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U S EPA RCRA 7003 ADMINISTRATIVE ORDER ON CONSENT DOCKET RCRA-02-2005-
7303 NAVAL ACTIVITY PUERTO RICO
2/1/2005
U S EPA

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:)
)
United States)
The Department of the Navy,)
)
Naval Activity Puerto Rico,)
formerly Naval Station Roosevelt Roads)
Puerto Rico,)
)
RESPONDENT,)
)
Proceeding under Section 7003 of)
the Solid Waste Disposal Act, as amended)
42 U.S.C. Section 6973.)
_____)

EPA DOCKET NO.
RCRA- 02-2005-7303

RCRA § 7003 ADMINISTRATIVE ORDER ON CONSENT

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ATTACHMENT III Scope of Work for a Full RCRA Facility Investigation (RFI)

ATTACHMENT IV Scope of Work for a Corrective Measure Study

I. INTRODUCTION

1. This Administrative Order on Consent (Consent Order) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and Respondent, The United States Department of the Navy.
2. This Consent Order provides for the performance by Respondent of the following: implementation of RCRA Facility Investigations (RFIs) at certain units, implementation of Interim Measures at certain units, completion of Corrective Measures Studies (CMSs) at certain units, submission of work plans to complete CMSs to determine the final remedy for certain units, submission of Corrective Measures Implementation (CMI) plans to implement the selected final remedy(ies), and completion of public notice and comment on any CMI plans (and RFI and CMS as appropriate) and implementation of those CMI Plans as modified based on public comments, submission to EPA of acceptable Closure Plans for SWMU #3 in lieu of CMS and/or CMI plans for that unit, documentation that acceptable institutional controls are in effect to prevent future inappropriate usage of portions of the Site and/or the groundwater in certain portions of the Site. The Respondent had previously been implementing this work at certain of the units under its RCRA permit issued in 1994. This Consent Order also requires Respondent to perform any Additional Work that may be required by Section VIII.5 of this Consent Order (Notification and Additional Work Requirements for Newly-discovered Releases) and/or Section IX (EPA Approvals and Additional Work).
3. In entering into this Consent Order, the mutual objectives of EPA and Respondent are to identify, investigate, remedy, and/or prevent the potential endangerment to human health and/or the environment from activities involving "solid waste" and "hazardous waste" and to insure that the Work ordered by EPA be designed and implemented to protect human health and the environment. These activities are outlined below in Section VIII (Work To Be Performed). Respondent shall fund and perform the Work in accordance with plans, standards, specifications and schedules set forth in this Consent Order or developed by Respondent and approved by EPA pursuant to this Consent Order.
4. EPA has notified the Commonwealth of Puerto Rico of this action pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a), on [date].

II. JURISDICTION

5. This Consent Order is issued under the authority vested in the Administrator of EPA by Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973, as further defined below, which authority has been delegated to the Regional Administrator of EPA Region 2.
6. Respondent agrees to undertake and complete all actions required by the terms and

conditions of this Consent Order. In any action by EPA or the United States to enforce the terms of this Consent Order, Respondent consents to and agrees not to contest the authority or jurisdiction of the Regional Administrator to issue or enforce this Consent Order, and agrees not to contest the validity of this Consent Order or its terms or conditions.

III. PARTIES BOUND

7. This Consent Order, and the responsibilities and obligations it imposes, shall apply to and bind Respondent and, in their official capacity, Respondent's employees, agents, successors and assigns.
8. Regardless of Respondent's employ of, or contractual agreement with, any entity, Respondent remains ultimately liable for failure to carry out, or comply with, any term or condition imposed by this Consent Order. It shall not be a defense to any violation of this Consent Order that the supervisory personnel, contractor, laboratory or consultant committing the violation was not informed of the requirements of this Consent Order
9. All contractual agreements entered into by Respondent aimed at satisfying its responsibilities or obligations under this Consent Order shall strictly comply with the terms and conditions of this Consent Order. In addition, Respondent shall, within one week of the effective date of this Consent Order and immediately, upon hiring, provide a copy of this Consent Order, and any relevant attachments, to all Respondent project management personnel and prime contractors, retained to conduct, monitor or perform any work pursuant to this Consent Order. All Respondent personnel and prime contractors shall perform such work in accordance with the requirements of this Consent Order.
10. Respondent shall give notice, and a copy, of this Consent Order to any successor in interest prior to any transfer of ownership or operation of the Facility (as defined in Section IV below) and shall notify EPA's designated contact ninety (90) days prior to any such transfer. Nothing in this Consent Order shall be read to waive any requirements of the Community Environmental Response Facilitation Act, Public Law 102-426.
11. No change in the Navy's organizational form or in the ownership of the "Facility" (as defined in Section IV below) shall in any way alter or alleviate Navy's responsibility and obligation to carry out all the terms and conditions of this Consent Order. However, the Navy and EPA expect that the Navy will sell and/or otherwise convey various parcels or segments of the Facility to various third parties at which time EPA expects to issue a separate order to such third parties requiring the performance of any remaining corrective action tasks related to the transferred parcel and to amend the tasks to be performed under this Consent Order to reflect such changes.

IV. DEFINITIONS

12. Unless otherwise expressly provided herein, terms used in this Consent Order that are defined in the RCRA statute shall have the meaning assigned to them in that statute. Whenever the terms listed below are used in this Consent Order the following definitions apply:

“AOC” shall mean Area of Concern, i.e., an area being addressed pursuant to Section 3005 (c) of RCRA, 42 U.S.C. 6925(c) (Section 212 of HSWA), and its corresponding regulations published in 40 C.F.R. § 270.32 (b)(2), the “Omnibus Provisions.”

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

“Day” shall mean a calendar day unless expressly stated otherwise.

“Effective Date” shall be the date on which EPA signs this Consent Order following the public comment period which is held pursuant to Section XXVIII (Public Comment on this Consent Order).

“EQB” shall mean the Environmental Quality Board of the Commonwealth of Puerto Rico.

“Facility,” unless otherwise indicated, shall mean the entire Naval Activity Puerto Rico (NAPR, formerly Naval Station Roosevelt Roads) base which has been owned by the United States Department of the Navy and which is approximately 8,900 acres on the east Coast of Puerto Rico in the municipality of Ceiba, and two adjacent, offshore islands (Pineros and Cabeza de Perro). A fuller description of the Facility appears in Section V.7, below.

“Navy” shall mean the United States Department of the Navy.

“RCRA” shall mean the Solid Waste Disposal Act), as amended by various statutes including the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*

“Respondent” shall mean the United States Department of the Navy (“Navy”).

“Site,” unless otherwise indicated, shall mean the entire Naval Activity Puerto Rico (NAPR, formerly Naval Station Roosevelt Roads) base which is owned by the United States Department of the Navy and which is

approximately 8,900 acres on the east coast of Puerto Rico in the municipality of Ceiba, and two adjacent, offshore islands (Pineros and Cabeza de Perro). A fuller description of the Site appears in Section V.7, below.

“SOW” shall mean Scope of Work that is attached to this Consent Order.

“SWMU” shall mean solid waste management unit as that term is applied in 40 CFR § 264.101.

“Work” shall mean all the activities and requirements specified in Section VIII (Work To Be Performed) of this Consent Order but does not include other obligations imposed by other paragraphs of this Consent Order.

V. FINDINGS OF FACT

13. 1. Navy is an Owner/Operator of a Hazardous Waste Treatment Facility:

Navy has been a "generator" of "hazardous waste" and the "owner" and "operator" of a hazardous waste "storage" "facility", which constituted an “existing Hazardous Waste Management facility” (HWMF), as those terms are defined at 40 C.F.R. § 260.10. The Navy facility that is the subject of this Consent Order is located mostly on the east end of the island of Puerto Rico near to the town of Ceiba, but also includes two adjacent, offshore islands (Pineros and Cabeza de Perro) (together, hereinafter referred to as "Naval Activity Puerto Rico", “NAPR”, "the Facility," “the Site,” or "Navy's Facility").

2. Navy is a "Person":

Navy is a "person" as defined by Section 1004(15) of the Act, 42 U.S.C. § 6903(15). Pursuant to Section 6001 of the Act, 42 U.S.C. § 6961, Navy is subject to all federal, state, interstate, and local requirements, both substantive and procedural, to the same extent as any “person,” as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), is subject to such requirements.

3. Notification and Interim Status:

Pursuant to Section 3010 of the Act, 42 U.S.C. § 6930, in 1980, Navy notified EPA of its hazardous waste activity, as that term is defined by Section 1004(5) of the Act, 42 U.S.C. § 6903(5) and requested the issuance of an EPA Hazardous Waste Identification number. In this notification, Navy identified itself as a generator of hazardous waste and an owner and operator of a hazardous waste treatment, storage, and disposal facility; and Navy established itself as the owner of the Facility as the term "owner" is used under RCRA.

The facility filed its original Part A of the Hazardous Waste Permit Application on

November 7, 1980, and pursuant to 40 CFR § 270.10(e) constituted an “existing Hazardous Waste Management facility” (HWMF). Pursuant to 40 CFR § 270.70 the facility was subject to the requirement to have a RCRA permit, and pursuant to 40 CFR § 270.70 through 40 CFR § 270.73 has operated since November 7, 1980 as an HWMF.

4. Hazardous Waste Permit Application:

The Facility revised its Part As on April 26, 1988, January 31, 1992, June 10, 1999, June 1, 2001, July 24, 2001, October 3, 2003, and March 30, 2004. The July 24, 2001 Part A, which is a recent Part A that has information on the full range of wastes formerly managed at the facility, identifies the hazardous waste activity by process code S01, storage, and indicates the presence of 6 such units, with a process design capacity to store 18,645 gallons of hazardous waste. The July 24, 2001 Part A indicates that the following hazardous wastes (pursuant to 40 CFR §§ 261.23 and/or 261.24 for “D” wastes and 261.31 for “F” wastes), among others, were authorized to be stored at the facility:

- D001 -a solid waste exhibiting the characteristic of ignitability.
- D002 -a solid waste exhibiting the characteristic of corrosivity.
- D006 -a solid waste exhibiting the toxicity characteristic for cadmium.
- D007 -a solid waste exhibiting the toxicity characteristic for chromium.
- D008 -a solid waste exhibiting the toxicity characteristic for lead.
- D009 -a solid waste exhibiting the toxicity characteristic for mercury.
- D011 -a solid waste exhibiting the toxicity characteristic for silver.
- D018 -a solid waste exhibiting the toxicity characteristic for benzene.
- D027 -a solid waste exhibiting the toxicity characteristic for 1, 4-dichlorobenzene.
- D035 -a solid waste exhibiting the toxicity characteristic for methyl ethyl ketone.
- F001- spent halogenated solvents used in degreasing.
- F002- spent halogenated solvents and still bottoms from the recovery of such spent solvents.
- F003- spent non-halogenated solvents and still bottoms from the recovery of such spent solvents.
- F005- spent non-halogenated solvents and still bottoms from the recovery of such spent solvents.

5. Hazardous Waste Permit

The Facility submitted the Part B of the Hazardous Waste Permit Application on April 26, 1988. The Part B was modified by subsequent amendments dated December 1, 1988; June 15, 1990; October 29, 1991 and January 1, 1992 (hereafter referred to as the Application). Based on the Application, a RCRA permit was issued by EPA and became effective on November 28, 1994.

