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LETTER FROM U S NAVY REGARDING THE TRANSMITTAL OF PROPOSED
INSTALLATION RESTORATION CONSENT ORDER NSWC INDIAN HEAD MD
3/10/1992
NSWC INDIAN HEAD

**DEPARTMENT OF THE NAVY**

INDIAN HEAD DIVISION
NAVAL SURFACE WARFARE CENTER
101 STRAUSS AVE
INDIAN HEAD MD 20640-5035

5090
Ser 096/127
10 Mar 92

From: Commander, Indian Head Division, Naval Surface Warfare Center
To: Commanding Officer, Chesapeake Division, Naval Facilities Engineering Command, Washington, DC 20374-2121

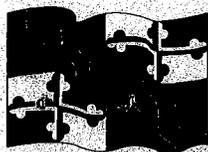
Subj: PROPOSED IR CONSENT ORDER

Encl: (1) Copy of Consent Order

1. I request that you review and advise us on the Installation Restoration (IR) consent order proposed by the Maryland Department of the Environment (MDE) for our activity. A copy of the consent order is provided as enclosure (1).
2. MDE personnel have indicated to us that the State has not signed an IR consent order with any Federal agency. If we were to negotiate and the Navy sign a consent order; MDE would use it as a precedent for Federal agencies.
3. The State would like to meet with us, as soon as possible, to discuss their proposal. We have an excellent working relationship with MDE and feel that a prompt response from us is necessary to maintain that relationship. Please provide us with any comments or advice pertaining to the consent order by 6 April 1992. If you have any questions or need additional information, please contact Ms. Sherry McCahill, of my staff, on Commercial (301) 743-6745 or our legal counsel, Ms. Susan Luther, on Commercial (301) 743-6668.

A handwritten signature in black ink, appearing to read "Kenneth D. Morin", is positioned above the typed name.

KENNETH D. MORIN, P.E.
By direction



STATE OF MARYLAND
DEPARTMENT OF THE ENVIRONMENT
2500 Broening Highway Baltimore, Maryland 21224
(410) 631-3437

William Donald Schaefer
Governor

Robert Perciasepe
Secretary

February 20, 1992

Commander, Indian Head Division
Naval Surface Warfare Center
Attention: Mr. Kenneth D. Morin
Code 096
Indian Head, MD 20640-5035

Dear Mr. Morin:

Enclosed is a draft of a proposed Consent Order (CO) covering response activities at sites under the Installation Restoration Program. The CO is intended to cover State/Facility responsibilities and interactions for all phases of CERCLA response activities at your facility.

We invite you to get together with us as soon as possible to discuss your initial comments and to develop procedures and an acceptable timetable aimed at finalizing the CO. If you have any questions, please contact Milton Marder at (410) 631-3439 or have your attorney contact Ms. Pamela Marks, Esq. at (410) 631-3043.

Sincerely,

A handwritten signature in cursive script that reads "Frank Henderson".

Frank Henderson
Acting Program Administrator
CERCLA Program

FH:bjw

Enclosure

cc: Mr. Richard Collins
Ms. Pamela Marks, Esq.
Ms. Susan Luther, Esq.

