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NCBC GULFPORT
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AGREEMENT ORDER BETWEEN THE U S AIR FORCE AND U S NAVY REGARDING
LEAKING OR SPILLED HERBICIDE ORANGE NCBC GULFPORT MS
11/6/1997
MISSISSIPPI COMMISSION ON ENVIRONMENTAL QUALITY



STATE OF MISSISSIPPI
DEPARTMENT OF ENVIRONMENTAL QUALITY
JAMES I. PALMER, JR.
EXECUTIVE DIRECTOR

November 6, 1997

Mr. Steve Beverly
Assistant Counsel
Southern Division
Naval Facilities Engineering Command
P.O. Box 190010
2155 Eagle Drive
North Charleston, SC 29419-9010

Dear Sir:

Enclosed please find a copy of the Agreed Order between the Department, the U.S. Air Force, and the U.S. Navy that has been signed by all parties. If you have any questions or if I may be of any assistance, please call me at 601-961-5221.

Sincerely,

A handwritten signature in cursive script that reads "Jerry B. Banks".

Jerry B. Banks, P.E., DEE
Chief, Hazardous Waste Division

Enclosure

BEFORE THE MISSISSIPPI COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF:

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

ORDER No. 3466 - 97

AND

**U.S. DEPARTMENT OF THE AIR FORCE
AT THE NAVAL CONSTRUCTION BATTALION CENTER**

AGREED ORDER

COMES NOW, the Mississippi Commission on Environmental Quality ("Commission") and the U.S. Department of the Navy, Naval Construction Battalion Center, Gulfport, Mississippi (hereafter "Navy" or "NCBC Gulfport") and the U.S. Department of the Air Force (hereafter "Air Force") in the above captioned matter, and agree as follows:

1.

Acting as Executive Agent for the Department of Defense (DoD), the Air Force stored Herbicide Orange, a formulated mixture of the active ingredients 2,4-dichlorophenoxyacetic acid (2, 4-D) and 2,4,5-trichlorophenoxyacetic acid (2,4,5-T), at Naval Construction Battalion Center, Gulfport, MS, ("Navy" or "NCBC Gulfport"), until its use was suspended by the DoD in 1970. Herbicide Orange contains trace amounts of dioxin and related compounds including 2,3,7,8-tetrachlorodibenzo-p-dioxin ("TCDD") (hereafter "dioxin").

2.

While stored at NCBC Gulfport, Herbicide Orange leaked and/or was spilled at three storage areas (Areas 8A, 8B and 8C). Attached to this Order as Exhibit "A" is a map indicating the location of Areas 8A, 8B and 8C. Preliminary investigations of these areas conducted by both the Navy and Air Force under the authority of Executive Order 12580, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), and the National Contingency Plan ("NCP"), revealed the presence of dioxin or dioxin-related contaminants in surface soils.

3.

Under United States Environmental Protection Agency ("EPA") Research Development and Demonstration Permit (Permit) MS2 170 022 626, issued in July, 1986, the Air Force undertook remediation of storage Areas 8A, 8B, and 8C and excavated approximately 15,000 cubic yards of contaminated soils from the storage areas and incinerated the soil based upon an approved cleanup criterion for dioxin of 1 part per billion (ppb). As authorized under the permit, the Air Force placed the material resulting from the incineration back upon approximately one-third of storage Area 8A.

4.

In November 1988, the Air Force submitted a Delisting Petition to EPA Headquarters (EPA/HQ), Washington, D.C., for the delisting of the ash as a hazardous waste. In September 1992, EPA determined that additional ash and groundwater sampling was needed to support the petition. In January 1994, the Navy completed and submitted to EPA a supplemental ash and groundwater monitoring plan on behalf of both the Navy and the Air Force. In April 1994, EPA approved the Navy's supplemental sampling plan requiring six (6) sampling events. Supplemental ash/groundwater sampling activities were completed between August 1994 and May 1996. In August 1996 the Navy and the Air Force submitted a revised ash Delisting Petition to the Mississippi Office of Pollution Control (OPC) which had since obtained delisting authority from EPA.

5.

Independent Navy Installation Restoration Program (IRP) activities conducted in December 1994 confirmed the presence of dioxin and dioxin-related compounds at certain sites on NCBC Gulfport in surface soils, ditch and drainage way sediments and in groundwater. Beginning in March 1995, the Navy conducted initial off-base soil and sediment sampling. Based upon the results of that sampling, in April 1995, the Navy constructed twelve (12) sediment recovery traps (SRTs) to slow or prevent the movement of sediments off-base. The Navy also conducted a second round of off-base sampling to assist in the further delineation of possible dioxin contaminant migration adjacent to the base. In conjunction with an off-base road improvement project (28th Street construction), in July 1995, the Navy conducted a removal action of dioxin contaminated surface soils and sediments adjacent to the north side of the base.

