov 94
5. Submission of 3rd-Quarter GW Sampling Report -	22 Mar 95

¹ All groundwater and ash pile analysis will be for the complete list of RCRA Appendix IX parameters, to include low level dioxin and furans.



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| 6. | Submission of 4th-Quarter GW Sampling Report - | 30 Jun 95 |
| 7. | Submission of delisting petition addendum - | 10 Nov 95 |

8.

The dates set forth above for submission of those sampling/monitoring plans and reports identified in that paragraph may be extended upon receipt by MDEQ of a timely request for extension and when "good cause" shall exist for the requested extension. Good cause shall be deemed to exist document submission delay caused by factors beyond the control of NCBC Gulfport including but not limited to:

- a. Acts of God including unusually severe weather conditions;
- b. Compliance with any applicable statute or regulation governing government contracting, procurement or acquisition procedures despite the exercise of reasonable diligence;
- c. An inability to obtain after the exercise of reasonable diligence any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority other than within the Department of Defense;
- d. An inability to prevent after the exercise of reasonable diligence, a default in government contractor performance with resulting delay in either required activity completion and/or document submission schedule compliance;
- e. An insufficient availability of appropriated funds if NCBC Gulfport shall have made a timely request for such funds as part of the applicable Memorandum of Agreement (MOA) with the USAF for the funding of those specific investigative activities encompassed by this Agreement;

9.

Any request for an extension of time to submit any document called for under paragraph six (6) above shall be submitted by NCBC Gulfport in writing at least five (5) working days prior to the submission deadline to be extended and shall specify:

- a. The submission date sought to be extended and length of the extension sought;
- b. The good cause basis for granting of the extension;
- c. Any related activity or other document submission that would be impacted if the desired extension were granted;

10.

It is further agreed that the decision by NCBC Gulfport to either continue or discontinue its



efforts to delist the ash shall be determined by those analytical results obtained from the ash and groundwater sampling effort to be undertaken pursuant to this Order. Should those results indicate that either ash or groundwater contamination levels would make ash delisting impossible under EPA delisting requirements, then NCBC Gulfport agrees to initiate discussions with MDEQ towards implementing appropriate remedial measures for Area A, such measures to be encompassed under the terms of an amendment to this Order.

11.

NCBC Gulfport and MDEQ agree to use their best efforts to resolve any disputes which may arise under this Order informally and in good faith. If a disagreement cannot be resolved informally, NCBC Gulfport may formally appeal in accordance with prescribed administrative appeal procedures.

12.

Entry of this Order shall not be construed as an acknowledgement by NCBC Gulfport that in its current condition, Area A constitutes an imminent and substantial endangerment to public health or welfare or the environment. Additionally, this Order shall not be deemed to constitute an admission of liability by NCBC Gulfport for any purpose nor shall it be admissible in any judicial or administrative proceeding except as may be brought by MDEQ for enforcement of the terms of the Order.



13.

NCBC Gulfport hereby makes an informed waiver of any right it may have under §49-71-31, Mississippi Code Annotated (Supp. 1991) to an evidentiary hearing on the matters contained in this Order.

SO ORDERED, this _____ day of _____, 1994.

MISSISSIPPI COMMISSION ON
ENVIRONMENTAL QUALITY

By: _____

Executive Director
Mississippi Department of
Environmental Quality

AGREED TO, this _____ day of _____, 1994

DEPARTMENT OF THE NAVY
NCBC GULFPORT

By: _____

Commanding Officer
NCBC Gulfport