The RCRA Permit authorized continued storage of hazardous waste in containers at designated hazardous waste storage units, all located inside the Defense Reutilization and Marketing Organization (DRMO) compound at the Facility. The RCRA Permit also imposed corrective

action investigation and other requirements at solid waste management units (SWMUs) and areas of concern (AOCs) throughout the Facility, where releases of solid and/or hazardous waste and hazardous constituents were considered to have possibly occurred. On June 10, 1999 the Navy submitted a Part B application to renew its RCRA Permit. The renewal application was amended on May 8, 2000, June 1, 2001, July 3 and July 24, 2001, November 8, 2001, March 27, 2002, May 22, 2003, October 6, 2003, March 30, 2004 and Sept. 20, 2004 . Pursuant to 40 CFR § 270.51, the Facility's RCRA permit was administratively extended based on the submission of its Part B renewal application.

On February 3, 2004, the Facility submitted a letter to EPA indicating that it planned to cease using its six permitted hazardous waste container storage units (HWCSUs), and to close them pursuant to the requirements of the RCRA permit. The letter indicated that future hazardous waste generated at the facility will be stored in an alternative "less than 90 day" storage unit, which would not require a RCRA permit. The Navy subsequently has indicated that the six HWCSUs have all been emptied of hazardous waste, and are being closed pursuant to the requirements of the closure plan in the 1994 RCRA permit.

6. Facility Description:

8432
NAPR, formerly Naval Station Roosevelt Roads, is located on the east coast of Puerto Rico in the municipality of Ceiba, approximately 33 miles southeast of San Juan. The nearest major town is Fajardo, which is 10 miles north of the station. The facility occupies approximately 8900 acres and, except for two adjacent, unpopulated offshore islands (Pineros and Cabeza de Perro) off the northeast coast of the facility, is bordered on all sides but the west by the marine waters of the Atlantic Ocean, Caribbean Sea, Vieques Passage. According to information supplied by the Navy¹, NAPR/Roosevelt Roads consists of 3,938 acres of upland (developable) property and 4955 acres of environmentally sensitive areas including wetlands, mangrove areas, and wildlife habitat. The Facility was used as a military base from 1940 until March 31, 2004. It includes a major airfield complex, and contains small arms ranges, but, based on information supplied by the Navy, the Facility never contained bombing ranges and/or open burning/open detonation areas for waste munitions. Groundwater has not been used as a drinking water or potable water source at the site. For over 30 years, the Facility has obtained drinking and potable water from a water treatment plant that receives raw water from the Rio Blanco.

The Facility ceased operation as an active Naval Station on March 31, 2004, at which point it was designated Naval Activity Puerto Rico (NAPR). The Navy currently retains ownership and maintains the facility in preparation for sale and/or transfer of the property, which is currently targeted to begin in August 2005.

¹ Refer to the *Draft Phase II Environmental Conditions of Property Report*, dated September 1, 2004.

3938
4955

8893

7. Solid Waste Management Units and Areas of Concern at the Facility

A. Solid Waste Management Units (SWMUs): Pursuant to Section 3004(u) of RCRA, 42 U.S.C. § 6924(u) (Section 206 of HSWA), and its corresponding regulations published in 40 C.F.R. § 264.101, the following SWMUs have been identified at Naval Station Roosevelt Roads.

24 Cat 1
31 Cat 2, 3

55 ?
21 closed since 1999?
31 - correctly listed

1) A total of fifty two (52) SWMUs were identified in the 1994 RCRA permit issued to the facility, based on the RCRA Facility Assessment (RFA), dated November 1988, supplemented by a June 1993 follow-up visual site inspection (VSI) discussed below. The RFA for Naval Station Roosevelt Roads included a Preliminary Assessment (PA) (i.e., a review of available information available to EPA in its own files and those made available by the facility), and a VSI. The VSI was conducted in August, 1988. The follow-up VSI inspection was conducted in June, 1993 to update the data gathered during the 1988 VSI. Based on the PA, VSI, and follow-up VSI, SWMUs were characterized as to their release potential and evaluated as to which media could be affected.

2) A total of twenty four (24) additional SWMUs have been identified subsequent to issuance of the 1994 RCRA permit. Two of the new SWMUs (#53 and #54) were first identified in the May 31, 2000 "RCRA Quarterly Progress Report" submitted to EPA by the Navy. A third new SWMU (#55) was previously being addressed in conjunction with the releases from SWMUs #7 & #8 (Tow Way Fuel Farm); however, it was identified as a separate SWMU in EPA's letter of February 24, 2004. In addition, 21 SWMUs have been identified based on the "Phase I Environmental Condition of Property Report" (the Phase I ECP Report), dated March 31, 2004, which was developed by the Navy.



52
24

76 ✓

3). Thus, a total of seventy six (76) SWMUs have been identified at the Facility. They are listed below, and are described more fully in the RFA and Phase I ECP reports, discussed above. The defined SWMUs at the Facility are:

SWMU 1 - former Army Cremator disposal site ✓

SWMU 2 - former Langley Drive disposal site ✓

SWMU 3 - the Facility's non-hazardous landfill ✓

* SWMU 4 - oil/water separator at Building 860 ✓ Cat. 1

- * SWMU 5 - miscellaneous metal dumpsters ✓ *cat 1*
- SWMU 6 - Building 145 - uncontrolled waste paint storage area ✓
- SWMUs 7/8 - Tow Way Fuel Farm free product plumes and sludge ✓
disposal pits
- SWMU 9 - Tanks 212 through tank 217 sludge disposal pits ✓
- SWMU 10 - Transformer Substation 2 ✓
- SWMU 11 - interior areas of Building 38 (Old Power Plant) ✓
- * SWMU 12 - oil/water separator at Fire Training Area *cat. 1*
- SWMU 13 - Building 138 - former Pest Control Area ✓
- SWMU 14 - Fire Training Pit at Crash Crew Area ✓
- * SWMU 15 - former hospital incinerator ✓ *cat 1*
- * SWMU 16 - Building 1666 - explosive storage locker ✓ *cat 1*
- * SWMU 17 - Building 1973 - hazardous waste container storage area ✓ *cat 1*
- * SWMU 18 - Building 2009 - hazardous waste container storage area ✓ *cat 1*
- SWMU 19 - Building 121 - closed pesticide storage area ✓
- * SWMU 20 - Building 860 waste oil storage area *cat 1*
- * SWMU 21 - floating oil spill clean-up "donuts" *cat 1*
- * SWMU 22 - Ship Waste Offload Barges *cat 1*
- SWMU 23 - "first stage" oil/water separators at Fuel Pier ✓
- SWMU 24 - "second stage" oil/water separators at Fuel Pier ✓
- SWMU 25 - Defense Reuse and Marketing Organization (DRMO) storage ✓
yard
- SWMU 26 - uncontrolled storage area at Building 544 ✓

- * SWMU 27 - Capehart Sewage Treatment Plant *Cat 1*
- * SWMU 28 - Bundy Sewage Treatment Plant *Cat 1*
- * SWMU 29 - Industrial Area wastewater treatment plant *Cat 1*
- SWMU 30 - former waste oil incinerator ✓
- SWMU 31 - uncontrolled storage are near Building 31 and 2022 ✓
- SWMU 32 - discarded battery storage area at Building 31 ✓
- SWMU 33 - waste storage area at Building 379 ✓
- * SWMU 34 - waste oil and fuels storage area at Airfield *Cat 1*
- * SWMU 35 - oil/water separator at Building 36 *Cat 1*
- * SWMU 36 - oil/water separator at Berthing Pier *Cat 1*
- ~~*~~ SWMU 37 - waste oil and fuels storage area at hanger 200 at airfield ~~*Cat 1*~~ ✓
- * SWMU 38 - sanitary and storm water sewer systems *Cat 1*
- SWMU 39 - Building 3158 battery fluid drainage area ✓
- * SWMU 40 - waste oil accumulation tank at Alpha Company Maintenance Yard *Cat 1*
- SWMU 41 - Building 3152 pesticide storage area ✓
- * SWMU 42 - water purification plant lagoons *Cat 1*
- SWMU 43 - Building 860 concrete storm water drain ✓
- SWMU 44 - Aerial Target Yard storm water drainage ditch ✓
- SWMU 45 - exterior areas of Old Power Plant(Building 38) ✓
- SWMU 46 - transformer storage pad at Public Works Department ✓
- * SWMU 47 - miscellaneous "satellite" disposal areas *Cat 1*
- * SWMU 48 - waste oil storage rack near building 3102 *Cat 1*

1994 RCRA Permit



- * SWMU 49 - waste oil accumulation tank near building 3188 *Cat 1*
- * SWMU 50 - uncontrolled storage area near building 3166 *Cat 1*
- SWMU 51 - waste storage pad at Building 379 ✓
- * SWMU 52 - waste storage pad at Building 3158 *Cat 1*

Identified in May 2020



- SWMU 53 - Building 64 - former malaria control shop ✓
- SWMU 54 - Building 1914 - former automobile repair shop ✓

Feb. 2024



- SWMU 55 - Trichloroethene (TCE) Groundwater Plume at Tow Way Fuel Farm. ✓

ECP 1 ???

- SWMU 56 (a/k/a ECP 2) - Hanger 200 Apron ✓
- SWMU 57 (a/k/a ECP 3) - Facility No. 278 POL Drum Storage Area ✓
- * SWMU 58 (a/k/a ECP 4) - Rifle Range at Punta Puerca *Cat 1*
- SWMU 59 (a/k/a ECP 5) - Former Vehicle Maintenance and Refueling Area ✓
- SWMU 60 (a/k/a ECP 6) - Former Landfill at the Marina ✓
- SWMU 61 (a/k/a ECP 7) - Former Bundy Area Maintenance Facilities ✓
- SWMU 62 (a/k/a ECP 8) - Former Bundy Disposal Area ✓
- * SWMU 63 (a/k/a ECP 9) - Former Pistol Range at BEQ *Cat 1*
- * SWMU 64 (a/k/a ECP 10) - Former Skeet Range at Ofstie Field *Cat 1*
- * SWMU 65 (a/k/a ECP 11) - Former UST No. 208 *Cat 1*
- * SWMU 66 (a/k/a ECP 12) - Former UST No. 289 *Cat 1*
- SWMU 67 (a/k/a ECP 13) - Former Gas Station ✓
- SWMU 68 (a/k/a ECP 14) - Former Southern Fire Training Area ✓

SWMU 69 (a/k/a ECP 15) - Aircraft Parking Area ✓

SWMU 70 (a/k/a ECP 16) - Disposal Area Northwest of Landfill ✓

SWMU 71 (a/k/a ECP 17) - Quarry Disposal Site ✓

* SWMU 72 (a/k/a ECP 18) - Building 31 -Public Works Dept. *cat 1*

SWMU 73 (a/k/a ECP 19) - DRMO Scrap Metal Recycling Yard ✓

SWMU 74 (a/k/a ECP 20) - Fuel Pipelines and Hydrant Pits ✓

SWMU 75 (a/k/a ECP 21) - Building 803 ✓

SWMU 76 (a/k/a ECP 22) - Building 2300 ✓

- B. Areas of Concern (AOC): Pursuant to Section 3005 (c) of RCRA, 42 U.S.C. 6925(c) (Section 212 of HSWA), and its corresponding regulations published in 40 C.F.R. § 270.32 (b)(2), the Director of the Division of Environmental Protection and Planning("the Director") may impose other terms and conditions in a RCRA permit as the Director determines necessary to protect human health and the environment. Under that authority, AOCs requiring corrective action work may be identified. The AOCs that have been identified at the Facility are listed below and described more fully in the RFA and Phase I ECP Reports discussed above.