6.

On February 13, 1996, the Executive Director of the Mississippi Commission on Environmental Quality issued Ex Parte Orders 3193 96 and 3194 96 to the Navy and the Air Force, respectively, requiring the initial submission of three draft workplans with associated work activity completion schedules by 1 May 1996, namely: (1) an Off-Site Dioxin Delineation Workplan, (2) an On-Site Dioxin Delineation Workplan, and (3) an On-Site Interim Corrective Measures Workplan. Those Orders also directed the later submission of other Workplans/studies with associated work activity completion schedules, namely: (1) Off-Site Remediation Workplan; (2) On-Site Remediation Workplan; (3) Biological Monitoring Workplan; (4) Groundwater Monitoring Workplan, and (5) Remedial Investigation/Feasibility Study. In accordance with the aforesaid Ex Parte Orders, on April 30, 1996, the Navy and the Air Force submitted drafts of the aforementioned Off-Site and On-Site Delineation and ICM Workplans to OPC for review and approval. On June 17, 1996, OPC staff provided initial comments to the Navy on these draft workplans. On December 20, 1996, the Navy submitted its draft Groundwater Monitoring Workplan to OPC staff for review and approval. On January 7, 1997, OPC staff formally approved the Navy's Off-Site and On-Site Delineation and ICM draft workplans.

7.

The purpose of this Agreed Order is to set in place a focused yet comprehensive strategy to be implemented for the further delineation and, if warranted, environmental remediation of the dioxin and/or dioxin-related contamination attributable to the prior storage and handling of Herbicide Orange on NCBC Gulfport that may now be present in surface soils, sediment and/or groundwaters on, beneath, or in proximity to, that facility.

This Agreed Order shall replace Administrative Orders 3193 96 and 3194 96 as issued to the Navy and the Air Force, respectively. The Navy and the Air Force agree to work cooperatively to satisfy the requirements set forth in this Agreed Order and recently have executed a Memorandum of Agreement (MOA) to address their respective roles in this regard. Although the responsibilities of the Navy and Air Force toward each other are delineated by the MOA, it is understood that the responsibilities of the Navy and Air Force to the Commission are created by State and federal law and that the particular responsibilities of the Navy and Air Force to the Commission in this matter are memorialized in this Order and are not lessened by any provision in the MOA.

A. OFF-SITE DELINEATION

1. On or before March 10, 1997, commence execution of the approved OFF- SITE DELINEATION WORKPLAN according to the schedule incorporated therein.
2. Complete those activities set forth in the approved OFF-SITE DELINEATION WORKPLAN and schedule.
3. Within eighty-five (85) days of completion of the OFF-SITE DELINEATION WORKPLAN activities, to include any necessary data analysis and validation, submit to OPC a final report (OFF-SITE DELINEATION REPORT) of the investigation findings.

B. OFF-SITE REMEDIATION PLAN

1. Within one hundred and thirty (130) days of receipt of written approval for the OFF-SITE DELINEATION REPORT, submit to OPC a remediation plan and schedule (OFF-SITE REMEDIATION WORKPLAN) to address that off-site dioxin or other dioxin-related contamination which may have migrated from NCBC Gulfport and be present in those sediments and surface soils identified in the OFF-SITE DELINEATION REPORT.
2. Within one hundred and eighty (180) days of receipt of approval by the OPC, commence execution of the approved OFF-SITE REMEDIATION WORKPLAN according to the schedule incorporated therein.
3. Complete those activities set forth in the approved OFF-SITE REMEDIATION WORKPLAN and schedule.

4. Within eight-five (85) days of completion of the OFF-SITE REMEDIATION WORKPLAN activities, to include any necessary data analysis and validation, submit to OPC a final report (OFF-SITE REMEDIATION REPORT) documenting the remediation activities completed.

C. INTERIM CORRECTIVE MEASURES

1. On or before March 10, 1997, commence execution of the approved ON-SITE INTERIM CORRECTIVE MEASURES WORKPLAN according to the schedule incorporated therein.
2. Complete those activities set forth in the approved ON-SITE INTERIM CORRECTIVE MEASURES WORKPLAN and schedule.
3. Within eighty five (85) days of completion of the ON-SITE INTERIM CORRECTIVE MEASURES WORKPLAN activities, to include any necessary data analysis and validation, submit to OPC a final report (ON-SITE INTERIM CORRECTIVE MEASURES REPORT) of the interim corrective measures completed.