TABLE OF CONTENTS

1. PARTIES

2. JURISDICTION

3. DEFINITIONS

4. PURPOSE

5. DETERMINATIONS

6. WORK TO BE PERFORMED

7. CONTRACTORS

8. DOCUMENT REVIEW AND COMMENT AND CONSULTATION

9. STATE RESPONSE ACTIVITIES

10. WORK STOPPAGES, REMOVALS AND EMERGENCY RESPONSE
ACTIONS

11. DISPUTE RESOLUTION

12. PERMITS

13. SUBSEQUENT PLACEMENT ON THE NATIONAL
PRIORITIES LIST

14. BASE CLOSURE

15. PUBLIC PARTICIPATION

16. PERIODIC REVIEW

17. PROJECT MANAGERS

18. QUALITY ASSURANCE

19. SAMPLING AND DATA AVAILABILITY

20. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

21. DEADLINES

22. EXTENSIONS

23. FORCE MAJEURE AND NOTIFICATION OF DELAY

24. ENFORCEABILITY AND PENALTIES

25. STATE REIMBURSEMENT

26. SITE ACCESS

27. NOTIFICATION

28. PRESERVATION OF RECORDS

29. TRANSFER OF REAL PROPERTY

30. TERMINATION OR MODIFICATION OF CONSENT ORDER

31. OTHER CLAIMS

32. INDEMNIFICATION OF THE STATE OF MARYLAND

33. EFFECTIVE DATE

STATE OF MARYLAND
AND
THE MARYLAND DEPARTMENT OF THE ENVIRONMENT

IN THE MATTER OF:	*	FEDERAL FACILITY
UNITED STATES DEPARTMENT	*	REMEDIAL CONSENT ORDER
OF NAVY, NAVAL SURFACE WARFARE	*	
CENTER, INDIAN HEAD DIVISION	*	NO. _____
* * * * *	*	* * * * *

**CONSENT ORDER FOR REMEDIAL INVESTIGATION
FEASIBILITY STUDY, AND IMPLEMENTATION OF DECISION
AT NAVAL SURFACE WARFARE CENTER, INDIAN HEAD DIVISION**

1. PARTIES

1.1 The State of Maryland, Department of the Environment, ("MDE"), Hazardous and Solid Waste Management Administration (HSWMA), and the United States Department of Navy ("Navy"), Naval Surface Warfare Center, (NSWC), Indian Head Division, located in Indian Head, Maryland, are the Parties to this Consent Order.

2. JURISDICTION

2.1 The MDE enters into this Consent Order pursuant to the powers, duties and responsibilities vested in the Secretary of the Environment by Environment Article, Sections 1-301, and 7-201 through 7-268, and 9-301 through 9-344, inclusive.

2.2 The Navy enters into this Consent Order pursuant to [insert] federal authorities - Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986

("SARA"), 42 U.S.C. Sections 9601, et seq., executive orders, i.e. 12088?..).

3. DEFINITIONS

3.1 Except as noted below or otherwise explicitly stated, the definitions provided in the Environment Article, Annotated Code of Maryland, and Code of Maryland Regulations ("COMAR") Title 26, Subtitles 13 and 14 shall control the meaning of terms used in this Consent Order.

3.2 "ARARs" or applicable or relevant and appropriate requirements shall have the meaning set forth in the National Contingency Plan, 40 C.F.R. § 300.5, and also shall include MDE identified guidelines that are derived from current scientific or technical literature, unpublished written MDE guidelines, and recommendations by the Toxics, Environmental Science and Health Administration ("TESH") within MDE.

3.3 "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act, Public Law 96-510, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, and any subsequent amendments.

3.4 "Consent Order" shall refer to this document and shall include all Appendices to this document. All Appendices shall be made an integral and enforceable part of this document.

3.5 "Days" shall mean calendar days, unless business days are specified. Any submittal that under the terms of this Consent

Order would be due on Saturday, Sunday, or State or Federal holiday shall be due on the following business day.

3.6 "Environment Article" shall mean the Environment Article, Annotated Code of Maryland.

3.7 "EPA" shall refer to the Federal Environmental Protection Agency.

3.8 "Feasibility Study" or "FS" shall have the meaning set forth in the National Contingency Plan, 40 C.F.R. § 300.5.

3.9 "Federal Facility" shall include the Naval Surface Warfare Center, Indian Head Division, including [describe real property, this is not necessarily limited to current real estate because possibly portions have been sold].

3.10 "HRS" or "Hazard Ranking System" shall have the meaning set forth in the National Contingency Plan 40 C.F.R. § 300.5.

3.11 "National Contingency Plan" or "NCP" shall refer to the regulations contained in § 40 C.F.R. 300.1 et seq.

3.12 "National Priorities List" or "NPL" shall have the meaning set forth in the National Contingency Plan 40 C.F.R. § 300.5.

3.13 "Operable Unit", or "OU", shall mean a discrete action that comprises an incremental step toward addressing Site or Study Area problems and as further defined in the National Contingency Plan, 40 C.F.R. § 300.5

3.14 "Preliminary Assessment" or "PA" shall have the meaning set forth in the National Contingency Plan, 40 C.F.R. § 300.5.

3.15 "Quality Assurance Project Plan" or "QAPP" shall have the meaning set forth in the National Contingency Plan, 40 C.F.R. § 300.5.

3.16 "RCRA" shall refer to the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq., as amended.

3.17 "Remedial Investigation" or "RI" shall have the meaning set forth in the National Contingency Plan, 40 C.F.R. § 300.5.