* AOC A - Torpedo Shop

cat 1

AOC B - uncontrolled waste storage area at former Building 25 ✓

AOC C - transformer storage pads near building 2042 ✓

AOC D - Ensenada Honda sediments ✓

AOC E (a/k/a ECP 23) - offshore islands Pineros and Cabeza de Perro ✓

- C. Determination Of Corrective Action Complete

1). Corrective Action Complete determinations are made pursuant to the February 13, 2003 EPA guidance document "*Guidance on Completion of Corrective Action Activities at RCRA Facilities*", Notice of which was published in the Federal Register Volume 68, No 37, February 25, 2003. Two types of Completion Determinations are recognized:

- a) Corrective Action Complete without Controls, and
- b) Corrective Action Complete with Controls.

- 2). A determination of Corrective Action Complete with Controls does not preclude the Director from requiring the Respondent to perform continued or periodic monitoring of air, soil, groundwater, surface water or subsurface gas, if necessary to protect human health and the environment, when site-specific circumstances indicate that release(s) of hazardous waste or hazardous constituents are likely to occur from a SWMU at the facility.
- 3). A determination of Corrective Action Complete with no Controls, or with Controls, does not preclude the Director from requiring the Respondent to perform further investigations, studies, or corrective measures at a later date if new information or subsequent analysis indicates a release or likelihood of a release from a SWMU at the facility that is likely to pose a threat to human health or the environment.
- 4). Subject to completion of public notice and possible changes in response to public comment, Corrective Action Complete without Controls determinations are approved for the following 5 SWMUs and 2 AOCs:

✓
✓
✓
✓
✓
✓
✓

SWMUs #6, #12, #24, #25, #26, and AOCs B and AOC D.

The Corrective Action Complete without Controls determination for SWMU # 25 (DRMO Storage Yard) would be contingent on the Respondent completing acceptable closure of all hazardous waste container storage units located inside the DRMO compound, as specified in the Facility's 1994 RCRA permit, 40 CFR § 264.178.

- 5). An additional twenty seven (27) SWMUs and one (1) AOC had no further actions required under the November 1994 RCRA permit. The 27 SWMUs and 1 AOC which had no further action determinations in the 1994 RCRA permit include the following SWMUs: 4, 5, 15, 16, 17, 18, 20, 21, 22, 27, 28, 29, 33, 34, 35, 36, 38, 40, 41, 42, 43, 44, 47, 48, 49, 50, and 52; and AOC A. These are also now considered to have Corrective Action Completed without Controls determinations.
- 6). Subject to completion of public notice and possible changes in response to public comment, Corrective Action Complete with Controls determinations are approved for the following 6 SWMUs: #10, #23, #30, #37, #39, and #51.

The Corrective Action Complete with Controls determination for the

above SWMUs would be contingent on the Respondent demonstrating to EPA's satisfaction that it has implemented acceptable deed restrictions to preclude unacceptable future usages of the lands and/or groundwater impacted by releases from these SWMUs.

- 7). Based on the September 1, 2004 Draft *Phase II Environmental Condition of Property Report*, determination that six (6) ECP sites have not been impacted by past and present operations at NAPR (i.e., the Navy has found no evidence of a release relating to these SWMUs), EPA is proposing Corrective Action Complete without Controls determinations for the following SWMUs/ECP sites:

SWMU 58 (a/k/a ECP 4) - Rifle Range at Punta Puerca ✓

SWMU 63 (a/k/a ECP 9) - Former Pistol Range at BEQ ✓

SWMU 64 (a/k/a ECP 10) - Former Skeet Range at Ofstie Field ✓

SWMU 65 (a/k/a ECP 11) - Former UST No. 208 ✓

SWMU 66 (a/k/a ECP 12) - Former UST No. 289 ✓

SWMU 72 (a/k/a ECP 18) - Building 31 -Public Works Dept. ✓

- 8). Public notice and comment on these proposed Corrective Action Complete determinations is being implemented as part of the public notice and comment on this Consent Order.

8. Documentation of Release:

A. Extensive environmental sampling has occurred at the Facility, and numerous releases of hazardous waste and/or hazardous constituents to the environment have been documented. Details of the past waste management activities and the evidence for releases at those SWMUs and AOCs where releases have been documented are described in Attachment I to this Consent Order.

B. Based on the March 31, 2004 "*Phase I Environmental Condition of Property Report*" (the Phase I ECP Report), and the September 1, 2004 Draft *Phase II Environmental Condition of Property Report* ("*Phase II ECP*"), the following 15 ECP sites, which are now identified as SWMUs or AOCs, have documented releases:

SWMU 56 (a/k/a ECP 2)- Hanger 200 Apron ✓

- SWMU 57 (a/k/a ECP 3) - Facility No. 278 POL Drum Storage Area ✓
- SWMU 59 (a/k/a ECP 5) - Former Vehicle Maintenance and Refueling Area ✓
- SWMU 60 (a/k/a ECP 6) - Former Landfill at the Marina ✓
- SWMU 61 (a/k/a ECP 7) - Former Bundy Area Maintenance Facilities ✓
- SWMU 62 (a/k/a ECP 8) - Former Bundy Disposal Area ✓
- SWMU 67(a/k/a ECP 13) - Former Gas Station ✓
- SWMU 68 (a/k/a ECP 14) - Former Southern Fire Training Area ✓
- SWMU 69 (a/k/a ECP 15) - Aircraft Parking Area ✓
- SWMU 70 (a/k/a ECP 16) - Disposal Area Northwest of Landfill ✓
- SWMU 71 (a/k/a ECP 17) - Quarry Disposal Site ✓
- SWMU 73 (a/k/a ECP 19) - DRMO Scrap Metal Recycling Yard ✓
- SWMU 74 (a/k/a ECP 20) - Fuel Pipelines and Hydrant Pits ✓
- SWMU 75 (a/k/a ECP 21) - Building 803 ✓
- SWMU 76 (a/k/a ECP 22) - Building 2300 ✓
- AOC E (a/k/a ECP 23) - offshore islands Pineros and Cabeza de Perro ✓

C. As further detailed in Attachment A, there have been numerous releases of hazardous wastes at the Facility which pose an exposure risk to onsite workers/employees and visitors to the Site and which pose a risk to environmental receptors as well including both resident and local endangered birds as well as other fauna and flora.

9. Exposure Pathways and Possible Adverse Human Health or Environmental Impacts:

Potentially complete exposure pathways are present at the Facility that could result in both unacceptable adverse human health and environmental impacts (e.g., exposure pathways are present creating a potential hazard of imminent and substantial endangerment). The potentially

complete exposure pathways at the Facility that could result in unacceptable adverse human health impacts are discussed in Attachment II of this Consent Order. The complete exposure pathways described in Attachment II are based on expected future land usage being similar to the land usage patterns currently in place. However, changes in future land usage from the present pattern of development/land usage at the Facility could result in additional receptors (such as on-site residents, if new housing areas are established; or on-site child-care or school populations, if new child-care or school facilities are established on-site) being impacted via complete exposure pathways that currently are not considered complete (e.g., such receptors are either not present or exposure pathways have been interrupted either by man-made conditions or by temporary natural conditions). Potentially complete exposure pathways are present at the Facility that could also result in unacceptable adverse environmental impacts to biota at the Facility which have been listed by either the federal or Commonwealth governments as threatened, endangered, or vulnerable (Commonwealth only), and/or to critical habitat. According to the Phase I ECP Report, the facility supports a variety of biota that have been listed by either the federal or Commonwealth governments as threatened, endangered, or vulnerable (Commonwealth only), including 5 sea turtle species (Green, Loggerhead, Hawksbill, Leatherback, and Olive Ridley), 1 snake (Puerto Rican Boa), 12 birds (including the yellow-shouldered blackbird), 1 mammal (the West Indian Manatee), and 1 plant (Cobana negra). The species observed at the Facility that are classified as endangered under Federal law include: Hawksbill and Leatherback sea turtles, the Puerto Rican Boa, the yellow-shouldered blackbird and the Brown pelican, and the West Indian Manatee. Table 2-2 of the Phase I ECP Report lists the threatened, endangered, or vulnerable species at the Facility. According to the Phase I ECP Report, the only declared critical habitat at the Facility is for the yellow-shouldered blackbird. That habitat was declared critical pursuant to a 1980 agreement between the Navy and the United States Fish and Wildlife Service (USFWS). A 1996 study performed for the Navy by GMI determined that the mangrove habitats constitute the most important habitats for the yellow-shouldered blackbird at the Facility. Three species of mangroves occur at the Facility: the red, black, and white mangrove. Approximately 2,900 acres of the Facility are designated wetlands. Of the designated wetland areas, approximately 60% are mangrove habitats. The mangroves themselves are not considered endangered, though the black mangrove is classified as threatened, under Federal law. Since the mangrove areas are considered wetland areas, those areas are protected under Federal law. All the wetland areas at the Facility, including the mangrove areas, are depicted in Figure 2-8 of the Phase I ECP Report. The waters surrounding the offshore islands Pineros and Cabeza de Perro contain habitat for sea turtles (four species at the Facility are endangered or threatened) and manatees (an endangered species). The beaches on Pineros and Cabeza de Perro provide potential habitat for nesting sea turtles.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

14. This Section is based on the Findings of Fact set forth above, and the administrative record supporting this AOC:
 - a. The Navy is a Department of the Executive Branch of the Federal government and is

subject to the requirements of Section 6001 of RCRA, 42 U.S.C. § 6961.

b Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

c. The "D" and "F" wastes listed in the above Findings section are each a "solid waste" as defined in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27). Each such solid waste is also a "hazardous waste" as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5).

d. Imminent and Substantial Endangerment. The past storage and other handling of the above-listed hazardous wastes may present an imminent and substantial endangerment to human health and/or the environment within the meaning of Section 7003(a) of RCRA, 42 U.S.C. § 6973(a).

f. Respondent's storage and/or disposal and other handling of the above-listed hazardous wastes have contributed to the potential endangerment of human health and the environment via the releases detailed in Attachments I and II to this Consent Order.

g. The actions required by this Consent Order are necessary to protect human health and/or the environment.

VII. ORDER ON CONSENT

15. Based upon the administrative record for the Site and the Findings of Fact (Section V) and Conclusions of Law and Determinations (Section VI) set forth above, the following is hereby agreed to by the parties and ordered by EPA. Respondent shall comply with all provisions of this Consent Order, including, but not limited to, all appendices to this Consent Order and all documents incorporated by reference into this Consent Order.
16. Respondent shall fund and perform the Work in accordance with this Consent Order (subject to the limitations specified in Section XXVII, Funding, below), plans, standards, specifications and schedules set forth in this Consent Order or developed by Respondent and approved by EPA pursuant to this Consent Order.

VIII. WORK TO BE PERFORMED

17. 1. RCRA FACILITY INVESTIGATIONS ("RFIs"):
 - A). For all SWMUs and/or AOCs required to have either a Phase One or Full RFA under the 1994 RCRA Permit, acceptable RCRA Facility Investigations have been completed, except for SWMU #14 (Fire Training Pit area adjacent to the Crash Crew training adjoining the base's airfield). Therefore, within forty five (45) days of the effective date of this Consent Order, the Respondent shall submit to EPA for approval an acceptable work

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plan to complete the RFI investigations at SWMU #14, as discussed in the "Interim Decision Document" dated November 22, 2000.