D. EXPOSURE ASSESSMENT

On or before May 15, 1997, submit to OPC a HUMAN HEALTH EXPOSURE ASSESSMENT REPORT detailing the results of a Human Health and Ecological Exposure Assessment survey to be conducted off-base. That report shall contain an assessment of the frequency, duration and magnitude of both direct and indirect routes of potential human exposure to dioxin or other dioxin related contaminants which may have migrated from Site 8 and its related drainage ways into sediment and surface soils which likely received sediment overflow, or surface water, off-base. The results of the assessment

will be used to establish a site conceptual exposure model which will help guide field sampling efforts to ensure that sufficient media and biota samples are collected to adequately assess the potential human health and ecological risks in the surrounding community(ies) from possible exposure to dioxin contamination which may have migrated off-base.

E. BIOLOGICAL MONITORING

1. Within one hundred and thirty (130) days after receipt of final comments from OPC on the HUMAN HEALTH EXPOSURE ASSESSMENT REPORT specified under Paragraph 7D above, submit to OPC a workplan and schedule for conducting phased biological monitoring [BIOLOGICAL MONITORING WORKPLAN] in those surface aquatic environments potentially affected by dioxin or other dioxin-related contaminants which may have been present in sediment and those surface soils which likely received sediment overflow, and surface water discharged from the base. At a minimum, the BIOLOGICAL MONITORING WORKPLAN shall cover likely dioxin contaminant migration via off-base ditches and drainage ways into Canal #1, Turkey Creek, Bernard Bayou and Brickyard Creek.
2. Within one hundred and eighty (180) days of receipt of written approval from OPC, commence execution of the approved BIOLOGICAL MONITORING WORKPLAN according to the schedule incorporated therein.
3. Within eighty-five (85) days of completion of each biological monitoring period designated in the BIOLOGICAL MONITORING WORKPLAN, to include any necessary data analysis and validation, submit to OPC a final report (BIOLOGICAL MONITORING REPORT) of the findings.

F. ON-SITE DELINEATION

1. On or before March 10, 1997, commence execution of the approved ON-SITE DELINEATION WORKPLAN according to the schedule incorporated therein.
2. Complete those activities set forth in the approved ON-SITE DELINEATION WORKPLAN and schedule.
3. Within eighty-five (85) days of completion of ON-SITE DELINEATION WORKPLAN activities, to include any necessary data analysis and validation, submit to OPC a final report (ON-SITE DELINEATION REPORT) of the investigation findings.

G. ON-SITE REMEDIATION PLAN

1. Within one hundred and thirty (130) days of receipt of written approval by OPC of the ON-SITE DELINEATION REPORT, submit to OPC a remediation plan and schedule (ON-SITE REMEDIATION WORKPLAN) for the dioxin or other dioxin-related contaminants found in the soil and sediment at Sites 4, 5 and 8 and their related drainage ways as identified in the ON-SITE DELINEATION REPORT.
2. Within one hundred and eighty (180) days of receipt of written approval by OPC, commence execution of the approved ON-SITE REMEDIATION WORKPLAN according to the schedule incorporated therein.
3. Complete the activities as approved in the ON-SITE REMEDIATION WORKPLAN and schedule.
4. Within eighty-five (85) days of completion of the ON-SITE REMEDIATION WORKPLAN activities, to include any necessary data analysis and validation, submit to OPC a final report (ON-SITE REMEDIATION REPORT)

documenting the remediation activities completed.

H. GROUNDWATER MONITORING

1. Within ninety (90) days of receipt of written approval from OPC, commence execution of the approved GROUNDWATER MONITORING WORKPLAN according to the schedule incorporated therein.
2. Complete the activities as approved in the GROUNDWATER MONITORING WORKPLAN and schedule.
3. Within eighty-five (85) days of completion of GROUNDWATER MONITORING WORKPLAN activities, to include any necessary data analysis and validation, submit to OPC a final report (GROUNDWATER MONITORING REPORT) of the investigation findings.
4. If dioxin contamination is identified in the groundwater above action levels, within one hundred and thirty (130) days of submittal of the GROUNDWATER MONITORING REPORT, submit to OPC a workplan (CONTINUED PERIODIC MONITORING WORKPLAN) for continued periodic groundwater monitoring.
5. Within ninety (90) days of receipt of written approval from OPC, commence execution of the approved CONTINUED PERIODIC GROUNDWATER MONITORING WORKPLAN according to the schedule incorporated therein.

I. GROUNDWATER REMEDIATION

1. If dioxin contamination is identified in the groundwater above action levels, within one hundred and thirty (130) days after receipt of written approval of the CONTINUED PERIODIC GROUNDWATER MONITORING REPORT, submit to OPC a workplan (GROUNDWATER REMEDIATION WORKPLAN) for the potential remediation of dioxin-contaminated groundwater.
2. Within one hundred and eighty (180) days of receipt of written approval from OPC, commence execution of the approved GROUNDWATER REMEDIATION WORKPLAN according to the schedule incorporated therein.
3. Complete the activities as approved in the GROUNDWATER REMEDIATION WORKPLAN and schedule.
4. Within eighty-five (85) days of completion of the GROUNDWATER REMEDIATION WORKPLAN activities, to include any necessary data analysis and validation, submit to OPC a final report (GROUNDWATER REMEDIATION REPORT) of the remediation activities completed.