3.18 "Remedy" or "Remedial Action or "RA" shall have the meaning set forth in the National Contingency Plan, 40 C.F.R. § 300.5.

3.19 "Remedial Design" or "RD" shall have the meaning set forth in the National Contingency Plan, 40 C.F.R. § 300.5.

3.20 "Removal" shall have the meaning set forth in CERCLA 101(23), 42 U.S.C. Section 9601(23).

3.21 "Response" shall have the meaning set forth in CERCLA 101(25), 42 U.S.C. Section 9601(25).

3.22 "Site" shall include the Federal Facility as described above, and any area off the Federal Facility to or under which a release of hazardous substances has migrated, from a source on or at the Federal Facility.

3.23 "Site Inspection" or "SI" shall have the meaning set forth in the National Contingency Plan, 40 C.F.R. § 300.5.

3.24 "Statement of Work" or "SOW" shall mean a document which describes in a comprehensive manner the activities to be performed as anticipated prior to the onset of a project. It establishes

broad objectives, general activities to be undertaken and deliverables to be submitted as part of the covered project or activity.

3.25 "Study Area" shall refer to specified geographical locations within the Site at which investigations and other response actions will be undertaken pursuant to the Consent Order. A Study Area may contain more than one OU.

3.26 "Work Plan" or "WP" shall mean a document which describes the methodology for accomplishing the objectives set forth in the SOW.

4. PURPOSE

4.1 The general purposes of this Consent Order are to:

4.1.1 Ensure that the environmental impacts associated with past and present activities at the Federal Facility are thoroughly investigated;

4.1.2 Ensure that appropriate remedial action is taken as necessary to protect the public health, welfare and the environment;

4.1.3 Establish a procedural framework and schedule for developing, implementing and monitoring appropriate response actions at the Site in accordance with State laws, regulations, and policy, and not inconsistent with relevant portions of the NCP;

4.1.4 Facilitate cooperation, exchange of information and participation of the Parties in such action;

4.1.5 Provide for notification of Federal and State Natural Resources Trustees; and,

4.1.6 Recognize and reach compromise on perceived conflicts between State and Navy response authorities under applicable State and Federal law, and preserve any rights or entitlements each party may have under applicable State and Federal law.

4.2 Specifically, the purposes of this Consent Order are to:

4.2.1 Establish requirements for the performance of preremedial work and Remedial Investigation (RI) to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release or threatened release of hazardous substances, pollutants, or contaminants at the Site and to establish requirements for the performance of a Feasibility Study (FS) for the Site to identify, evaluate, and select alternatives for the appropriate remedial action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants, or contaminants at the Site in accordance with State laws and regulations;

4.2.2 Identify the nature, objective, and schedule of response actions to be taken at the Site. Response actions at the Site shall attain that degree of cleanup and/or control of hazardous substances, pollutants or contaminants consistent with State laws, regulations, and policies;

4.2.3 Implement the selected remedial action(s) in accordance with applicable State laws and regulations;

4.2.4 Assure compliance, through this Consent Order, with applicable State laws and regulations for matters covered herein;

4.2.5 Coordinate response actions at the Site with the mission and support activities at the Federal Facility;

4.2.6 Expedite the cleanup process to the extent consistent with protection of human health and the environment;

4.2.7 Provide for State oversight of the initiation, development, selection and enforcement of remedial actions to be undertaken at the Federal Facility, including the review of all applicable data as they become available and the development of studies, reports, and action plans;

4.2.8 Provide for operation and maintenance of any remedial action selected and implemented pursuant to this Consent Order; and,

4.2.9 Identify as early as possible Study Area and Operable Unit ("OU") alternatives which are appropriate at the Site prior to the implementation of final remedial activities for the Site.

5. DETERMINATIONS

5.1 The Naval Surface Warfare Center, Indian Head Division, is a division of the United States Navy ("Navy").

5.2 NSWC is the current owner or operator of all portions of the Federal Facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and pursuant to Environment Article, § 7-201(x), except for the following parcels of property which the Navy

has sold but which owned and operated at the time of disposal of any hazardous substance at such locations: (insert)

5.3 The Navy is a responsible person within the meaning of Environment Article, § 7-201(x), and is a liable party under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

5.4 There has been a release or there is a substantial threat of a release of a hazardous substance into the environment from the Federal Facility, within the meaning of Environment Article, § 7-222(a). There may be an imminent and substantial endangerment to the public health or welfare or to the environment from such release.

