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LETTER REGARDING FINAL AGREED ORDER FOR REMEDIATION ACTIVITIES NCBC  
GULFPORT MS  
7/8/1997  
MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY



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

July 8, 1997

Captain F. P. DiGeorge, III  
Civil Engineer Corps  
United States Navy  
Naval Construction Battalion Center  
5200 CBC 2nd Street  
Gulfport, MS 39501-5001

Dear Captain DiGeorge:

Please find enclosed the final agreed order to be entered between the Mississippi Commission on Environmental Quality, the U. S. Department of the Navy, and the U. S. Department of the Air Force regarding remediation activities at the Naval Construction Battalion Center in Gulfport, Mississippi. The Agreed Order is the product of ongoing negotiations between environmental professionals acting on behalf of the three signatories.

If the document meets with your approval, please sign as indicated and forward the document to the Department of the Air Force for that entity's review and signature. The Air Force then should return the document to me for execution by the Executive Director of the Commission. I then will forward fully executed copies of the Agreed Order to both the Navy and the Air Force.

Thank you for your assistance in this matter. If you have any further questions, I may be reached at 601-961-5076. With best regards, I remain,

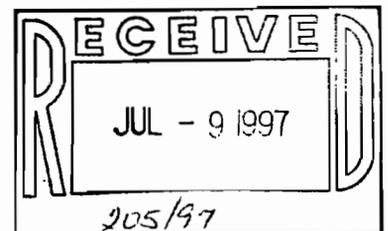
Sincerely,

A handwritten signature in black ink, appearing to read "Chuck D. Barlow".

Chuck D. Barlow  
Chief, Legal Division

CDB:gyd  
Enclosure

cc: J. I. Palmer, Jr.  
Charles Chisolm  
Jerry Banks



**BEFORE THE MISSISSIPPI COMMISSION ON ENVIRONMENTAL QUALITY**

**IN THE MATTER OF:**

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

**ORDER No. 3466 - 97**

**AND**

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

**AGREED ORDER**

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

1.

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

2.

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

presence of dioxin or dioxin-related contaminants in surface soils.

3.

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

4.

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

5.

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

removal action of dioxin contaminated surface soils and sediments adjacent to the north side of the base.

6.

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

7.

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

This Agreed Order shall replace Administrative Orders 3193 96 and 3194 96 as issued to the Navy and the Air Force, respectively. The Navy and the Air Force agree to work cooperatively to satisfy the requirements set forth in this Agreed Order and recently have executed a Memorandum of Agreement (MOA) to address their respective roles in this regard. Although the responsibilities of the Navy and Air Force toward each other are delineated by the MOA, it is understood that the responsibilities of the Navy and Air Force to the Commission are created by State and federal law and that the particular

responsibilities of the Navy and Air Force to the Commission in this matter are memorialized in this Order and are not lessened by any provision in the MOA.

A. OFF-SITE DELINEATION

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

B. OFF-SITE REMEDIATION PLAN

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

3. Complete those activities set forth in the approved OFF-SITE REMEDIATION WORKPLAN and schedule.

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

C. INTERIM CORRECTIVE MEASURES

1. On or before March 10, 1997, commence execution of the approved ON-SITE INTERIM CORRECTIVE MEASURES WORKPLAN according to the schedule incorporated therein.

2. Complete those activities set forth in the approved ON-SITE INTERIM CORRECTIVE MEASURES WORKPLAN and schedule.

3. Within eighty five (85) days of completion of the ON-SITE INTERIM CORRECTIVE MEASURES WORKPLAN activities, to include any necessary data analysis and validation, submit to OPC a final report (ON-SITE INTERIM CORRECTIVE MEASURES REPORT) of the interim corrective measures completed.

D. EXPOSURE ASSESSMENT

On or before May 15, 1997, submit to OPC a HUMAN HEALTH EXPOSURE ASSESSMENT REPORT detailing the results of a Human Health and Ecological Exposure Assessment survey to be conducted off-base. That report shall

contain an assessment of the frequency, duration and magnitude of both direct and indirect routes of potential human exposure to dioxin or other dioxin related contaminants which may have migrated from Site 8 and its related drainage ways into sediment and surface soils which likely received sediment overflow, or surface water, off-base. The results of the assessment will be used to establish a site conceptual exposure model which will help guide field sampling efforts to ensure that sufficient media and biota samples are collected to adequately assess the potential human health and ecological risks in the surrounding community(ies) from possible exposure to dioxin contamination which may have migrated off-base.

E. BIOLOGICAL MONITORING

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

MONITORING REPORT) of the findings.

F. ON-SITE DELINEATION

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

G. ON-SITE REMEDIATION PLAN

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

3. Complete the activities as approved in the ON-SITE REMEDIATION WORKPLAN and schedule.
4. Within eighty-five (85) days of completion of the ON-SITE REMEDIATION WORKPLAN activities, to include any necessary data analysis and validation, submit to OPC a final report (ON-SITE REMEDIATION REPORT) documenting the remediation activities completed.

#### H. GROUNDWATER MONITORING

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

5. Within ninety (90) days of receipt of written approval from OPC, commence execution of the approved CONTINUED PERIODIC GROUNDWATER MONITORING WORKPLAN according to the schedule incorporated therein.

## I. GROUNDWATER REMEDIATION

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

J. STATUS REPORTING

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

8.

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

9.

It is agreed that any event arising beyond the control of the Navy or the Air Force, exercising reasonable diligence, that may delay or prevent the Navy or the Air Force from performing any of their respective obligations under this Agreed Order will be deemed a Force Majeure event justifying the extension of those affected work activity and/or document submission deadlines as set forth in this Agreed Order. Such events will include, but not be limited to, acts of God including unusually severe weather conditions; fire; war; civil disturbance; unanticipated breakage or accident to machinery or

equipment despite reasonably diligent maintenance; unusual delays in transportation; inability to obtain at reasonable cost and after exercise of reasonable diligence any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency other than the Navy or the Air Force; restraint by court order or order of public authority; delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures despite the exercise of reasonable diligence; and non-availability of appropriated funds as specified in paragraph 8 above. "Reasonable diligence" as used in this paragraph shall include, but not be limited to, the filing of all applications and information required by state and federal law and regulations.

10.

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

11.

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

12.

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

SO ORDERED, this the \_\_\_\_\_ day of \_\_\_\_\_, 1997.

MISSISSIPPI COMMISSION ON  
ENVIRONMENTAL QUALITY

BY: \_\_\_\_\_  
J.I. PALMER, JR.  
EXECUTIVE DIRECTOR

AGREED TO AND ACCEPTED this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

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

By: \_\_\_\_\_  
F.P. DiGEORGE, III  
Captain, Civil Engineer Corps  
United States Navy  
Commanding Officer

AGREED TO AND ACCEPTED this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

U.S. DEPARTMENT OF THE AIR FORCE

By: \_\_\_\_\_  
TERESA R. POHLMAN  
Acting Chief, Environmental Division  
DCS Installations and Logistics