J. STATUS REPORTING

Beginning January 16, 1997, provide a quarterly status report to OPC (due 30 days after each quarterly reporting period beginning January 1st, April 1st, July 1st and October 1st) that summarizes the status of all ongoing activities agreed to under this Order.

8.

Compliance with those work activity and work plan submission deadlines set forth in this Agreed Order will be subject to the availability of appropriated funds for such purposes and no provision of this Agreed Order will be interpreted to require the obligation or payment of funds in advance or in excess of their appropriation in violation of the Anti-Deficiency Act (31 U.S.C. Section 1341). The Navy and the Air Force will use their best efforts to obtain sufficient funding through their budgetary processes to fulfill their obligations under this Agreed Order and to keep OPC staff apprised of the status of their funding efforts. Any insufficiency of appropriated funds which will affect the progress of scheduled work will be deemed to qualify as a Force Majeure event as defined under paragraph 9 below, justifying the extension of affected deadlines assuming a timely request for such funds has been made. Such an insufficiency of appropriated funds shall not, however, void the Agreed Order nor the responsibility of the Navy or the Air Force to ultimately carry out the work activity described in this Agreed Order. In the event an insufficiency of appropriated funds occurs, the Navy will notify MDEQ immediately of the insufficiency and will submit in writing to MDEQ the parties' best estimate of when work will resume and to what extent the deadlines set forth herein should be extended.

9.

It is agreed that any event arising beyond the control of the Navy or the Air Force, exercising reasonable diligence, that may delay or prevent the Navy or the Air Force from performing any of their respective obligations under this Agreed Order will be deemed a Force Majeure event justifying the extension of those affected work activity and/or document submission deadlines as set forth in this Agreed Order. Such events will include, but not be limited to, acts of God including unusually severe weather conditions; fire; war; civil disturbance; unanticipated breakage or accident to machinery or equipment despite reasonably diligent maintenance; unusual delays in transportation; inability to obtain at reasonable cost and after exercise of reasonable diligence any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency other than the Navy or the Air Force; restraint by court order or order of public authority; delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures despite the exercise of reasonable diligence; and non-availability of appropriated funds as specified in paragraph 8 above. "Reasonable diligence" as used in this paragraph shall

include, but not be limited to, the filing of all applications and information required by state and federal law and regulations.

10.

Nothing in this Agreed Order limits the rights of the Mississippi Department of Environmental Quality or the Mississippi Commission on Environmental Quality in the event there is a failure to comply with this Agreed Order.

11.

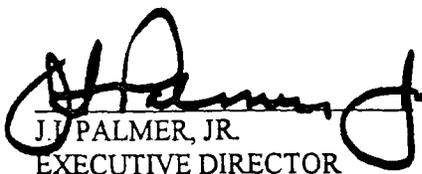
Nothing in this Agreed Order will be construed to override or otherwise restrict the rights, responsibilities or authorities possessed by the Navy or the Air Force under applicable federal law or regulations including Executive Order 12580, CERCLA as amended by the Superfund Amendments and Reauthorization Act (SARA), or the NCP, to undertake those independent investigative and/or remedial activities required pursuant to such law(s) or regulations in response to any other known or hereafter to be discovered release(s) of any hazardous substance, pollutant or contaminant on, or emanating from, NCBC Gulfport.

12.

The Navy and the Air Force understand and acknowledge that they have made an informed waiver of any right for a hearing before the Commission pursuant to the Mississippi Code Annotated (Supp. 1996) regarding the matters set forth in this Agreed Order.

SO ORDERED, this the 5th day of December 1997.

MISSISSIPPI COMMISSION ON
ENVIRONMENTAL QUALITY

BY: 
J.J. PALMER, JR.
EXECUTIVE DIRECTOR

AGREED TO AND ACCEPTED this 19 day of AUGUST, 1997.

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

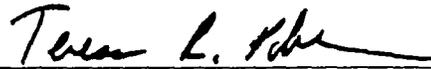
By: 

J. W. ZINK,
Commander, Civil Engineering Corps
U. S. Navy
Commanding Officer
Acting

**

AGREED TO AND ACCEPTED this 31st day of October, 1997.