5.5 NSWC has discharged pollutants into the waters of the State, in violation of Environment Article, § 9-322.

5.6 NSWC has stored, discharged, treated or disposed of a controlled hazardous substance in violation of Environment Article, § 7-224.

5.7 The Navy is required to reimburse MDE for all expenditures from the State Hazardous Substance Control fund made by MDE in response to a release or a threatened release of a hazardous substance at the Federal Facility or the Site, pursuant to Environment Article, § 7-221(a).

6. WORK TO BE PERFORMED

6.1 The Parties recognize that a significant amount of background information exists, and must be reviewed prior to developing the statements of work, Work Plans and other documents required by this Consent Order. It is the intent of both Parties that current-

ly ongoing work not be halted, but the Navy may be obligated to modify or supplement work done previously to produce a final product which meets the requirements of this Consent Order. The Navy and MDE also intend that work done and data generated prior to the effective date of this Consent Order be retained and utilized to the maximum extent feasible in documents without violating State or Federal ARARs or guidelines and without risking significant technical errors. Although no portion of the Federal Facility is currently listed on the NPL, response procedures not inconsistent with relevant portions of the NCP shall be followed except as otherwise specified in this Consent Order or agreed to in writing by both Parties.

6.2 Initial Review of Existing Documents

6.2.1 Within fourteen (14) days after the effective date of this Consent Order:

6.2.1.1 The Navy shall identify all study areas in which studies have been conducted or there is a potential or suspected release for which studies have not commenced or are not finalized.

6.2.1.2 The Navy shall provide MDE with copies of all existing studies and reports evaluating and/or investigating suspected or known environmental contamination which have been finalized prior to the effective date of this Consent Order. These shall include, but are not limited to, PAs, SIs, RI/FSs and associated WPs. For on-going studies, submittal dates are listed in Attachment C to this Consent Order.

6.2.1.3 The Navy shall propose to MDE for approval any plans for prioritizing, phasing its activities or dividing into OUs at various study areas within the Site.

6.2.2 Following receipt of the studies and documents, MDE will in a timely manner:

6.2.2.1 Provide comments to the Navy, including but not limited to, the identification of data gaps and quality control problems in the studies and documents.

6.2.2.2 Review for approval as to whether the Navy may proceed to the next step in the response process for each discernable Site or study area.

6.2.3 During the review period the Project Managers shall make themselves available to meet and confer as necessary to facilitate the process in accordance with § 17, Project Managers.

6.3 Following the initial review, the Parties agree to perform all subsequent tasks, obligations and responsibilities described in this Section in accordance with State laws and regulations and not inconsistent with relevant portions of the NCP, and in accordance with all terms and conditions of this Consent Order including documents prepared and incorporated in accordance with § 8, Document Review and Comment and Consultation.

6.4 The Navy shall undertake, fully implement in accordance with approved final work plans and report on the following tasks, with oversight by MDE as set forth in this Consent Order:

6.4.1 All response actions, including but not limited to, remedial investigations and feasibility studies, remedial

design, remedial actions, and operation and maintenance of response actions; and

6.4.2 Federal and State Natural Resource Trustee Notification and Coordination.

6.5 Preliminary Assessment and Site Investigation

6.5.1 This Section applies to any and all PAs and SIs that the Navy conducts following the effective date of this Consent Order.

6.5.2 Pursuant to 42 U.S.C. 9620 (d), the Navy is required to conduct a preliminary assessment and appropriate additional evaluations for determining priorities among releases and to assist in a determination for inclusion on the NPL.

6.5.3 The Navy shall notify MDE seven (7) days in advance of initiating a PA to allow MDE to comment or consult informally on the proposed study. In the event the Federal Facility has multiple study areas, such notification shall be provided for each PA.

6.5.4 The Navy shall submit a Work Plan to MDE for review, comment and approval at least thirty (30) days in advance of each proposed SI.

6.5.5 After conducting the investigations, the Navy shall submit each draft PA and/or SI to MDE at the same time as submitted to EPA. Each SI shall include a prescore HRS performed by the Navy. MDE retains its rights under CERCLA and State laws and regulations regarding review, comment and approval.