B). Based on the Phase I and Phase II ECP Reports 9 ECP sites which are identified as SWMUs and/or AOCs under this Consent Order require additional investigation. Therefore, within forty five (45) days of the effective date of this Consent Order, the Respondent shall submit to EPA for approval an acceptable work plan to complete the RFI investigations at the following SWMUs and/or AOCs:

SWMU 57 (a/k/a ECP 3) - Facility No. 278 POL Drum Storage Area

SWMU 60 (a/k/a ECP 6) - Former Landfill at the Marina

SWMU 62 (a/k/a ECP 8) - Former Bundy Disposal Area

SWMU 67(a/k/a ECP 13) - Former Gas Station

SWMU 68 (a/k/a ECP 14) - Former Southern Fire Training Area

SWMU 70 (a/k/a ECP 16) - Disposal Area Northwest of Landfill

SWMU 71 (a/k/a ECP 17) - Quarry Disposal Site

SWMU 75 (a/k/a ECP 21) - Building 803

AOC E (a/k/a ECP 23) - offshore islands Pineros and Cabeza de Perro

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2.

INTERIM MEASURES

A) For SWMU #3 (Facility's Non-hazardous Landfill): Respondent shall implement a semi-annual groundwater monitoring and analysis program at SWMU #3, pursuant to the "Groundwater Sampling and Analysis Plan, Solid Waste Landfill Facility, U.S. Naval Station Roosevelt Roads", prepared for the Navy by Burns & McDonnell Waste Consultants Inc., dated April 1999, until such time as the Respondent submits written notification to EPA that SWMU #3 has been closed in a manner that is substantively equivalent to requirements given at 40 CFR § 264.310, and EPA concurs in writing with such a determination.

(i) Following each semi-annual groundwater sampling event, within 60 days of the Respondent's receipt of the validated analytical results from that event, Respondent shall submit to all EPA offices indicated in Condition III.B.8 above, a complete report of the results of that

groundwater sampling event, including validated analytical results.

(ii) If based on the results of the semi-annual groundwater sampling event a release of hazardous waste and/or hazardous constituents from SWMU #3 is indicated, the Respondent shall:

a) notify EPA, in writing, within seven days of such determination, and

b) within thirty (30) days of that notification, submit a proposal for any further actions that are needed to address that release, as warranted.

7 { B) For SWMU 11 (interior areas of Building 38 (Old Power Plant)), Respondent shall submit, within sixty (60) calendar days of the effective date of this Consent Order, acceptable documentation that access controls to SWMU #11 are in place and maintained and that an acceptable institutional control has been developed and become effective so as to preclude future usage of the site unless acceptable clean-up is implemented.

3.

CORRECTIVE MEASURES STUDY ("CMS")

(a) For the following SWMUs a CMS has previously been determined to be required, and a CMS work plan has been approved by EPA; however, implementation has not been fully completed: SWMU 1; SWMU 2; SWMUs 7/8 (Tow Way Fuel Farm); SWMU 9, SWMU 45, and SWMU 54.

Therefore, the Respondent shall complete implementation of the CMSs for those 7 SWMUs, and within sixty days of completion of all activities required under the CMS Work Plan for that SWMU, shall submit a draft CMS Final Report meeting the requirements of paragraph 3(h) below. Any unacceptable impacts to AOC D (Ensenada Honda sediments) which have been caused by releases from SWMUs shall be evaluated as part of the respective CMSs for SWMUs #1 and #2 (the two former littoral landfills) and SWMUs #7 and #8 (Tow Way Fuel Farm).

(b) In lieu of a CMS plan to determine the final remedy for SWMU #3, as well as a CMI plan to implement any selected remedy for that SWMU, Respondent has submitted draft Closure Plans to close SWMU #3. Pursuant to the requirements of this Consent Order, Respondent shall close SWMU #3 in a manner that is substantively equivalent to requirements given at 40 CFR § 264.310. Upon written notification by EPA that the draft closure plan(s) for SWMU #3 is (are) acceptable, Respondent shall arrange for public review of that draft closure plan(s) in a manner that is substantively

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equivalent to requirements given at Section XXIX of this Consent Order. If based on that public review, substantive revisions of the closure plan(s) for SWMU #3 appear warranted, Respondent shall revise the draft closure plan(s) to address relevant comments received. Respondent shall submit the draft Closure Plan(s) and any revised closure plan(s) for SWMU #3 to EPA for its approval pursuant to Section IX of this Consent Order, prior to its implementation.

(c) Based on the September 1, 2004 Draft *Phase II Environmental Condition of Property Report*, 6 ECP sites require remediation. Therefore, within forty five (45) days of the effective date of this Consent Order, Respondent shall submit to EPA an acceptable work plan to complete a CMS to determine the final remedy for the following SWMUs/ECP sites:

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SWMU 56 (a/k/a ECP 2)- Hanger 200 Apron

SWMU 59 (a/k/a ECP 5) - Former Vehicle Maintenance and Refueling Area

SWMU 61 (a/k/a ECP 7) - Former Bundy Area Maintenance Facilities

SWMU 69 (a/k/a ECP 15) - Aircraft Parking Area

SWMU 73 (a/k/a ECP 19) - DRMO Scrap Metal Recycling Yard

SWMU 74 (a/k/a ECP 20) - Fuel Pipelines and Hydrant Pits

Once a work plan is approved by EPA, Respondent shall complete a CMS for these SWMUs.

(d) Should EPA determine that a CMS is required for any other of the SWMUs or AOCs, EPA shall notify Respondent in writing. This notice shall identify the hazardous constituent(s) which have exceeded action levels as well as those which have been determined to pose a potential threat to human health and the environment given site specific exposure conditions, due to additive exposure risk, or for other reasons.

(e) EPA may require a CMS under the following conditions:

(i) If the concentrations of hazardous constituents in groundwater, surface water/sediment, soil, or air exceed their corresponding individual action levels or generic risk-based concentration (RBC) levels for human health and/or ecological screening values;

(ii) If the concentrations of hazardous constituents in groundwater, surface water/sediment, soil, or air do not exceed their corresponding individual action levels or generic risk-based concentration (RBC) levels for human health and/or ecological screening values, but additive exposure risk due to the presence of multiple constituents renders the individual action levels or RBC levels non-protective of human health; or

(iii) If the concentrations of hazardous constituents in groundwater, surface water/sediment, soil, or air do not exceed individual action levels or generic risk-based concentration (RBC) levels for human health and/or ecological screening values, but still pose a potential threat to human health or the environment, given site-specific exposure conditions.

(f) The Respondent shall submit a CMS Work Plan to EPA within sixty (60) calendar days after receiving written notification from EPA that a CMS is required.

(i) The CMS Work Plan shall provide:

(1) A description of the general approach to investigating and evaluating potential corrective measures;

(2) A definition of the overall objectives of the study;

(3) The specific plans for evaluating corrective measures to ensure compliance with corrective measure standards;

(4) The schedule for conducting the study; and

(5) The proposed format for the presentation of information.

(ii) The CMS Work Plan must address, at a minimum, all necessary activities to complete Tasks II and III of the Statement of Work for a Corrective Measures Study given at Attachment IV, or alternatively a "Streamlined CMS" may be developed if usage of a "Streamlined CMS" is considered appropriate by EPA. "Streamlined CMS" are discussed in the Proposed Corrective Action Rule given in the May 1, 1996 Federal Register, vol. 61 No. 85.

(g) No later than thirty (30) calendar days after the Respondent has received

written approval from EPA for the CMS Work Plan, the Respondent shall begin to implement the CMS according to the schedules specified in the CMS Work Plan.

(h) Within sixty (60) calendar days after the completion of the CMS, the Respondent shall submit a CMS Final Report. The CMS Final Report shall:

(i) Summarize the results of the investigations and, if applicable, of any bench-scale or pilot tests conducted;

(ii) Provide a detailed description of the corrective measures evaluated and include an evaluation of how each corrective measure alternative meet the standards set forth in Condition F of this Module;

(iii) Present all information gathered under the approved CMS Plan; and

(iv) Contain any additional information to support EPA in the corrective measure selection decision-making process, described under Condition F of this Module.

(i) Based on a review of the CMS Final Report, EPA, by written notification to the Respondent, may require the Respondent to evaluate additional corrective measures or to evaluate further particular elements of one or more proposed corrective measures, prior to approval of the CMS Final Report or to modify the CMS Final Report.

(j) EPA shall either approve or disapprove the CMS Final Report in writing. If the CMS Final Report is not approved, EPA shall provide written comments giving the basis for such disapproval.

4.

CORRECTIVE MEASURE IMPLEMENTATION (CMI):

(a) CMI Plans have been previously developed for five SWMUs and one AOC, but these have not yet undergone public review, been fully approved by EPA, or been implemented:

SWMU #13 "Final CMI Work Plan Design Package" dated January 25, 2001;

SWMU #31 "Final CMI Work Plan Design Package" dated January 25, 2001;

SWMU #32 "Final CMI Work Plan Design Package" dated January 25, 2001;

SWMU #46 "Final CMI Work Plan Design Package" dated January 25, 2001;

SWMU #53 "Final CMI Design Package for Soil Remediation" dated July 13, 2004, as modified by Attachment 2 of Mr. Mark Kimes' (of Baker Environmental) letter of September 20, 2004.

AOC C "Final CMI Work Plan Design Package" dated January 25, 2001;

Public notice and comment on those proposed CMI plans shall be implemented as part of the public notice and comment on this Consent Order, pursuant to Section XXIX of this Consent Order.

(b) Upon completion of public notice and comment on the above CMI plans for SWMUs #13, SWMU #31, SWMU #32, SWMU #46, SWMU #53, and AOC C, pursuant to Section XXIX of this Consent Order, the Respondent shall implement those CMI Plans, as modified based on public comments if required by EPA pursuant to Section XXIX of this Consent Order, according to the schedules given in those respective CMI plans.

(c) Corrective Measures involving institutional controls have been conditionally selected as the remedies for SWMU #30 and SWMU #37, and as part of the remedies for SWMUs #31 and #32. However, acceptable documentation that institutional controls are established for SWMUs #30, #31, #32 and SWMU #37 has not yet been provided. Therefore, within 60 days of completion of public notice and comment on this Consent Order, Respondent shall:

(i) submit to EPA documentation that acceptable institutional controls are in effect which prevent future usage of the sites of the former SWMUs #31, #32, and #37 for residential purposes or other non-industrial usages such as for a school or a child care facility.

(ii) submit to EPA documentation that acceptable institutional controls are in effect which will prevent future usage of any groundwater impacted by releases from SWMU #30 for potable water supply.

(d) Should EPA determine that a CMI is required for any other of the SWMUs or AOCs, EPA will notify Respondent in writing.

(e) No later than ninety (90) calendar days after the Respondent has received written notification from EPA that a CMI is required for any other of the SWMUs or AOCs, the Navy shall submit to EPA for its review and approval, a Work Plan for implementing the CMI. Once the work plan has been approved by EPA Respondent shall implement the approved work plan.

5. NOTIFICATION and ADDITIONAL WORK REQUIREMENTS FOR NEWLY-DISCOVERED RELEASES

(a) No later than fifteen (15) days after discovery, The Respondent shall notify EPA, in writing, of any release(s) of hazardous waste and/or solid waste, and/or hazardous constituents discovered after the effective date of this Consent Order. The notification shall, at the minimum, identify the location of the release, the basis for determining that a release has occurred, the media impacted by the release, and the specific hazardous and/or solid wastes and/or hazardous constituents indicated or suspected to have been released.

(b) If such a release is indicated to have been sourced from a unit or area not identified as a SWMU and/or AOC under this Consent Order, the Respondent's notification shall advise whether the unit or area indicated to be the source of the release constitutes a newly identified SWMU and/or AOC, and if not, the Respondent's notification shall advise the basis for such a determination. The Respondent's determination of whether the unit or area indicated to be the source of the release constitutes a newly identified SWMU and/or AOC shall be subject to review and final determination by EPA. If EPA determines that the unit or area constitutes a newly identified SWMU and/or AOC, EPA shall notify the Respondent in writing, and the newly identified SWMU and/or AOC shall be subject to the terms and conditions of this Consent Order.