U.S. DEPARTMENT OF THE AIR FORCE

By: 

TERESA R. POHLMAN
Chief, Environmental Division
DCS/Installations & Logistics

MEMORANDUM OF AGREEMENT
BETWEEN
UNITED STATES DEPARTMENT OF THE NAVY
AND
UNITED STATES DEPARTMENT OF THE AIR FORCE

I. PURPOSE

This Memorandum of Agreement (MOA) is entered into between the U.S. Department of the Navy (Navy) and U.S. Department of the Air Force (Air Force) (also hereinafter referred to as Parties) in order to implement a focused yet comprehensive strategy for the further delineation and, if warranted, environmental remediation of the dioxins and/or dioxin-related contamination attributable to the prior storage and handling of Herbicide Orange on NCBC Gulfport that may now be present in surface soils, sediment and/or groundwaters on, beneath, or in proximity to the Naval Construction Station Center, Gulfport, Mississippi, (NCBC Gulfport). Through execution of this agreement, the undersigned signatories confirm their respective agency's commitments towards their mutual goal of achieving the most timely and cost effective cleanup of the dioxins and/or dioxin-related contamination attributable to the prior storage and handling of herbicide orange on NCBC Gulfport in compliance with applicable federal, state and/or local environmental laws and regulations.

II. BACKGROUND

A. Requirements Under the Ex Parte Orders

On 13 February 1996, the Mississippi Department of Environmental Quality (MDEQ) issued to both the Navy and the Air Force separate Ex Parte Administrative Orders (Orders or Ex Parte Orders). These Orders directed both Parties, as individual respondents, to undertake the following specific activities for the further investigation and remediation of all dioxin and dioxin related contamination existing on, or in proximity to, NCBC Gulfport:

1. OFF-SITE DIOXIN DELINEATION - development and submission of a draft workplan for necessary off-site delineation work activities with associated activity completion schedule;
2. ON-SITE DIOXIN DELINEATION - development and submission of a draft workplan for necessary on-site delineation work activities with associated activity completion schedule;

3. INTERIM CORRECTIVE MEASURES - development and submission of a draft workplan for proposed interim corrective measures to reduce the transport of dioxin off-site with associated activity completion schedule;
4. BIOLOGICAL MONITORING - development and submission of a biological monitoring plan with associated work activity completion schedule;
5. GROUNDWATER MONITORING - development and submission of a groundwater contaminant and flow delineation plan with associated work activity completion schedule;
6. OFF-SITE DIOXIN REMEDIATION - development and submission of a draft workplan for off-site remediation work activities with associated activity completion schedule;
7. ON-SITE DIOXIN REMEDIATION - development and submission of a draft workplan for on-site remediation work activities with associated activity completion schedule;
8. REMEDIAL INVESTIGATION / FEASIBILITY STUDY - development and submission of a schedule for implementation and completion of the previously approved Remedial Investigation / Feasibility Study for the base;
9. STATUS REPORTING - development and submission of quarterly progress reports that summarize the status of all ongoing activities required by the Order.

After issuance of the aforesaid Ex Parte Orders, Navy and Air Force representatives conferred for the purpose of filing appropriate administrative appeals and for reaching consensus on the proper scope of those specific restoration activities which should be effected to address the dioxin contamination at NCBC Gulfport. These discussions resulted in the submission of three (3) draft workplans (On-Site Delineation, Off-Site Delineation, and Interim Corrective Measures) to MDEQ on 30 April 1996.

After consultation with Air Force representatives, on 20 August 1996, the Navy submitted to MDEQ a draft Agreed Order which proposed specific changes to the Ex Parte Administrative Order previously issued to the Navy by MDEQ. The Navy's draft Agreed Order revised the overall scope and associated deadlines for the dioxin delineation and remediation work activities proposed by MDEQ for completion, including, elimination of all CERCLA remedial investigation/feasibility study related work activities from inclusion under the terms of the Order. On 16 October 1996, MDEQ provided formal comments to the Navy on its proposed draft

Agreed Order. Since receipt of those comments Navy and Air Force personnel have consulted for the purposes of evaluating MDEQ's comments and for developing a joint Agreed Order for submission to MDEQ. On 7 January 1997, MDEQ formally approved the three Draft Workplans previously submitted by the Navy in compliance with the submission deadlines set forth in both Ex Parte Administrative Orders.

III. PLAN OF ACTION

A. Joint Order Implementation

The Parties recently executed with MDEQ a mutually developed Joint Agreed Order (Attachment 1). The Joint Order sets forth certain specific work activities and associated activity completion schedules which both Parties believe will best facilitate the timely further delineation and, as necessary, appropriate remediation of that dioxin contamination on, or in proximity to, NCBC Gulfport. The term "Joint Agreed Order" as used in this MOA includes the Order as executed by the Parties and any subsequent mutually agreed upon amendment(s) thereto.

