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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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December 21, 2006

Mr. Christopher Penny, P.E.
Vieques Project Coordinator
Commander Atlantic Division
Naval Facilities Engineering Command
6506 Hampton Boulevard
Norfolk, VA 23508-1278

Re: Review of the Final MEC Master Work Plan, Former Naval Training Range (VNTR),
Vieques, Puerto Rico

Dear Mr. Penny:

The U.S. Environmental Protection Agency (EPA) and the Puerto Rico Environmental Quality Board (EQB) have completed the review of the Final Munitions and Explosives of Concern (MEC) Master Work Plan, Former Naval Training Range (VNTR), Vieques, Puerto Rico, dated December 2006.

Our review indicates that the Final MEC Master Work Plan does not address several Regulatory Agencies comments submitted by EPA to the Navy on November 7, 2005. In addition, the final document does not include several modifications presented on the response to comments dated April 4, 2006, and the second set of response posted on the Navy's project website on August 4, 2006. Therefore, the Final MEC Master Work Plan cannot be approved. Enclosed you will find our comments.

The Navy should ensure that all comments submitted by the Regulatory Agencies are appropriately incorporated in the subsequent revision of the document. Changes to be made in the document should be implemented exactly as stated in the response to comments, unless this is not possible due to some overriding reason. Should a change to the proposed modification of the subject document be necessary after the responses to the Regulatory Agencies' comments have been formalized, the Regulatory Agencies should be advised of these changes and given an opportunity to review them and to comment on their sufficiency prior to the finalization of the succeeding revision of the document.

We remain available to meet with you to go over these outstanding matters. If you have any questions, please contact me at (787) 741-5201.

Cordially,

A handwritten signature in black ink, appearing to read 'Daniel Rodriguez', with a horizontal line extending to the right.

Daniel Rodriguez
Remedial Project Manager
Response and Remediation Branch

Enclosures (2)

cc: Yarissa Martinez, EQB, w/ encl.
Richard Henry, FWS, w/ encl.
Stacin Martin, CH2M Hill, w/ encl.
Doug Maddox, FFRRO, w/ encl.

**EPA review of *Final Munitions and Explosives of Concern (MEC) Master Work Plan,
Former Vieques Naval Training Range (VNTR), Vieques, Puerto Rico*
December 2006**

Only those comments deemed deficient during the analysis and the necessary corrections are presented below.

SPECIFIC COMMENTS

2. **Appendix I, Response to Comments, Page 11: EPA Specific Comment 25 reads as follows: Table 10-2 Rare and Endangered Terrestrial and Amphibious Wildlife at VNTR, page 10-2:** In this table, all of the rare or endangered species listed are noted as not having been observed during the study, with the exception of *Trimeresurius* (Fer-De-Lance). This would seem to indicate that this species was observed during the survey. However, this species is listed in the table as "Rare or Extinct." It would seem very unlikely that this species is extinct if one was observed during the referenced study. Please review this table and correct it as necessary.

The April 4, 2006 Navy response reads as follows: Footnote for *Trimeresurius* has been revised on Table 10-2 to indicate "not observed during study".

Analysis: The Navy response addresses the concern expressed. However, it appears that no such footnote was added, as Table 10-2 (Rare and Endangered Terrestrial and Amphibious Wildlife at VNTR) has been deleted from Section 10 of the Final MEC MWP. It appears that the listing presented in Table 10-2 has been completely removed from the Final MEC MWP. If the Navy opted to remove Table 10-2, the Navy should revise the response to the subject EPA comment to reflect the action actually taken on the EPA comment.

4. **Appendix I, Response to Comments, Page 11: EPA Specific Comment 26 reads as follows: Section 10.4, Water Resources within the Project Site, page 10-3:** The text only describes ocean water resources. It should include groundwater. See comment#9 above.

The April 4, 2006 Navy response reads as follows: Section 10.4 will be re-titled 'Surface Water and Groundwater Resources within the Project Site'. Additionally, the entire section will be replaced with 'Based on available aerial photography, surface water resources located within or adjacent to the project area, are the Caribbean Sea to the north, south, and east and several lagoons primarily along the coast.'

Analysis: The Navy response addresses the concern expressed. However, the section number concerned has been renumbered as Section 10.2 instead of 10.4 as stated in the Navy response. In addition, the revised verbiage in Section 10.2

does not read as stated in the Navy response. The Navy should revise the cited response to reflect the actual changes made to the Final MEC MWP.

5. **Appendix I, Response to Comments, Page 11: EPA Specific Comment 27 reads as follows: Section 10.8, Compliance with ARARs, page 10-4:** Need to expand the compliance with ARARs discussion to include; what they are; chemical specific, action specific, location specific; difference between applicable and relevant and appropriate; clearly describe that NPL sites must meet ARARs – this is a threshold CERCLA/NCP requirement; be clear that for most activities conducted entirely on-site, permits are not required. etc.