6.5.6 The Parties anticipate that EPA will determine the final HRS score for the Site or any Study area. If the Site or any portion thereof is included on the NPL, then the terms and procedures set forth in § 13, Subsequent Placement on the National Priorities List, shall apply.

6.6 Selection of Remedial Action.

6.6.0 Following final acceptance by MDE of the RI and FS for each Site or study area, and in accordance with the deadline as approved in the Work Plan, the Navy shall, after consultation with, and preliminary approval of, MDE, publish its proposed plan for forty five (45) days of public review and comment. The Navy shall submit its draft ROD to MDE within thirty (30) days after the public comment period on the proposed plan. MDE, in consultation with the Navy, shall make the final selection of the remedial action.

6.6.2 The selection of the remedial action by the Secretary, MDE, shall be final and not subject to dispute resolution.

6.6.3 Within thirty (30) days following issuance of the ROD, the Navy shall submit a SOW for RD/RA activities in accordance with § 21, Deadlines. A dispute arising under this subsection may not be utilized to challenge MDE's final selection of a remedial action.

6.7 Solid Waste Management Units (insert language as appropriate to Site).

7. CONTRACTORS

7.1 All response work performed pursuant to this Consent Order shall be under the direct supervision of qualified personnel.

7.2 Within fourteen (14) calendar days after the effective date of this Order, the Navy shall notify MDE in writing of the identity and qualifications of the primary contractor(s), and/or supervisory personnel to be used in carrying out the work to be performed pursuant to this Order. The Navy has a continuing obligation to notify MDE of selection of contractors, subcontractors, or supervisory personnel, and to provide MDE with the identity and qualifications of contractors, subcontractors and supervisory personnel, and any addition or change, hired to do work pursuant to this Order, within ten (10) days of such addition or change.

7.3 MDE may, in its discretion, disapprove of the use of any contractor, subcontractor and/or supervisory personnel MDE considers to be unqualified or otherwise unable to perform the work, or to continue to perform any part of the work required by this Consent Order. In the event of a disapproval, the Navy shall notify MDE within ten (10) days of receipt of such disapproval of the identity and qualifications of the person, contractor, subcontractor or supervisory personnel that will replace the one that was disapproved.

7.4 In the event MDE subsequently disapproves of any replacement contractor, subcontractor or supervisory personnel, MDE

reserves the right to conduct a complete RI/FS, and to seek reimbursement from the Navy and/or other parties for such work.

7.5 MDE will provide a notice of acceptance of the prime contractor to the Navy. Such notice shall not interfere with MDE's right to subsequently disapprove of such contractor.

8. DOCUMENT REVIEW AND COMMENT AND CONSULTATION

8.1 The provisions of this section establish procedures for appropriate notice, review, comment and response to comments regarding Site environmental documents. The term "documents" will be used to refer to all documents, plans, reports, assessments and other deliverables described in this Consent Order. The Navy will be responsible for issuing these documents to MDE for review and comment. As of the effective date of this Consent Order, all draft and final reports for any deliverable document identified herein shall be prepared and delivered in accordance with § 8.2 to § 8.6. The designation of a document as "draft" or "final" is solely for purposes of consultation with MDE in accordance with this section. Such designation does not affect the obligation of the Parties to issue documents, which may be referred to herein as final, to the public for review and comment as appropriate and as specified in § 15, Public Participation.

8.2 General Process for Document Review

8.2.1 Unless otherwise agreed to by both Parties, documents shall be prepared in accordance with State laws and regulations and relevant MDE guidance, and shall be prepared in a manner not inconsistent with the NCP. The Navy shall complete and

transmit draft documents to MDE for review and comment in accordance with provisions of this section.

8.2.2 Primary documents include documents that are major, discrete portions of PA/SI and RI/FS studies and RD/RA activities. Typical primary documents are listed in Appendix A and are subject to dispute resolution in draft final form. Primary documents are initially issued by the Navy in draft form subject to review and comment by MDE. Within sixty (60) days following receipt of comments on a particular draft document, the Navy shall respond to the comments received and issue a draft final document. The draft final document will become the final document, upon approval by MDE. In the event MDE does not approve the draft final document as submitted, then the Navy shall either revise the document in accordance with MDE's comments, or invoke dispute resolution, as set forth in §§ 8.6.1 and 11, within five (5) days of receipt of MDE's disapproval. The decision reached under dispute resolution shall be final and uncontested, and the Navy shall make all modifications necessary to be consistent with that decision.