Consistent with the terms of the Parties' Joint Agreed Order, this MOA is intended to facilitate the timely implementation and completion of the following specific activities:

1. Implementation of the previously approved Off-Site Delineation Workplan and development of Off-Site Delineation Report;
2. Implementation of the previously approved On-Site Delineation Workplan and development of On-Site Delineation Report;
3. Implementation of the previously approved Interim Corrective Measures (ICM) Workplan and development of ICM Report;
4. Finalization of the Navy's Draft Health Exposure Assessment Report;
5. Development and implementation of a Biological Monitoring Workplan and development of Biological Monitoring Report;
6. Development and implementation of a Groundwater Monitoring Workplan and development of Groundwater Monitoring Report;
7. Development and implementation of an Off-Site Remediation Workplan and development of Off-Site Remediation Report;
8. Development and implementation of an On-Site Remediation Workplan and On-Site Remediation Report;

9. Development and submission of quarterly progress reports that summarize the status of all ongoing activities required by the Order;
10. Development and implementation of a Groundwater Remediation Workplan and development of Groundwater Remediation Report

B. Respective Responsibilities

It is agreed that to best accomplish the mutual goals of the Parties of achieving the timely and cost effective cleanup of dioxins and/or dioxin-related contamination attributable to the prior storage and handling of Herbicide Orange on NCBC Gulfport and ensuring full compliance with the terms of the Joint Agreed Order each Party's respective representatives shall assume and carry out the specific responsibilities set forth under this section. The Navy's designated representative shall be Southern Division, Naval Facilities Engineering Command. The Air Force's designated representative shall be the Air Force Center for Environmental Excellence Environmental Restoration Directorate.

1. The Navy will serve as the lead technical representative and Primary Project manager for the investigation and cleanup of dioxins and/or dioxin-related contamination attributable to the prior storage and handling of Herbicide Orange on NCBC Gulfport. Subject to receipt of agreed upon project funding, as identified in Paragraph V "Project Funding," the Navy shall be responsible for:

a. Overall on-site and off-site investigative and remedial activities project management to include being the primary point of contact for all project related communications with MDEQ, U.S.EPA, the NCBC Gulfport Restoration Advisory Board (RAB) and the general public;

b. Development (in-house or by contract) of all reports, studies, workplans, risk assessments or other documentation required for submission to MDEQ, U.S.EPA, or the NCBC Gulfport RAB under the terms of the Joint Agreed Order involving future dioxin delineation and remediation including necessary interim corrective measures, biological and groundwater contamination assessment and monitoring, human health assessments and related dioxin related restoration requirements;

c. Providing to the Air Force by 1 March of each year projected annual funding requirements necessary for continued compliance with the terms of the Joint Agreed Order (See Sample - Attachment 2);

d. Overseeing timely implementation (in-house or by contract) of all field investigative and remedial activities required under approved workplans;

e. Unless mutually agreed otherwise, providing the Air Force with at least thirty (30) days to review all draft reports, studies, workplans, risk assessments or other technical documentation required under the Joint Agreed Order to be submitted to MDEQ, U.S. EPA, the RAB or to the general public;

f. Unless mutually agreed otherwise, providing the Air Force with at least thirty (30) days for technical input on all proposed work activity initiation and completion dates or any desired revisions to previously established work activity completion or document submittal deadlines to be submitted to MDEQ for approval;

g. Providing the Air Force monthly status reports as produced by the contractor, describing work completed in the previous month and projected work for the upcoming month. The Navy will make available to the Air Force for periodic inspection, as desired, all pertinent cost and contractor performance documentation relating to any work funded by the Air Force (See Sample - Attachment 3);

h. Providing the Air Force reasonable opportunity for review/input into any community briefings, fact sheets, newspaper articles and newscasts related to the dioxin contamination at NCBC Gulfport;

i. Providing the Air Force with copies of any written comments, decisions or recommendations relating to Joint Agreed Order activities, including any agreed upon schedule changes, within five (5) days of receipt of same from MDEQ or U.S. EPA;

j. Providing the Air Force RAB meeting minutes within thirty (30) days of all RAB meetings.

2. The Air Force will serve as the Parties' Alternate Project Manager. In such capacity, the Air Force shall be responsible for:

a. Providing technical and legal input to the Navy within thirty (30) days of receipt of those documents which concern the planning and implementation of all necessary on-site and off-site investigative and remedial activities to be undertaken pursuant to the terms of the Joint Agreed Order;

b. Providing review and written technical input to the Navy on all draft reports, studies, workplans, risk assessments or other documentation prepared by the Navy or its designated environmental consultant(s) within thirty (30) days of receipt of said documentation in implementing the requirements of the Joint Agreed Order;

c. Advising the Navy's Project Manager of the perceived need for any direct communications with any MDEQ, U.S. EPA, NCBC Gulfport

RAB or other agency representative pertaining to ongoing investigative or remedial activities. Any dispute over the need for, or substance of, such communications shall be resolved in accordance with the procedures specified in Section VII, DISPUTE RESOLUTION of this MOA;

d. As may later be mutually agreed by the Parties in light of contracting or personnel resource availability considerations, be responsible for the development (in-house or by contract) of certain specific reports, studies, workplans, risk assessments or other documentation as may be required for submission to MDEQ, U.S. EPA, and/or the NCBC Gulfport RAB under the terms of the Joint Agreed Order;

e. For advising the Navy of any reasonably foreseeable grounds for revising any previously established work activity completion or document submittal deadlines enforceable by MDEQ under the terms of the Joint Agreed Order no later than thirty (30) days prior to proposed deadlines;

f. For programming necessary funding to facilitate required investigative and remedial activities as identified by the Navy in accordance with Paragraph III.B.1.c. herein to the extent such funding is the Air Force's responsibility under Paragraph V of this MOA.