(c) Based on the information provided in the notification, EPA shall determine the need for further investigation of the release(s) and/or other actions, including remedial measures, for such release(s). If EPA determines that such investigations and/or other actions, including remedial measures are needed, EPA shall notify the Respondent to prepare a Sampling and Analysis Work Plan and/or a work plan for any other necessary actions, including remedial measures. The Respondent shall submit to EPA a Sampling and Analysis Work Plan and/or a work plan for any other necessary actions, including remedial measures for such releases within ninety (90) days of written notification by EPA.

6. REPORTING.

(a) The Respondent shall submit copies of all correspondence, including but not limited to, work plans, and reports, generated pursuant to the provisions of this Consent Order to the following:

(i) Chief, Caribbean Section, RCRA Programs Branch (2 paper copies and 1 Compact Disc in .pdf format)

EPA Region 2

290 Broadway, 22nd Floor.

New York, NY 10007-

1866

(ii) Project Coordinator (Mr. Timothy Gordon)

(1 paper copy and 1 Compact Disc in .pdf format)

RCRA Programs Branch

EPA Region 2

290 Broadway, 22nd Floor.

New York, NY 10007-1866

(iii) Director (Mr. Carl Soderberg)

(1 paper copy and 1 Compact Disc in .pdf format)

U. S. Environmental Protection Agency

Caribbean Environmental Protection Division

Centro Europa Building, Suite 417

1492 Ponce de Leon Ave

Santurce, PR 00907-4127

(iv) Puerto Rico Environmental Quality Board

Director, Land Pollution Regulation Program

(1 paper copy and 1 Compact Disc in .pdf format)

National Plaza Building

431 Ponce de Leon Ave

Hato Rey, PR 00917

(b) Unless an alternative date is specified in an existing work plan approved in writing by EPA prior to the effective date of this Consent Order, within 60 days of completion of all tasks in an EPA approved RFI, Interim Measures, Closure Plan, CMS, or CMI work plan, the Respondent shall submit a draft Final Report on that RFI, Interim Measures, Closure Plan, CMS, or CMI to the above parties, in the quantities specified above.

(c) Respondent shall also submit to the parties noted immediately above,

the above-specified number of copies of signed quarterly progress reports of all activities (i.e., SWMU Assessment, Interim Measures, Closure Plan, RCRA Facility Investigation, Corrective Measures Study) conducted pursuant to the provisions of this Consent Order, beginning no later than ninety (90) calendar days after its effective date. These reports shall, unless otherwise agreed in writing, contain:

- (i) A description of the work completed;
 - (ii) Summaries of all findings made during the reporting period, including summaries of laboratory data;
 - (iii) Summaries of all changes made during the reporting period;
 - (iv) Summaries of all contacts made with representatives of the local community and public interest groups during the reporting period;
 - (v) Summaries of problems or potential problems encountered during the reporting period and actions taken to rectify problems;
 - (vi) Changes in personnel conducting or managing the corrective action activities during the reporting period;
 - (vii) Projected work for the next reporting period; and
 - (viii) Copies of daily reports, inspection reports, validated laboratory/monitoring data, etc. generated during the reporting period
- (d) Upon request, Respondent shall submit copies of other reports (e.g., inspection reports, drilling logs and laboratory data) as requested by EPA.
 - (e) EPA may require the Respondent to conduct new or more extensive assessments, investigations, or studies, based upon information provided in the progress reports referred to above, or upon other supporting information.
 - (f) All plans and schedules required by the conditions of this Consent Order are, upon approval of EPA, incorporated into this Consent Order by reference and become an enforceable part of this Consent Order. Any noncompliance with such approved plans and schedules shall be termed noncompliance with this Consent Order. Extensions of the due dates for submittals may be granted by EPA in writing.

(g) Imminent and Substantial Endangerment due to Hazardous Waste. Upon receipt of information that there is newly identified hazardous waste at the Site which may present an imminent and substantial endangerment to human health or the environment, Respondent shall immediately provide notice to EPA and EQB. Respondent shall also comply with statutory requirements for the posting of a notice of the endangerment at the Site

18. Project Coordinator. On or before the Effective Date of this AOC, Respondent shall designate its Project Coordinator. Respondent shall notify EPA in writing within five (5) days of the Effective Date of this Consent Order of the name, address, phone number, electronic mail address and qualifications of its Project Coordinator. The EPA Project Coordinator will be Timothy Gordon, 212-637-4167, 290 Broadway, New York, NY 10007-1866. EPA may also designate an Alternate Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Order. EPA and Respondent have the right to change their respective Project Coordinators. The other party must be notified in writing at least 10 days prior to the change.
19. The EPA Project Coordinator shall be EPA's designated representative for the Site. Unless otherwise provided in this Consent Order, all reports, correspondence, notices, or other submittals relating to or required under this Consent Order shall be in writing and shall be sent to the EPA Project Coordinator at the address specified in Paragraph 18, above, unless notice is given in writing to Respondent of a change in address. Reports, correspondence, notices or other submittals shall be delivered by U.S. Postal Service, private courier service or electronic mail. All correspondence shall include a reference to the case caption EPA Docket No. RCRA- 02-2005-7303, and the facility's EPA Identification Number.
20. Within 25 days of the Effective Date of this Consent Order, Respondent shall notify EPA in writing of the names, titles and qualifications of the personnel, including agents, contractors, subcontractors, consultants and laboratories, to be used in carrying out the work. The qualifications of the persons undertaking the Work for Respondent shall be subject to EPA's review, for verification that such persons meet minimum technical background and experience as required by EPA. All persons under the direction and supervision of Respondent's Project Coordinator must possess all necessary professional licenses required by federal and Commonwealth law.
21. Respondent shall undertake and complete all of the Work to the satisfaction of EPA, pursuant to RCRA § 7003, 42 U.S.C. § 6973.
22. Respondent's obligation to perform the Work will begin on the Effective Date of this Consent Order.

23. The Work undertaken pursuant to this Consent Order shall be conducted in compliance with all applicable EPA guidances, policies and procedures, and with this Consent Order, and is subject to EPA approval.
24. The Work Plan shall include a schedule of the Work to be performed. The Work Plan shall be submitted to EPA for approval. Following EPA's approval or modification of the Work Plan pursuant to Paragraph 25, Respondent shall implement the Work Plan in accordance with the schedule and provisions approved by EPA.
25. Health and Safety Plan. Respondent shall develop a Health and Safety Plan and it shall be implemented during the Work performed under this Consent Order. The Health and Safety plan shall comply with applicable Occupational Safety and Health Administration (OSHA) regulations.

IX. EPA APPROVALS, ADDITIONAL WORK AND TRANSFER OF RESPONSIBILITY

26. Unless otherwise specified, EPA will review any plan, report, specification, program, documentation, notification, proposal or schedule submitted pursuant to, or required by this Consent Order, and agrees to endeavor to provide within 90 calendar days of receipt of that document by EPA, EPA's written request for modification, approval, or disapproval, with comments and/or modifications ("EPA's response"), to Respondent. Respondent may request, in the cover letters to its submittals, that EPA provide Respondent with EPA's response, with comments and/or modifications, within an alternative specified period of time. Unless EPA either: (1) provides Respondent with EPA's acceptance of the alternative specified time period for completing its response; or (2) notifies Respondent in writing of a revised alternative time when EPA expects to provide its response, the normal time period for EPA to provide its response will be within 90 calendar days of receipt of that document by EPA. EPA will notify Respondent whenever additional time is needed to provide its response to any submittals required pursuant to this Consent Order. The Parties agree that if during EPA's review of any submittals by Navy required by this Consent Order, Navy's funding expires for work related to that submittal, then such expiration may constitute a delay under Section XX of this Consent Order until such time as funding is secured, provided that Navy pursues all necessary funding at all times with due diligence.
27. Within fifteen (15) days of Navy's receipt of EPA's response, Respondent may request a meeting with EPA to discuss EPA's response. Within thirty (30) days of such meeting, or if no meeting is requested, within forty-five (45) days of receipt of EPA's response, Respondent shall either: (1) notify EPA of its intention to amend or modify the submission to incorporate all of EPA's comments and proposed modifications and to submit the amended submittal to EPA within thirty (30) days thereafter or according to a

mutually agreed schedule; or (2) provide EPA with a written notice of dispute, setting forth Respondent's position, any actions which Respondent considers necessary to resolve the dispute, and the basis for Respondent's position. Any such written notice of dispute shall be subject to the dispute resolution procedures as set forth in Section XVIII of this Consent Order.

28. As part of the review of any plan, report, specification, program, documentation, notification, proposal or schedule submitted pursuant to, or required by this Consent Order, EPA or Navy may determine that certain tasks and deliverables required pursuant to Section VIII (Work to be Performed) of this Consent Order may require additional work.
- (a) If EPA determines that such additional work is necessary, EPA shall identify, in writing, the additional work required and shall specify the reasons for that determination, and the time period during which the additional work shall be performed.
- (b) Within thirty (30) calendar days after the receipt of such request, Navy shall have the opportunity to meet or confer with EPA to discuss the additional work requested, and if it deems it necessary it shall within thirty (30) calendar days invoke the Dispute Resolution provisions of this Consent Order.
- (c) If the Navy does not invoke Dispute Resolution, such additional work shall be performed in accordance with the terms of this Consent Order.
- (d) Any additional work performed by Navy, whether at the request of EPA under (a) above, or at the initiative of the Navy, shall be subject to review and approval by EPA under the terms of this Consent Order.
29. Any noncompliance with an EPA approved document or an EPA determination under the Dispute Resolution provision of this Consent Order constitutes noncompliance with this Consent Order.
30. Should the Navy sell or otherwise transfer a parcel or any part of the Facility to a new party who assumes responsibility for corrective action on the real property it is acquiring, and demonstrates to EPA its financial and technical capability to perform such corrective action, and enters into an administrative order on consent with EPA, then EPA plans to omit from the work requirements of this Consent Order those corrective action responsibilities which are being assumed by the new party related to that parcel. Any changes in the Navy's responsibility for work related to the transferred parcel will be conditioned on the satisfactory and timely performance by the transferee, and will take effect following the effective date of the order to the new party. Should EPA later determine that a third party has failed to satisfy its responsibility for such work and is not likely to be able to satisfy its responsibility to perform the work in a timely and satisfactory manner, then EPA will require the Navy to reassume responsibility for such

work. EPA will consult with the Navy prior to making any final determination requiring the Navy to reassume responsibility for the corrective action. The Navy agrees that it or its representative will perform any additional remedial action found to be necessary after the date of the transfer of real property by the Navy and nonperformance by the transferee if EPA determines, in writing, that the Navy must reassume responsibility for corrective action on the designated parcel(s). EPA's determination(s) shall be subject to Dispute Resolution.

X. MODIFICATION OF WORK PLANS

31. If at any time during the implementation of Work, Respondent identifies a need for a compliance date modification or revision of an existing EPA approved Work Plan, Respondent shall document in a written request to EPA the exact modification or revision requested and the basis for that modification or revision. EPA will determine if the modification or revision is warranted and will provide written approval or disapproval. Any approved modified compliance date or Work Plan modification will be incorporated by reference into this Consent Order.
32. Emergency Response. In the event of any action or occurrence during the performance of Work that constitutes an emergency situation or may present an immediate threat to human health and the environment, Respondent shall immediately take all appropriate action to minimize such emergency or threat, and shall immediately notify the EPA's Project Coordinator. Respondent shall take such immediate and appropriate actions in consultation with EPA's Project Coordinator. Respondent shall submit to EPA written notification of such emergency or threat at the Site within three (3) calendar days of such discovery. Respondent shall thereafter submit to EPA for approval, within 20 days, a plan to mitigate this threat. EPA will approve or modify this plan, and Respondent shall implement this plan as approved or modified by EPA. In the case of an extreme emergency, Respondent may act as it deems appropriate, at its own risk, to protect human health or the environment.