The April 4, 2006 Navy response reads as follows: The definition of ARARs and TBCs is provided following Table 1-1 in Section 1.2. The discussion of chemical, action, and location specific ARARs is beyond the intended scope of this document. Further explanation of compliance with ARARs as required for environmental site implementation is contained in the Environmental MWP for Vieques, CH2M HILL, January 2001.

The last sentence in Section 10.8 Compliance with ARARs will be changed to read 'Other ARARs and TBCs to be followed were presented in Table 1-1.' The following sentence will be added as the last sentence in the paragraph 'All sites addressed under the NPL must meet the ARARs set forth in this document, the Environmental MWP (CH2M HILL, January 2001), and other ARARs as necessary.'

Analysis: There is no Section 10.8 in the Final MEC MWP as is stated in the Navy response. The Navy should revise the cited response to reflect the actual changes made to the Final MEC MWP.

EQB comments on *Final Munitions and Explosives of Concern (MEC) Master Work Plan, Former Vieques Naval Training Range (VNTR)*, Vieques, Puerto Rico, dated December 2006

The following are comments (last reaction to comments on bold) that the Navy has not complied with the agreed-upon resolution on the final document sent to EQB. For comments #4 and #9 the responses provided by the Navy were accepted, however EQB still believes that these topics should be discussed in the final document. Also, comments #13 and #16, the responses were accepted but they were not adequately inserted in the final document.

Comment #4. Section 2.4.8, Pg 2-15: There is no mention of potentially clearing vegetation by controlled burning. Since this is a MWP it may be appropriate to say that controlled burning is being considered, may be implemented if regulatory issues can be resolved, and, if used, will be described in a site-specific work plan.

Navy Response: At this time, due to the legal limitations, controlled burning cannot be conducted at the Former VNTR. If this changes this document will be revised to include that vegetation clearance method as an option. Specific plans to carry out this operation will be developed and any general procedures will be included in a revision of this document.

Additional EQB comment (May 2006): Response accepted.

December 2006 EQB comment: Since the Navy plans to perform controlled burns it would have been efficient to include information on this operation in this MWP. However, it is the Navy's option to choose not to do so and modify this MWP and inform the regulators of this modification (in accordance with Section 1.9 of the MWP) prior to performing controlled burns.

Comment #9. Section 2.4.13, Pg 2-21: Range fires have been a problem. It is recommended to include precautions to be taken to prevent range fires caused by MEC detonations in this section on MEC disposal or to include a new section on this subject. It is appropriate that the MWP identify this problem and analyze applicable solutions.

Navy Response: A Prescribed Burn Plan for the TCRA within the LIA, which contains several preventative measures for the spread of fire resulting from MEC detonations, is currently under review by EPA, DOI and EQB. Fire preventative measures proposed include: the establishment of fire breaks surrounding the detonation areas, vegetation clearance of selected areas to suppress the spread of fire and the maintenance of a standby water supply to wet down fire breaks away from any range fires. Once the Draft Prescribed Burn Plan is finalized the fire prevention measures can be amended to the Master Work Plan.

Additional EQB comment (May 2006): Response accepted.

December 2006 EQB comment: Although the Navy response to this comment discusses fire suppression in the context of controlled burning, the original EQB comment discusses fire suppression in the context of other MEC operations such as manual vegetation clearing and MEC disposal. It appears that these MEC operations may have caused several fires on Eastern Vieques. Therefore, it is appropriate for the MWP to include a fire suppression plan regardless of whether or not controlled burning is performed in the future. It is possible that this plan will need to be modified to support controlled burning. But, the fact that serious fire hazards exist on Eastern Vieques makes it important that planning for fires caused by MEC operations is in place as soon as possible. As stated in the original EQB comment, it is recommended that the MWP be modified to include a fire suppression plan.

Comment #11: Section 3.2, Pg 3-1: Reference the Puerto Rico explosives law (which requires users and transporters of explosives to have a permit from the Superintendent of Police) as required permit.

Navy response: The following will be added as the last sentence in Section 3.2 Licenses and Permits: 'In addition, users and transporters of explosives over public transportation routes will be required to obtain a permit from the Superintendent of Police, as required by the Commonwealth of Puerto Rico law.'

Additional EQB comment (May 2006): Puerto Rico Law No. 134 of, June 28, 1969, requires more than obtaining permits for "users and transporters of explosives over public transportation routes". The following text, taken directly from Law 134, requires permits for manufacture, transport, receipt, storage, possession, handling and use of explosives. It is recommended that the MWP be modified to completely comply with Law 134.

"(a) No person shall carry out any or any one of the activities herein listed without having first obtained the corresponding permit or permits from the Superintendent issued in accordance with the provisions of this chapter and its regulations:

- (1) Manufacture explosives or substances that may be used to manufacture explosives;
- (2) transport explosives or substances that may be used to manufacture explosives;
- (3) receive, store or possess explosives or substances that may be used to manufacture explosives;
- (4) use explosives or substances that may be used to manufacture explosives;
- (5) operate an establishment where explosives or substances are handled that may be used to manufacture explosives."