IV. COMPREHENSIVE PERFORMANCE SCHEDULE

The Parties agree that the schedule of performance for both on-site and off-site delineation, biological and groundwater monitoring, interim corrective measures and on-site and off-site remediation shall be as agreed to by the Parties in the Joint Agreed Order with MDEQ to include any amendments thereto. Attachment 4 contains a comprehensive schedule reflecting those on-site and off-site related work activities which the Parties presently anticipate will be associated with future compliance of the Joint Agreed Order. Attachment 4 was specifically developed by the Parties to facilitate the long-term planning and associated funding of all required work activities. It is the intent of the Parties that this schedule be updated as necessary, on at least an annual basis by 1 March, to take into account any future changes to be effected to those performance deadlines initially established under the terms of their Joint Agreed Order as such changes may thereafter be approved by MDEQ. The Parties agree to use their best efforts to ensure compliance with the schedules submitted to MDEQ in accordance with their respective responsibilities as designated herein.

V. PROJECT FUNDING

The Parties agree to the following funding allocation scheme to accomplish those specific activities to be undertaken pursuant to the Joint Agreed Order to be executed with MDEQ or any amendments thereto:

A. For activity costs less than or equal to \$5.0 million, the Air Force will fund 72.2% and the Navy will fund 27.8% of such costs. The Parties acknowledge that the Navy has already met its obligated percentage by funding \$1,390,000 in necessary activities for Fiscal Year 1997.

B. For activity costs above \$5.0 million but less than or equal to \$8.0 million, the Air Force will fund 100% of such costs.

C. For activity costs above \$8.0 million but less than or equal to \$9.0 million, the Air Force will fund 95% and the Navy will fund 5% of such costs.

D. For activity costs above \$9.0 million but less than or equal to \$10.0 million, the Air Force will fund 94% and the Navy will fund 6% of such costs.

E. For activity costs above \$10.0 million but less than or equal to \$20.0 million, the Air Force will fund 70% and the Navy will fund 30% of such costs.

F. For activity costs above \$20.0 million, the Air Force will fund 50% and the Navy will fund 50% of such costs.

It is understood that the term "activity costs" as used herein shall not include internal Navy program management or RAB support costs and that such costs shall be the Navy's sole responsibility.

Both Parties agree to take all actions necessary to ensure that their percentage of funding required for compliance with the Comprehensive Performance Schedule set forth in Attachment 4 to this Agreement shall be available during any given Fiscal Year when and as needed by the Navy as Primary Project Manager to facilitate either in-house or contractor performance of work.

VI. PROJECT MANAGERS

On or before the effective date of this agreement the Parties will designate a project manager and notify the other Party of the name, address and telephone number of the same. The project managers shall be responsible for assuring proper implementation of all work performed under the terms of this Agreement and Joint Agreed Order. To the maximum extent practicable, all communications between the Parties and all documentation including reports, comments and other correspondence concerning the activities performed pursuant to those instruments shall be directed through the respective Project Managers. The Parties may designate an Alternate Project Manager to exercise the authority of the Project Manager in his or her absence.

The Parties may change their respective Project Managers at any time but shall make good faith efforts to avoid future personnel changes in order to help ensure program continuity. Any such change shall be accomplished by notifying the other Party, in writing, within five (5) days of the change and prior to any new Project Manager exercising his or her delegated authority.

The Parties' Project Managers shall meet to confer informally as mutually deemed necessary but not less than quarterly in order to ensure adequate work activity oversight and coordination. At least one week prior to each meeting, the Navy Project Manager will provide to the Air Force Project Manager a draft agenda and applicable supporting documentation if any. The purpose of such quarterly meetings shall be to:

- A. Discuss all pertinent sampling and analysis data received since the last quarterly meeting;
- B. Discuss field activities completed pursuant to this agreement since the last quarterly meeting as well as those activities which are scheduled for the upcoming ninety (90) days;
- C. Discuss any past and/or pending future delays in work accomplishment or funding availability; the reason(s) for such delays; the potential impacts on Order compliance which such delays may have or anticipated problems which might arise in the execution of any required workplan during the quarter and any steps which have or will be taken by each Project Manager to alleviate any such delays or problems;
- D. Discuss any necessary and appropriate adjustments to existing deadlines or schedules necessitated by past or anticipated delays in work accomplishment or funding availability and to coordinate the subsequent presentation of any such adjustment and/or other Order modification(s) to MDEQ representatives.

