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State of North Carolina
Department of Environment,
Health and Natural Resources
Division of Waste Management

James B. Hunt, Jr., Governor
Jonathan B. Howes, Secretary
William L. Meyer, Director

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

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11 July 1997

Commanding General, Major General George Karamarkovich
Marine Corps Air Station - Cherry Point, NC
Attention: MCAS-Cherry Point, RPM
Ms. Christine Kartman
Environmental Affairs Department
Marine Corps Air Station, PSC Code 8006
Cherry Point, NC 28533-0006

Re: Conditional Concurrence with the Record of Decision (ROD)
for Operable Unit 3 (Sites 6 and 7), MCAS-Cherry Point, North Carolina

Dear General Karamarkovich:

The North Carolina Superfund Section has completed its review of the Record of Decision (ROD) for Operable Unit 3 (Sites 6 and 7). The selected remedy described in the ROD contains source control and monitoring requirements, but its true protectiveness is based primarily on placing long-term institutional controls on the site. Although the State accepts the technical reasonableness of this remedy, we are very concerned about the enforceability and the longevity of institutional controls, both while the property remains part of the military installation and whenever the property is transferred into the civilian sector.

The State believes that placing property use, aquifer use, and site access restrictions in the Base Master Plan will be effective in assuring protectiveness if coupled with restrictive covenants placed on the property. We believe restrictive covenants are the most protective and enforceable institutional controls available. However, since MCAS-Cherry Point asserts that it lacks the authority to impose such restrictions, we believe that using less stringent, but somewhat redundant, institutional controls is appropriate. Therefore, the State concurs with the selected remedy, contingent upon satisfaction of the conditions described below within 90 days of the date of this letter, unless otherwise specified.

- I. The State must concur with the language restricting land use, aquifer use, and site access to be placed in the Base Master Plan (BMP). The BMP includes the accompanying file of updates.

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- 2. MCAS-Cherry Point must notify the State in writing when the agreed upon restrictions have been placed in the BMP. A letter from the Commanding General (CG), MCAS-Cherry Point, or his designee, accompanied by a copy of the document setting forth the restrictions and describing their insertion into the BMP, or into the accompanying file of updates, will be sufficient.
- 3. The CG, MCAS-Cherry Point, or his designee, must submit to the State, annually, a certification that the restrictions imposed on the land use, aquifer use, and site access remain unchanged in the Base Master Plan. The certification must be accompanied by a copy of applicable pages from the BMP.
- 4. *No Legal Authority* MCAS-Cherry Point *Noted Requirements* must comply with the provisions of N.C.G.S. 130A-310.8 (copy enclosed), which requires that a State-approved plat reflecting the area of contamination be recorded at the county register of deeds office.
- 5. An official with authority to bind MCAS-Cherry Point must state, in writing, that in the event that property containing any part of the site is transferred out of United States Marine Corps control, appropriate deed restrictions will be submitted for the State's approval, regardless of whether 42 U.S.C. Sec. 9620(h)(3) is still in effect.

In addition to these five conditions, this concurrence is based on the institution, by the NC Hazardous Waste Section, of an agency initiated Resource Conservation and Recovery Act (RCRA) Permit Modification under 40 CFR 270.41, incorporated by reference in 15A NCAC 13A.0113, imposing land use restrictions, aquifer use restrictions, and site access restrictions.

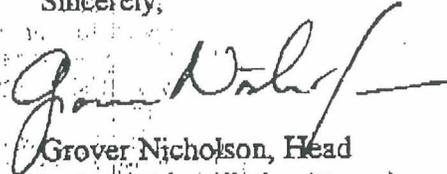
This concurrence is based on the information presented in the Record of Decision, Remedial Investigation Report, Feasibility Study and Proposed Remedial Action Plan. Should the State receive new or additional information which significantly affects this concurrence, the concurrence may be modified or withdrawn with appropriate written notice to the Navy, MC Air Station, and Region IV, US EPA.