December 2006 EQB comment: The MWP is still silent on how this requirement has been met. It says (section 3.2) that a permit is required, but there is not indication in the plan that this requirement has been complied with. It is recommended that the plan be modified to include a copy of the permit or other documentation that this requirement has been met.

Comment #13. Section 3.4.3, Pg 3-3: This section says that a guard will be posted during non-working hours. However, there is a new guidance to the Puerto Rico explosives law ("Guidance for the Administration, Application and Oversight of the Puerto Rico

Explosive's Law", Chapter XVIII, "Magazines, Guidance, Safety Precautions to be taken in the Magazines' Surroundings") that requires a guard at all times (24 hours/day) whenever explosives are stored. It is recommended that this guidance be added to the list of ARARs.

Navy Response: The following ARAR will be added to Table 1-1 in Section 1.2:

'Guidance for the Administration, Application and Oversight of the Puerto Rico Explosive's Law, Puerto Rico explosives law Chapter XVIII.'

However, it should be noted that NAVFAC is in consultation with PR State Police to clarify the requirements for guards. Because during working hours personnel are on-site in the vicinity of the storage area and during non-working hours a security guard is stationed in the vicinity of the stored explosives, it is believed the intent of the law is being met. The results of these discussions will be included in revisions to this document.

Additional EQB comment (May 2006): Response accepted.

December 2006 EQB comment: This agreed-upon addition to the MWP (note above: "The results of these discussions will be included in revisions to this document) has not been made. The Navy should modify the MWP to document the waiver from the Puerto Rico police for compliance with the requirement for a 24-hour guard of the explosives magazines.

Comment #16. Table 9-1: Table 9-1 is a good effort at identifying all of the relevant QC inspections. However, it appears that the DFW contained in Table 9-1 are not complete. For example, there are no DFW associated with geophysics, subsurface clearance or UXO disposal. It is recommended that Table 9-1 be modified to completely capture all of the DFW that are relevant to the full spectrum of activities that can be conducted at VNTR.

Navy response: Table 9-1 will be revised to include additional definable features of work including the following: digital geophysical surveys, geophysical prove-outs, subsurface MEC clearance and MPPEH processing.

Additional EQB comment (May 2006): Response accepted.

December 2006 EQB comment: The additions to Table 9-1 have been made. However, it doesn't appear that the audit requirement for "digital geophysical mapping" (page 9-15) is adequate because the audit requirement is "once". This means that compliance with this audit requirement only requires a QC inspection of the performance of this critical work one time. It is recommended that the MWP be modified to state this critical DFW will be audited more frequently than only once.

ADDITIONAL COMMENTS OF AGREEMENTS MADE THROUGHOUT THE PROCESS:

1. An agreement was made at the June 9, 2005 MR Subcommittee meeting that additional information on the GPO would be added to the MWP. This agreement is

documented in EQB's report of this meeting which states:

- Doug Maddox asked about establishing a GPO for Eastern Vieques. Chris Penny answered that Tom Douglas of Navy EOD TECHDIV is going to perform QA oversight for the Navy. George Overby said they are planning on constructing multiple GPOs in different areas with different geology. **He agreed that information on the GPO areas will be included in the Master MEC Work Plan which will be sent to the Navy for internal review in a week or so.**

This information hasn't been added to the MWP as agreed. Since we learned at the last CTC meeting that the GPO is currently being constructed it is likely that a significant amount of information is known about the GPO that can be added to the MWP as agreed. It is recommended that the MWP be modified to provide relevant information on the GPO such as its location, the number of targets, type of targets and depth of targets.

2. EQB has requested that Figure 2-1 be modified to include the agencies and regulators to show the lines of communication that will be used to provide information on the project. This was requested since EQB's earliest comments on the pre-draft MWP in December 2004 as documented by this comment:

"Page 2-5, Fig. 2-1:

1. Recommend adding dashed line boundaries or using shading to indicate which organizations the various personnel work for.
2. Add other members of the Project Team (EQB, USFWS, etc.) to the organization chart.
3. One block at the bottom references QA/QC. This is incorrect. These two functions are independent of each other and cannot reside with the same person or organization."

Note that #2 above has never been addressed. It is likely that the project can benefit from improvements in communication and showing the relationship of the regulators and agencies to the project may help. EQB continues to request that this modification to Figure 2-1 of the MWP be implemented.

3. Appendix I – EQB's comments begin on Page 18 of this appendix. However, they are labeled "UXO Pro, Inc. Comments". UXO Pro is a contractor to EQB and has no authority to separately submit comments. All comments developed by UXO Pro are submitted only after review and approval of EQB. Therefore, it is not correct to refer to these comments as "UXO Pro comments". It is requested that the document be modified to refer to these comments as "EQB comments".