8.2.3 Other documents which also serve as input to, or are discrete sections of, the aforementioned primary documents shall be referred to as secondary documents. Secondary documents are also subject to review by MDE and, unless otherwise agreed to, are not subject to dispute resolution until they are incorporated into, and finalized as part of, the primary documents. Secondary documents include, but are not limited to: Detailed Analysis of

Alternatives, Treatability Studies, Sampling and Data Results, Health and Safety Plans, Data Quality Objectives and Design Documents at about thirty percent (30%) and sixty percent (60%) stages.

8.2.4 The Navy shall complete and transmit draft and final documents in accordance with the timetable and deadlines established in § 21, Deadlines. Target dates are interim deadlines that should be contained in work plans and other documents, and shall be established by mutual agreement of the Parties for completion and transmission of draft secondary documents. In cases of complex or unusually lengthy documents, MDE may extend the response period following written request by the Navy.

8.3 Project Manager Meetings.

8.3.1 Project Managers shall be available at least once per month for the following tasks: to review and discuss progress of work being performed at the Site; to review results to be presented in a document in order to reach a common understanding, to the maximum extent practicable, with respect to such results, prior to preparation of a draft document; to discuss MDE comments prior to and/or after issuance of written comments on any document or action; to attempt to resolve disputes with regard to final documents or other issues prior to initiating formal dispute resolution procedures.

8.4 Identification and Determination of Potential ARARs

8.4.1 The Navy shall propose ARARs for those documents that consist of or include ARAR determinations. Prior to issuance of a draft report, the MDE Project Manager shall be avail-

able to confer with the Federal Facility Project Manager regarding State and Federal ARARs pertinent to the document being addressed.

8.4.2 The Parties recognize that ARARs can be identified only on a Site-specific basis which depend on conditions and characteristics of the Site. The Parties also recognize that ARAR identification is an iterative process and potential ARARs must be re-examined throughout the process until a Record of Decision (ROD) is issued.

8.4.3 MDE shall review, comment on and approve or disapprove all ARARs.

8.4.4 Disputes regarding ARARs are subject to dispute resolution.

8.5 Review and Comment on Draft Documents

8.5.1 The Navy shall complete and transmit each draft document to MDE on or before each deadline or target date established for such document. Upon request of MDE, the Navy shall provide a copy of any technical publication or other source referred to in any draft document.

8.5.2 MDE agrees to review and comment on all documents submitted in accordance with this Consent Order within sixty (60) days. In cases of complex or unusually lengthy documents, or in the event multiple documents require simultaneous review, MDE may extend the response period. If shorter turnaround is requested by the Navy in specific instances due to extenuating circumstances, MDE agrees to attempt to comply with the request, where possible, depending on complexity of the document and other workload priori-

ties. MDE's comments will be submitted to the Navy. Comments on SI Work Plans and SIs will be submitted to EPA as well as to the Navy. Review of any document by MDE may concern all aspects of the document (including completeness) and should include, but not be limited to, a technical evaluation of any aspect of the document and an evaluation of the document's consistency Federal and State laws, regulations, guidance and policies. Comments shall be in writing and sufficiently specific to enable the Navy to respond to the comments and, if appropriate, make changes to the draft report.

8.5.3 Representatives of both Parties shall make themselves available during the comment and response periods for purposes of informally discussing questions and comments. Oral comments made during such discussions need not be the subject of written response.

8.6 Finalization of Documents

8.6.1 The draft final primary document shall serve as the final document if approved by MDE. If MDE disapproves a draft final primary document, the Navy shall, within twenty-one (21) days, revise the document in accordance with MDE's request unless it invokes dispute resolution. In accordance with § 11, the Navy may invoke dispute resolution regarding the document within five (5) days of receipt of written notice of disapproval. At the conclusion of the dispute resolution process, the draft final document shall serve as the final document, should the Navy's position be sustained. If the Navy's position is not sustained in

dispute resolution, then within thirty (30) days the Navy shall revise the document in accordance with results of the dispute resolution process for approval by MDE. The Navy may not invoke dispute resolution more than once on the same issue.

8.6.2 Either Party may seek to modify a final document if it determines, based on new information or conditions that became known after the report was finalized, that the modification is necessary. The Party seeking such modification shall submit a written request to the Project Manager of the other Party. The request shall specify the nature of the modification and how the request is based on new information. Dispute resolution may be invoked if the Parties fail to agree.