The minutes of each Project Manager's meeting will be prepared by the Navy and will be distributed within twenty-one (21) days after the meeting. Any documents requested by either Project manager during the meeting will be provided by the other Party in a timely manner.

Either Project Manager may recommend the implementation of modifications to the type or level of work to be performed pursuant to this Agreement, or in techniques, procedures or approaches to be utilized in carrying out this Agreement as long as such changes will not result in any violation of the terms of the Joint Agreed Order. If agreement cannot be reached on any proposed work activity(ies) or any modification to previously agreed upon work activity(ies), then the proposing Party may invoke dispute resolution in accordance with Section VII- DISPUTE RESOLUTION, by submitting a written Request for Consultation (RFC). If both

Project Managers agree to any proposed work activity modification then, unless mutually agreed otherwise, within ten (10) working days following such agreed change the Project Manager who requested the modification shall prepare a written memorandum detailing the modification and the reasons therefor and shall provide a copy of the memorandum to the other Project Manager.

VII. DISPUTE RESOLUTION

A. The Parties shall make all reasonable efforts to informally resolve any disputes relating to the necessity for, future planning, performance or funding of, required investigative and remedial work activities at the Project Manager level. If resolution cannot be achieved informally, the procedures of this section shall be implemented to resolve any such dispute(s).

B. Within fourteen (14) days following any Project Manager's meeting or the receipt of written or oral communication which leads to or generates a dispute, the disputing Party's Project Manager shall submit to the other Party's Project Manager a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute and the technical, legal or factual information the disputing Party is relying upon to support its position. The head of each Project Manager's respective organizations (or their designees) shall attempt to informally resolve the dispute within fourteen (14) days.

C. Prior to any Party's issuance of a written statement of dispute, the disputing Party shall engage the other Party in informal dispute resolution among the Project Managers and/or their immediate supervisors. During this informal dispute resolution period, the Parties shall meet as many times as are necessary to discuss and attempt resolution of the dispute.

D. Within fourteen (14) days following non-resolution of any dispute at the Project Managers' organizational level, the disputing Party shall submit to the Dispute Resolution Committee (DRC) a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute and the technical, legal or factual information the disputing Party is relying upon to support its position.

E. The DRC will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individual designated to serve on the DRC shall be employed at the senior management level (Colonel) or equivalent or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this agreement. The Navy designated member is the Director, Environmental Programs Directorate,

Naval Facilities Engineering Command. The Air Force designated member is the Chief, Environmental Division, Headquarters, United States Air Force. Written notice of any delegated representative on the DRC shall be provided to all other Parties within fourteen (14) days of said delegation.

F. Following elevation of a dispute to the DRC, the DRC shall have twenty-one (21) days to unanimously resolve the dispute and issue a written decision. If the DRC is unable to unanimously resolve the dispute within this twenty-one (21) day period, the written statement of dispute shall be forwarded to the Senior Executive Committee (SEC) for resolution within seven (7) days after the close of the twenty-one (21) day resolution period.

G. The SEC will serve as a forum for resolution of dispute for which agreement has not been reached by the DRC. The Navy designated member is the Deputy Assistant Secretary of the Navy for Environment and Safety. The Air Force designated member is the Deputy Assistant Secretary of the Air Force for Environment, Safety and Occupational Health. SEC members shall as appropriate confer, meet, and exert their best efforts to resolve the dispute and issue a written decision within twenty-one (21) day period.

H. Neither the invocation nor the processing of any dispute under this Section shall affect either Party's responsibilities to ensure full compliance with the terms of the Joint Agreed Order and this MOA.

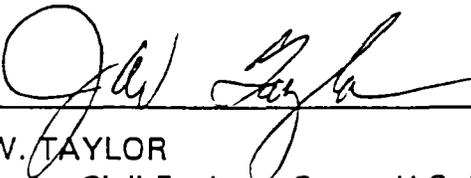
I. Within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this Section, that final determination shall be incorporated into the appropriate plan, schedule, or procedures and the Parties shall proceed to implement this Agreement according to the amended plan, schedule, or procedures.

J. Resolution of a dispute pursuant to this section of the Agreement constitutes a final resolution of any dispute arising under this Agreement. All Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Section of this Agreement.

III. EXECUTION

This Agreement is executed by the below named individuals on behalf of their respective agencies and shall become effective upon the date that the latter party signs.

For the Department of the Navy:



J. W. TAYLOR
Captain, Civil Engineer Corps, U.S. Navy
Deputy Director, Environmental Protection,
Safety and Occupational Health Division

16 SEP 97
Date

For the Department of the Air Force:



TERESA R. POHLMAN
Chief, Environmental Division
DCS / Installations and Logistics

27 Oct 97
Date