The State's concurrence with this Record of Decision in no way binds the State to concur in future decisions or commits the State to participate, financially or otherwise, in the cleanup of the site. The State reserves the right to review, comment, and make independent assessments of all future work relating to the site.

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If you have any questions regarding this conditional concurrence for Operable Unit 3, please call either Linda Raynor at (919) 733-2801, x.340 or myself at (919) 733-2801, x.291.

Sincerely,



Grover Nicholson, Head
Federal Remediation Branch
NC Superfund Section

cc: Commander, Atlantic Division, Naval Facilities Command
Attention: NAVFACENGCOM
Ms. Linda Saksvig
Code 1823
1510 Gilbert Street
Norfolk, Virginia 23511-2699

Jay Bassett, US EPA, Region IV
Bart Reedy, US EPA, Region IV
Beth Hartzell, NC Hazardous Waste Section
Rob Gelblum, NC Attorney General's Office
Richard Powers, NC Division of Water Quality

Enclosure

§ 130A-310.8. Recordation of inactive hazardous substance or waste disposal sites.

(a) After determination by the Department of the existence and location of an inactive hazardous substance or waste disposal site, the owner of the real property on which the site is located, within 180 days after official notice to him to do so, shall submit to the Department a survey plat of areas designated by the Department which has been prepared and certified by a professional land surveyor, and entitled "NOTICE OF INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITE". The Notice shall include a legal description of the site that would be sufficient as a description in an instrument of conveyance, shall meet the requirements of G.S. 47-30 for maps and plats, and shall identify:

- (1) The location and dimensions of the disposal areas with respect to permanently surveyed benchmarks; and
- (2) The type, location, and quantity of hazardous substances disposed of on the site, to the best of the owner's knowledge.

Where an Inactive Hazardous Substance or Waste Disposal Site is located on more than one parcel or tract of land, a composite map or plat showing all such sites may be recorded.

(b) After the Department approves and certifies the Notice, the owner of the site shall file the certified copy of the Notice in the register of deeds' office in the county or counties in which the land is located.

(c) The register of deeds shall record the certified copy of the Notice and index it in the grantor index under the names of the owners of the lands.

(d) In the event that the owner of the site fails to submit and file the Notice required by this section within the time specified, the Secretary may prepare and file such Notice. The costs thereof may be recovered by the Secretary from any responsible party. In the event that an owner of a site who is not a responsible party submits and files the Notice required by this section, he may recover the reasonable costs thereof from any responsible party.

(e) When an inactive hazardous substance or waste disposal site is sold, leased, conveyed, or transferred, the deed or other instrument of transfer shall contain in the description section, in no smaller type than that used in the body of the deed or instrument, a statement that the property has been used as a hazardous substance or waste disposal site and a reference by book and page to the recordation of the Notice.

(f) A Notice of Inactive Hazardous Substance or Waste Disposal Site shall be cancelled by the Secretary after the hazards have been eliminated. The Secretary shall send to the register of deeds of the county where the Notice is recorded a statement that the hazards have been eliminated and request that the Notice be cancelled of record. The Secretary's statement shall contain the names of the landowners as shown in the Notice and reference the plat book and page where the Notice is recorded. The register of deeds shall record the Secretary's statement in the deed books and index it on the grantor index in the name of the landowner as shown in the Notice and on the grantee index in the name "Secretary of the ~~North Carolina Department of Environment, Health, and Natural Resources~~". The register of deeds shall make a marginal entry on the Notice showing the date of cancellation and the book and page where the Secretary's statement is recorded, and the register shall sign the entry. If a marginal entry is impracticable because of the method used to record maps and plats, the register of deeds shall not be required to make a marginal entry.

(g) This section shall apply with respect to any facility, structure, or area where disposal of any hazardous substance or waste has occurred which is undergoing voluntary remedial action pursuant to this Part. (1987, c. 574, s. 2; 1989, c. 727, s. 219(34).)