XI. QUALITY ASSURANCE

33. As part of each new Work Plan, unless otherwise agreed, or unless a Master Quality Assurance Project Plan (QAPP) has been previously approved by EPA for usage under this Consent Order and it is appropriately cited in the new Work Plan, Respondent shall include a Quality Assurance Project Plan (QAPP) for EPA review and approval. The QAPP shall address quality assurance, quality control, and chain of custody procedures for all sampling, monitoring and analytical activities. Respondent shall follow "EPA Requirements for Quality Assurance Project Plans" (QA/R5)" (EPA/240/B-01/003, March 2001), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998), and "EPA Requirements for Quality Management Plans (QA/R-

2)" (EPA/240/b-01/002, March 2001) (or later versions of these documents) as well as other applicable documents identified by EPA. The QAPP shall be incorporated into this Consent Order by reference.

34. As part of the Work Plan, Respondent shall include Data Quality Objectives for any data collection activity to ensure that data of known and appropriate quality are obtained and that data are sufficient to support their intended use as required by this Consent Order.
35. Respondent shall ensure that laboratories used by Respondent for analysis perform such analysis according to the latest approved edition of "Test Methods for Evaluating Solid Waste (SW-846)" or other methods approved by EPA. If methods other than EPA methods are to be used, Respondent shall specify all such protocols in the applicable Work Plan. EPA may reject any data that does not meet the requirements of the approved Work Plan and EPA analytical methods and may require resampling and additional analysis.
36. Respondent shall ensure that all laboratories it uses for analyses participate in a quality assurance/quality control (QA/QC) program equivalent to the program that EPA follows. Respondent shall, upon EPA's request, make arrangements for EPA to conduct a performance and QA/QC audit of the laboratories chosen by Respondent, whether before, during, or after sample analyses. Upon EPA's request, Respondent shall have its laboratories perform analyses of samples provided by EPA to demonstrate laboratory QA/QC and performance. If the audit reveals deficiencies in a laboratory's performance or QA/QC, Respondent shall submit a plan to address the deficiencies and EPA may require resampling and additional analysis.
37. EPA reserves the right to require a change in laboratories for reasons which may include, but shall not be limited to, QA/QC, performance, conflict of interest, or confidential agency audit information. In the event EPA requires a laboratory change, Respondent shall propose two alternative laboratories within 30 calendar days. Once EPA approves of the laboratory change, Respondent shall ensure that laboratory service shall be made available within thirty (30) calendar days.

XII. DOCUMENT CERTIFICATION

38. Any report or plan or other document submitted by Respondent pursuant to this Consent Order which addresses work plans, or makes recommendations as to whether or not further actions are necessary, or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Consent Order shall be certified by a responsible civilian official or military officer of Respondent with authority to make such a certification.
39. The certification required by Paragraph 35, above, shall be in the following form:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowingly and willfully submitting a materially false statement.

Signature: _____

Name:

Title:

Date:

This certification requirement does not apply to emergency or similar notifications if compliance with this requirement would be impractical.

XIII. SAMPLING, ACCESS AND DATA AVAILABILITY

40. All results of sampling, testing, modeling or other data generated (including raw data if requested) by Respondent, or on Respondent's behalf, during implementation of this Consent Order shall be validated by Respondent and submitted to EPA within 30 days of Respondent's receipt of the data (unless a different schedule is agreed to in writing). Respondent shall tabulate data chronologically by media. EPA will make available to Respondent data generated by EPA for the purposes of oversight of the Work unless it is exempt from disclosure by any federal or Commonwealth law or regulation.
41. Respondent shall orally notify EPA at least 20 days prior to conducting field sampling. At EPA's request, Respondent shall allow split or duplicate samples to be taken by EPA or EPA's representative.
42. Site Access. Pursuant to RCRA § 3007(a), 42 U.S.C. § 6927(a) and other authority, Respondent shall provide access to the Site during regular business hours (and at other times if reasonable under the circumstances) to both EQB and EPA, and EQB's and EPA's contractors and oversight officials. Respondent shall also provide the above-noted entities with access at reasonable times, as noted above, to all records and documentation in its possession or control, including those records and documents in the possession or control of Respondent's contractors and employees, related to the conditions at the Site and the actions conducted pursuant to this Consent Order. Respondent shall use its best efforts to gain access to areas owned by or in the possession of someone other than Respondent, as

necessary to implement this Consent Order, as described in Paragraph 49. The above-noted entities shall be permitted to move freely about the Site and appropriate off-site areas in order to conduct actions that EPA and EQB determine to be necessary. The above-noted entities shall notify Respondent of their presence on the Site by presenting their credentials. All entities with access to the Site under this paragraph shall comply with all approved health and safety plans and regulations.

43. Pursuant to this Section, any denial of access at reasonable times to any portion of the Site property where a request for access was made shall be construed as a violation of the terms of this Consent Order subject to the penalty provisions outlined in Section XIX (Penalties) of this Consent Order.
44. Access Agreements. Where action under this Consent Order is to be performed in areas owned by, or in possession of, someone other than Respondent, and that other party is not responsible for the work, Respondent shall use its best efforts to obtain all necessary access agreements within 45 days of approval of any Work Plan for which access is necessary or as otherwise specified, in writing, by the EPA Project Coordinator. Any such access agreement shall provide for access by EQB and EPA and their representatives to move freely in order to conduct actions that EQB and EPA determine to be necessary. The access agreement shall specify that Respondent is not EQB's or EPA's representative with respect to any liabilities associated with activities to be performed. Respondent shall provide EQB's and EPA's Project Coordinators with copies of any access agreements. Respondent shall immediately notify EQB and EPA if after using Respondent's best efforts it is unable to obtain such agreements within the time required. Best efforts as used in this paragraph shall include, at a minimum, a certified letter from Respondent to the present owner of such property requesting access agreements to permit Respondent, EQB, EPA, and their authorized representatives to enter such property, and the offer of payment of sums of money (if reasonable under the circumstances) in consideration of granting access. Respondent shall, within 10 days of its receipt of a denial of access, submit in writing, a description of its efforts to obtain access. EQB and EPA may, at their discretion, assist Respondent in obtaining access. In the event EQB and/or EPA obtains access, Respondent shall undertake the Work on such property and Respondent shall reimburse EQB and EPA for all costs and attorney fees incurred by the Commonwealth and the United States in obtaining such access.
45. Confidential Information. Respondent may assert, pursuant to 40 C.F.R. §2.203(b), a confidentiality claim, if appropriate, covering part or all of the information required by this Consent Order. Such an assertion shall be adequately substantiated (e.g., data or other information related to facility production methods or processes). Any assertion of confidentiality shall be accompanied by sufficient documentation to satisfy the requirements of 40 C.F.R. § 2.204(e)(4). Information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies this information when it is submitted to EPA, it may be made available

to the public by EPA, without further notice to Respondent. No confidentiality claim shall be made with regard to any analytical data.

46. Privileged Documents. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege in lieu of providing documents, Respondent shall provide EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the author's name and title; (4) the name and title of each addressee and recipient; (5) a description of the contents; and (6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Consent Order shall be withheld on the grounds that they are privileged.
47. All data, information, and records created or maintained relating to any solid or hazardous waste found at the Site shall be made available to EQB and EPA upon request unless Respondent asserts a claim that such documents are legally privileged from disclosure. Respondent shall have the burden of demonstrating to EPA by clear and convincing evidence that such privilege exists.
48. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.
49. Nothing in this Consent Order shall be construed to limit EQB's and EPA's right of access, entry, inspection, and information gathering pursuant to applicable law, including but not limited to RCRA and CERCLA.

XIV. COMPLIANCE WITH OTHER LAWS

50. All actions undertaken pursuant to this Consent Order by Respondent shall be done in accordance with all applicable local, commonwealth and federal laws, regulations, ordinances and Executive Orders. Respondent retains the obligation and agrees to obtain all permits or approvals necessary to perform the work required by this Consent Order.

XV. RECORD RETENTION

51. Respondent shall preserve, during the pendency of this Consent Order and for at least seven (7) years after its termination, all data, records and documents in its possession or in the possession of its divisions, employees, agents or consultants or contractors, which data, records and documents relate in any way to this Consent Order, or to hazardous waste management practices and/or disposal at the facility.

52. Except where Respondent, and EPA otherwise agree, subsequent to the termination of the aforementioned seven (7) year period, Respondent shall provide written notification to EPA sixty (60) days prior to the destruction of any data, records or documents that relate in any way to this Consent Order, its implementation, or to hazardous waste management practices and/or disposal at its facility. At EPA's request, Respondent shall then make such records available to EPA for inspection and/or EPA's retention or shall provide copies of any such records to EPA prior to discarding.
53. Respondent shall make a good faith effort to preserve all documents pertaining to this Consent Order in a centralized location to afford ease of access by EPA or its representatives. Where Respondent finds such a requirement impossible, Respondent shall minimize the number of locations used and shall maintain in a central location a list detailing the location of such documents.
54. All data, information, and records concerning, created for, or maintained by the Respondent, in connection with this Consent Order, shall be made available to EPA upon request in accordance with the provisions of **Section XIV [check]**. All employees of the Respondent and all persons, including contractors and subcontractors who engage in activity under this Consent Order, shall be made available to and shall cooperate with EPA if information is sought.
55. Nothing in this Section shall be read to shorten any document retention requirements otherwise applicable to the Navy or other entity.
56. Submission of Documentation. EPA will maintain an administrative record file. The administrative record supporting this Consent Order and the Work to be performed shall be available for public review at EPA's Region 2 offices, 290 Broadway, New York, NY.

XVI. REIMBURSEMENT OF OVERSIGHT COSTS

[EPA awaiting response from Navy to EPA's request for FTE/fund assistance/contractor support.]

XVII. DISPUTE RESOLUTION PROCEDURES

57. Except as specifically set forth elsewhere in this Consent Order, if a dispute arises under this Consent Order the procedures of this part shall apply. In addition, during the pendency of any dispute, Navy agrees that it shall continue to implement those portions of this Consent Order which are not in dispute and which EPA determines can be reasonably implemented pending final resolution of the issue(s) in dispute. If EPA determines in writing that all or part of those portions of work which are affected by the dispute should stop during the pendency of the dispute, Navy shall discontinue implementing those portions of the work.

58. EPA and Navy shall make reasonable efforts to informally resolve disputes at the Project Coordinator or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this part shall be implemented to resolve the dispute.
59. Within thirty (30) days of the date when Navy is informed of an action by EPA that leads to or generates a dispute, Navy shall submit to EPA a written statement of dispute setting forth the nature of the dispute including any elements of work, submittals, or actions affected by the dispute, Navy's position with respect to the dispute, and the information Navy is relying upon to support its position, and any impact such dispute may have on specified schedules, elements of work, submittals, or actions required by this Consent Order. If Navy does not provide such written statement to EPA within this thirty (30) day period, Navy shall be deemed to have agreed with the action taken by EPA which led to or generated the dispute.
60. Upon receipt of the written statement of dispute, EPA and Navy shall engage in dispute resolution among the Project Coordinators and/or their immediate supervisors. EPA and Navy shall have twenty (20) days from the receipt by EPA of the written statement of dispute to resolve the dispute. During this period the Project Coordinators shall meet as many times as are necessary to discuss and attempt resolution of the dispute. Any agreed resolution shall be in writing, signed by EPA and Navy. If agreement cannot be reached on any issue within this twenty (20) day period, Navy may, within ten (10) days of the conclusion of the twenty (20) day dispute resolution period, submit a written notice to EPA escalating the dispute to the Dispute Resolution Committee ("DRC") for resolution. If Navy does not elevate the dispute to the DRC within this ten (10) day escalation period, Navy shall be deemed to have agreed with EPA's position with respect to the dispute.
61. The EPA representative on the DRC is the Director, Division of Environmental Planning and Protection, EPA Region II. The Navy representative on the DRC is the Commander, Atlantic Division Naval Facility Engineering Command. These representatives may be changed and they may designate other individuals to act for them. Notice of any change in the representative and delegation of authority from a party's designated representative on the DRC shall be provided to the other parties.
62. The DRC will serve as a forum for resolution of disputes for which agreement has not been reached informally. EPA and Navy shall each designate one individual and an alternate to serve on the DRC. Following escalation of a dispute to the DRC, the DRC shall have twenty (20) days to resolve the dispute. Any agreed resolution shall be in writing and signed by EPA and Navy. If the DRC is unable to resolve the dispute within this twenty (20) day period, Navy may, within ten (10) days of the conclusion of the twenty (20) day dispute resolution period, submit a written Notice of Dispute to the Senior Executive Committee (SEC) for resolution. In the event that the dispute is not escalated to the SEC within the designated ten (10) day escalation period, Navy shall be deemed to

have agreed with EPA's position with respect to the dispute.

63. The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The EPA's representative on the SEC is the Regional Administrator of the EPA Region II. The Navy's representative on the SEC is the Assistant Secretary of the Navy ("ASN") for Environment and Safety. The members shall as appropriate confer, meet and exert their best efforts to resolve the dispute and issue a unanimous written decision signed by the parties. If unanimous resolution of the dispute is not reached within twenty-one (21) days, the EPA Regional Administrator shall issue a written position on the dispute. The Secretary of the Navy may, within ten (10) days of the Regional Administrator's issuance of EPA's position, issue a written notice elevating the dispute to the Administrator of the U.S. EPA for resolution in accordance with all applicable laws and procedures. In the event that Navy elects not to elevate the dispute to the Administrator within the designated ten day escalation period, the Regional Administrator's decision will become final and the work will proceed in accordance with the Regional Administrator's written position with respect to the dispute.

1. Upon escalation of a dispute to the Administrator of the EPA pursuant to paragraph 7, above, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the EPA Administrator shall meet and confer with the Secretary of the Navy to discuss the issues under dispute. Upon resolution, the Administrator shall provide the other Parties with a written final decision setting forth the resolution of the dispute. The duties of the Administrator set forth in this Section shall not be delegated.

2. The pendency of any dispute under this part shall not affect Navy's responsibility for timely performance of the work required by this Consent Order, except that the time period for completion of work affected by such dispute shall be extended for a period of time not to exceed the actual delay caused by the resolution of any good faith dispute in accordance with the procedures specified herein. All elements of the work required by this Consent Order which are not affected by the dispute shall continue and be completed in accordance with the applicable schedule.

1. Within fourteen (14) days of resolution of a dispute pursuant to the procedures specified in this part, Navy shall incorporate the resolution and final determination into the appropriate plan, schedule or procedures and proceed to implement this Consent Order according to the amended plan, schedule or procedure.

1. Resolution of a dispute pursuant to this part of the Consent Order constitutes a final resolution of that dispute arising under this Consent Order. The Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this part of this Consent Order.

1. The procedures of this section shall not apply to disputes about EPA's designation of its project coordinator or any EPA enforcement actions.

XVIII. STIPULATED PENALTIES

1. In the event that the Navy fails to comply with the requirements of this Consent Order EPA may assess a stipulated penalty against the Navy as set forth below. A stipulated penalty may be assessed in an amount not to exceed \$3,000.00 for the first week (or part thereof), and \$6,000.00 for each additional week (or part thereof).
2. Upon determining that the Navy is liable for stipulated penalties, EPA shall so notify the Navy in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the Navy shall have fifteen (15) days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty. Penalties shall accrue but need not be paid during the dispute resolution period. If Respondent does not prevail upon resolution, all penalties shall be due to EPA within thirty (30) days of resolution of the dispute. If Respondent prevails upon resolution, no penalties shall be paid. In the event that Respondent prevails in part, penalties shall be due on those matters in which Respondent did not prevail.
3. Stipulated penalties assessed pursuant to this Section shall be payable only in the manner and to the extent expressly provided for in this Agreement, and in laws authorizing funds for, and appropriations to, the DOD.
4. This Section shall not affect the Navy's ability to obtain an extension of a timetable, deadline or schedule, either pursuant to Section XXVI -- Force Majeure, or as otherwise negotiated between the Parties.
5. Nothing in this Agreement shall be construed to render any officer or employee of the Navy personally liable for the payment of any stipulated penalty assessed pursuant to this Section.
6. If payment is not made within 30 days of the date of Respondent's receipt from EPA of a written demand for payment of the penalties or thirty (30) days after the date of agreement or decision resolving the dispute, interest shall begin to accrue on any unpaid stipulated penalty balance beginning on the thirty-first day after Respondent's receipt of EPA's demand letter, or thirty (30) days after the date of the agreement or decision resolving the dispute, and will accrue until such penalties and interest have been paid in full. Interest shall accrue at the Current Value of Funds Rate established by the Secretary of the Treasury. An additional penalty of six percent (6 %) per annum on any unpaid principal shall be assessed for any stipulated penalty payment which is overdue for ninety (90) days or more. The applicable rate of interest shall be the rate in effect at the time the interest accrues [pursuant to 31 U.S.C. § 3717].
7. Respondent shall make payments by money order, certified check, electronic funds transfer, or cashier's check payable to the Treasurer of the United States within thirty (30) days of

Respondent's receipt of EPA's demand (or of the date of the agreement or decision resolving the dispute), and shall be submitted to the following address:

Regional Hearing Clerk
U.S. EPA, Region 2
P.O. Box 360188M
Pittsburgh, PA 15251

8. The caption information (In the Matter of The Department of the Navy) on this Consent Order and the Docket No. RCRA- 02-2005-7303 should be clearly typed on the check and any cover letter to ensure proper credit. Respondent shall send simultaneous notices of such payments, including copies of the money order, certified check, company check, electronic funds transfer, or cashier's check to the following:

Carl R. Howard
Assistant Regional Counsel
U.S. EPA, Region 2
290 Broadway
New York, NY 10007-1866

9. Neither the invocation of dispute resolution nor the payment of penalties shall alter in any way Respondent's obligation to comply with the terms and conditions of this Consent Order. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the terms and conditions of this Consent Order.

10. Notwithstanding any other provision of this section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Order.

XIX. FORCE MAJEURE

11. "Force majeure" for purposes of this Consent Order is defined as any event arising from circumstances beyond the control of Respondent that delays or prevents the performance of any obligation arising under Section VI (Work to be Performed) and/or Section VII (Reporting Requirements) of this Consent Order. "Force majeure" specifically does not include increased costs or expenses of complying with the requirements of this Consent Decree.

12. When circumstances are occurring or have occurred that may reasonably be expected to cause a delay in the performance or completion of any requirement of Sections VI and VII of this Consent Order, Respondent shall notify EPA by telephone of said circumstances within four (4) working days. Such telephone call shall be made to the Chief of the EPA's (Region II) RCRA Program's Branch, whose telephone number at EPA Region II's current office location is (212) 637-4109. EPA will attempt to advise Respondent in writing if

this number changes.

13. Within ten (10) working days of the events or events that Respondent contends are responsible for the delay, for which event Respondent is asserting "force majeure", Respondent shall deliver to EPA in writing the: (1) reasons for, and anticipated duration of such delay, (2) the measures taken and to be taken by Respondent to prevent or minimize the delay, (3) the deadlines in the Order and the accompanying work plan that will be affected by the "force majeure", and (4) the timetable for implementation of the measures taken and to be taken by Respondent to prevent or minimize the delay. Such written notification is to be sent to the addressees identified in Section IX (Project Coordinator/Information).

14. Respondent's failure to give oral notice to EPA and/or to give written explanation to EPA as specified by this Section shall constitute a waiver by Respondent of any claim of "force majeure."

15. If EPA and Respondent are unable to agree on whether the reason for the delay or noncompliance was caused by a "force majeure" event, or whether the duration of the adjournment proposed by Respondent is warranted under the circumstances, the parties shall resolve the dispute according to the provisions of this Section XXVI (Force Majeure). Respondent shall have the burden of proving, by a preponderance of the evidence, "force majeure" as an explanation of any delay in or noncompliance with a requirement of Section VI (RCRA Work to be Performed) and/or Section VII (Reporting Requirements) of this Consent Order.

16. Any failure or delay by Respondent in complying with the terms of Sections VI and/or Section VII of this Consent Order which delay or failure results from a "force majeure" event, shall not be deemed to be a violation of Respondent's obligations and responsibilities under Section VI and/or Section VII of this Consent Order. To the extent a delay is caused by a "force majeure" event, the schedule affected by the delay shall be extended, if necessary, for a period equal to only the number of days of actual delay resulting from such circumstances, and Respondent shall not be liable for the number of days of actual delay caused by a "force majeure" event. Respondent, however, shall exercise due diligence in taking all necessary measures to mitigate the period of any such delay.

17. If EPA agrees that a delay or noncompliance is or was attributable to a "force majeure" event and that defense has not been waived, the deadline at issue shall be extended by a length of time not to exceed the duration of the "force majeure" event.

XX. RESERVATION OF RIGHTS

18. Notwithstanding any other provisions of this Consent Order, the United States retains all of its authority to take, direct, or order any and all actions necessary to protect public health or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste or constituents of such wastes, on, at, or from the Site, including but not limited to the right to bring enforcement actions

under RCRA, CERCLA, and any other applicable statutes or regulations.

19. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this Consent Order, including without limitation the assessment of penalties under Section 7003 of RCRA, 42 U.S.C. § 6973, and including the right to both disapprove of work performed by the Respondent and to request that the Respondent perform tasks in addition to those stated in the workplans.

20. This Consent Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, claims, and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, or any other statutory, regulatory, or common law authority of the United States.

21. This Consent Order is not intended to be nor shall it be construed to be a permit. Respondent acknowledges and agrees that EPA's approval of the Work and/or Work Plan does not constitute a warranty or representation that the Work and/or Work Plans will achieve the required cleanup or performance standards. Compliance by Respondent with the terms of this Consent Order shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, state, or federal laws and regulations.

22. Notwithstanding any other provision of this Consent Order, no action or decision by EPA pursuant to this Consent Order, including without limitation, decisions of the Regional Administrator, the Director of the Division of Environmental Planning & Protection, or any authorized representative of EPA, shall constitute final agency action giving rise to any right of judicial review prior to EPA's initiation of an action to enforce this Consent Order, including an action for penalties or an action to compel Respondent's compliance with the terms and conditions of this Consent Order.

23. This Consent Order and Respondent's consent to its issuance shall not limit or otherwise preclude EPA from taking any additional legal action against Respondent should EPA determine that any such additional legal action is necessary or warranted.

24. This Consent Order shall not relieve Respondent of its obligation to obtain and comply with any federal, commonwealth or local permit nor is this Consent Order intended to be, nor shall it be construed to be, a ruling or determination on, or of, any issue related to any federal, commonwealth or local permit.

25. EPA reserves the right to perform any and all work required by this Consent Order including, but not limited to, any additional site characterization, feasibility study, and/or response or corrective action deemed necessary to investigate and remediate the Facility thoroughly, or to protect human health or the environment

26. Notwithstanding compliance with the terms of this Consent Order, Respondent is not

released from liability for the costs of any response actions taken by EPA. EPA reserves any rights it may have to seek reimbursement from the Respondent for any such costs incurred by the EPA. Respondent reserves any rights it may have to challenge such an action.

27. Respondent does not waive any defenses Respondent may have or wish to pursue in any action involving third parties.

28. Nothing in this Consent Order and no determination made or action taken (including any failure to act) pursuant to the Consent Order, including, without limitation, any determination or resolution resulting from Dispute Resolution under Section XIX, shall constitute an admission or evidence of an admission by Respondent or otherwise constitute an adjudication of any fact or conclusion of law, except in an action or proceeding by EPA to enforce the terms of this Consent Order.

29. Nothing herein shall preclude any actions by EPA to enforce the terms of this Consent Order, or to address or bring any available legal or equitable claim for: (1) any pre-existing or current violations or conditions at the facility; (2) any emergency conditions or imminent hazard which may exist or arise at the facility; (3) any corrective action pursuant to the Act or Commonwealth law; or (4) any response action pursuant to CERCLA as amended.

30. The Parties recognize that EPA may issue a hazardous waste management permit under the Act or commonwealth law to one or more owner or operator of the Facility which includes corrective action requirements and which may cover one or more of the same SWMUs or AOCs addressed in this Consent Order. EPA reserves the right to enforce the requirements of such permits, including corrective action.

31. Although this Consent Order is issued under the Act (RCRA), Navy reserves any right it may have to utilize its own authority, or exercise any other available right as provided by law (including CERCLA, as amended, DERA, or Executive Order 12580) to implement the provisions of this Consent Order and nothing in this Consent Order shall alter Navy's inherent authority with respect to removal actions it may independently conduct pursuant to its own legal authorities. Any such action by the Navy shall, however, be consistent with the provisions of and work required by this Consent Order.

32. Except as otherwise specifically provided herein, the Parties reserve all rights and defenses they may have under any applicable law, executive orders, regulations, and this Consent Order with respect to any person.

XXI. OTHER CLAIMS

1. By issuance of this Consent Order, EPA assumes no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. EPA will not be deemed a party to any contract, agreement or other arrangement entered into by Respondent or its officers,

directors, employees, agents, successors, assigns, heirs, trustees, receivers, contractors, or consultants in carrying out actions pursuant to this Consent Order.

2. Respondent waives all claims against the United States relating to or arising out of conduct of this Consent Order, including, but not limited to, contribution and counterclaims.

3. Respondent shall bear its own litigation costs and attorney fees.

4. In any subsequent proceeding initiated by EPA or on behalf of EPA for injunctive or other appropriate relief relating to the Site, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by EPA or on behalf of EPA in the subsequent proceeding were or should have been raised in the present matter.

XXIV. INDEMNIFICATION

5. Respondent agrees, to the extent permitted under federal law, to indemnify, save and hold harmless the United States Environmental Protection Agency ("US EPA"), its officials, agents, contractors, employees, and representatives from any and all claims or causes of action: (a) arising from, or on account of, acts or omissions of Respondent, Respondent's directors, officers, employees, agents, successors, assigns, heirs, trustees, receivers, contractors, or consultants in carrying out actions pursuant to this Consent Order; and (b) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any persons for performance of the Work on or relating to the Site, including claims on account of construction delays. In addition, to the extent permitted under federal law, Respondent agrees to pay the US EPA all costs incurred by the US EPA, including litigation costs arising from or on account of claims made against the US EPA based on any of the acts or omissions referred to in the preceding sentence.

XXV. MODIFICATION OF THIS CONSENT ORDER

6. This Consent Order may be modified by the parties. Any such modification, proposed by the parties, must be approved by EPA. Such modification(s) shall be in writing and shall have as its effective date the date on which it is signed by the Regional Administrator. Any modification is, on its effective date, hereby incorporated into this Consent Order.

7. Notwithstanding the above, the EPA Project Coordinator and Respondent may agree to changes in the scheduling of events. Any such changes must be requested in writing by Respondent and be approved in writing by EPA. In addition, the parties may also agree to amend the work requirements under this Consent Order as Respondent sells and/or otherwise conveys various parcels of the Facility to various third parties. As noted in Section IX (EPA Approvals, Additional Work and Transfer of Responsibility), above, amendment of work requirements under this Consent Order is expected to follow the issuance of an order(s) to one or more third parties

assuming responsibility for corrective action work.

XXVI. ENFORCEMENT

8. Navy recognizes its obligations to comply with the applicable federal and commonwealth laws and regulations, including the Act, as set forth in Section 6001 of the Act, 42 U.S.C. § 6961, and Section 102 of the Federal Facility Compliance Act, and to faithfully discharge the requirements of this Consent Order.

XXVII. FUNDING

9. It is the expectation of the Parties to this Agreement that all obligations of the Navy arising under this Agreement will be fully funded. The Navy agrees to seek sufficient funding through its budgetary process to fulfill its obligations under this Agreement. Failure to obtain adequate funds or appropriations from Congress does not, in any way, release Navy from its obligation under this Consent Order to comply with RCRA, or any applicable law or regulation. If sufficient funds are not appropriated by the Congress as requested and existing funds are not available to achieve compliance with the schedules provided in this Consent Order, EPA reserves its right to initiate any other action which would be appropriate absent this Consent Order.

1. Any requirement for the payment or obligation of funds, including penalties, by the Navy established by the terms of this Agreement shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted.

2. Navy has informed EPA that funding authorized and appropriated annually by Congress under the Environmental Restoration, Navy (ER, N) appropriation in the Department of Defense Appropriations Act will be the source of funds for activities required by this Agreement consistent with 10 U.S.C. Chapter 160. However, should the ER, N appropriation be inadequate in any year to meet the total Navy's implementation requirements under this Agreement, the Navy will prioritize and allocate that year's appropriation.

3. If appropriated funds are not available to fulfill the Navy's obligations under this Agreement, EPA reserves the right to initiate an action against any other person, or to take any action, which would be appropriate absent this Agreement.

XXVIII. TERMINATION AND SATISFACTION

4. The provisions of this Consent Order shall be deemed satisfied and the obligations of Respondent under this Consent Order shall terminate upon Respondent's receipt of a written statement from EPA stating that Respondent has completed, to EPA's satisfaction, all the terms and conditions of this Consent Order. Termination of this Consent Order shall not terminate

Respondent's obligations to comply with inter alia, Sections XIV (Sampling, Access and Data Availability); XVI (Record Retention); XXI (Reservation of Rights); and XXV (Indemnification) of this Consent Order, and to maintain institutional and engineering controls. So long as Respondent is performing work pursuant to, or required by this Consent Order, this Consent Order shall not be deemed terminated or satisfied

5. Upon the satisfactory completion of all required actions and upon written request by Respondent, EPA shall endeavor to send to Respondent a written notice of satisfaction of the terms of this Consent Order as soon as practicable. The notice will state that EPA considers Respondent to have satisfied the terms of this Consent Order.

XXIX. PUBLIC COMMENT ON THIS CONSENT ORDER AND DECISIONS MADE PURSUANT TO THIS CONSENT ORDER

6. EPA shall provide public notice, a public meeting (or the equivalent) and a reasonable opportunity for public comment on the Consent Order. After consideration of any comments submitted during a public comment period, EPA may not issue this Consent Order or may seek to amend all or part of this Consent Order if EPA determines that comments received disclose facts or considerations which indicate that this Consent Order is inappropriate, improper, or inadequate in whole or in part.

7. Public Participation procedures will conform with guidance, given in the September 1996 RCRA Public Participation Manual, and EPA's Office of Solid Waste and Emergency Response Directives 9901.3 "Guidance for Public Involvement In RCRA Section 3008(h) Actions" (May 5, 1987), and 9902.6 "RCRA Corrective Action Decision Documents: The Statement of Basis and Response to Comments" (April 29, 1991), or other current EPA regulation or guidance, as appropriate.

8. As requested by EPA, Respondent will make any relevant documents, including any RCRA Facility Investigation (RFI), Corrective Measures Study (CMS), and/or Corrective Measures Implementation (CMI) Work Plan(s) and/or Final Report(s), and any other documents developed pursuant to the requirements of this Order available for public review and comment.

9. Following EPA's tentative decision to approve, subject to public review and comment, a draft Final CMS Report and the recommended final corrective measure(s)/remedy(ies), including no further action, EPA may issue a public notice on the proposed final corrective measure(s), including any no further action determination(s), and make available to the public for review and comment for at least thirty (30) days, both the RCRA Facility Investigation Final Report (or summary of report) and the Corrective Measure Study draft Final Report (or summary of report), and any Statement of Basis that may exist for the final corrective measure/remedy decision, and if appropriate, any draft Final Corrective Measures Implementation (CMI) Work Plan that may exist for the proposed corrective measure(s)/remedy(ies).

10. Following the public review and comment on the draft Final CMS Report and, as warranted the draft Final CMI Work Plan, EPA shall notify Respondent in writing of the corrective measures selected by EPA, and, if acceptable EPA's approval of the CMS Report and the CMI Work Plan. The EPA approved CMS Report and the CMI Work Plan shall be incorporated into this Order by reference. Respondent shall then implement the corrective measure/final remedy pursuant to schedules given in the approved CMI Work Plan. If the corrective measure(s) recommended in the draft Final Corrective Measure Study Report is (are) not the corrective measure(s)/final remedy selected by EPA after consideration of comments received during the public comment period, EPA shall inform Respondent in writing of the reasons for such decision, and if EPA so directs, Respondent shall modify the draft Final CMS Report and/or any CMI Work Plan that may exist based upon public comments, and EPA direction.

11. Respondent shall establish and maintain a Public Repository, located within 5 miles of the Facility, where the public may inspect all documents developed pursuant to this Consent Order or referenced in this Consent Order. Within ten (10) days of the effective date of this Consent Order Respondent shall place at least one (1) paper copy of all documents developed pursuant to this Consent Order or referenced in this Consent Order in the Public Repository, or for documents developed following the effective date of this Consent Order, within 21 (twenty one) days of EPA's request that such document be placed in the Public Repository.

XXX. SEVERABILITY

12. If any provision or authority of this Consent Order or the application of this Consent Order to any party or circumstance is found to be invalid, or is temporarily stayed, the remainder of this Consent Order shall remain in force and shall not be affected thereby.

XXXI. EFFECTIVE DATE

13. This Consent Order shall be effective five days after the date EPA signs this Consent Order after the public comment period as specified in Section XXIX (Public Comment on This Consent Order) above.

XXXII. CONSENT

14. Respondent consents to the issuance of this Consent Order, and agrees to undertake all actions required by the terms and conditions of this Consent Order, including any portions of the Consent Order incorporated by reference. Respondent consents to the issuance of this Consent Order, as an Order, pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, and explicitly waives its right to request a hearing on this matter. In addition, Respondent consents to and agrees not to contest either EPA's jurisdiction to enforce or compel compliance with any term of this Consent Order or the validity of this Consent Order and all of its provisions. The parties, however, acknowledge that disputes between units of the executive branch are not resolved in federal court.

15. Each undersigned signatory to this Consent Order certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order.

Agreed this ____ day of _____, 2005.

By: Signature: _____

Print Name: _____

Title: _____

Respondent's name and
Address: _____

It is so ORDERED and Agreed this ____ day of _____, 2005.

By: _____

Regional Administrator
Region 2, U.S. Environmental Protection Agency

EFFECTIVE DATE: _____