9. STATE RESPONSE ACTIVITIES

9.1 MDE intends to oversee and regulate the investigatory and response activities conducted by the Navy. Such oversight may include, but is not limited to, the actions listed in Appendix B.

9.2 MDE reserves its rights and authorities, pursuant to Environment Article, § 7-222, and the regulations promulgated thereunder, to undertake additional response, remedial or removal actions.

9.3 Reimbursement by the Navy to MDE for such oversight or other response actions shall be in accordance with § 25, State Reimbursement.

**10. WORK STOPPAGES, REMOVALS AND
EMERGENCY RESPONSE ACTIONS**

10.1 Either Party may initiate work stoppages, removals or conduct emergency actions as may be necessary to alleviate threats to human health or the environment from the release or threat of release of hazardous substances, pollutants or contaminants from the base. Such actions may be conducted at any time, either before or after the issuance of a ROD.

10.2 Work Stoppage

10.2.1 In the event that either Party determines that activities conducted pursuant to this Consent Order will cause, or otherwise be threatened by, a situation as described in § 10.1, the Party may propose termination of such activities. If the Parties mutually agree, the activities shall be stopped for such period of time to abate the danger.

10.2.2 In the absence of mutual agreement, the activities shall be stopped in accordance with the proposal, and the matter shall be immediately referred to the Administrator, CERCLA Program for resolution. The final decision of the Administrator is subject to expedited dispute resolution as described in § 11.7.

10.3 Removals

10.3.1 Removal actions will be taken at the Federal Facility if:

10.3.1.1 The Navy determines that a removal is appropriate; or

10.3.1.2 MDE requests that a removal be conducted, and either the Navy agrees to conduct such removal or it is determined through dispute resolution that a removal is appropriate.

10.3.2 Removal actions conducted at the Site are subject to State laws and regulations, and shall be conducted in a manner consistent with this Consent Order.

10.3.3 At least sixty (60) days before the removal action is to begin, except in the case of extreme emergency (§ 10.4), the Navy shall provide MDE with information concerning Site background, threats to the public health and welfare and the environment (including the need for response), proposed actions and costs (including a comparison of possible alternatives, means of transportation of any hazardous substances off-site, and proposed manner of disposal), expected changes in the situation should action be delayed (including associated environmental impacts), any important policy issues, Navy's recommendations, and other information and details requested by MDE.

10.4 Emergency Response.

In an extreme emergency, a Party conducting an emergency response action shall provide the other Party with oral notice as soon as possible after determining that an emergency action is necessary. In addition, within seven (7) days of such determination, the Party conducting the response shall provide written notice to the other Party explaining why such action is or was necessary. Promptly thereafter, the responding Party shall provide the other Party with written bases (factual, scientific and

technical) for such action and any available documents supporting such action, including the information specified in § 10.3.3 above. Upon completing an emergency action, the responding Party shall notify the other Party in writing that the emergency action has been implemented. Such notice shall state whether, and to what extent, the emergency action varied from the initial written description of the emergency action. When appropriate, MDE will respond on-site to monitor response activities and to provide necessary technical and material assistance.

11. DISPUTE RESOLUTION

11.1 The Navy and MDE Project Managers are the primary points of contact to coordinate response activities at the base, including resolution of disputes. It is the intention of both Parties that all disputes shall be resolved at the lowest possible level of authority and as expeditiously as possible within the framework as described below.

11.2 If the disputes can not be resolved informally by the Project Managers or their immediate supervisors, the matter shall be referred in writing as soon as practicable, but in no event to exceed ten (10) working days, to the Dispute Resolution Committee ("DRC"). The Navy representative on the DRC shall be _____ and the MDE representative shall be the Division Chief, CERCLA Response Division.

11.3 If the DRC members are unable to agree within ten (10) working days, then the matter shall be elevated to the Senior Executive Committee ("SEC"). Members of the SEC shall be the

Administrator, CERCLA Program of MDE and a counterpart member of the Navy who shall be a flag officer or member of the senior executive service.

11.4 If the SEC members are unable to agree within fifteen (15) working days, then the matter shall be elevated to the Director, HSWMA and _____ for resolution.

11.5 In the event that the Director, HSWMA and _____ of the Navy are unable to agree, the Director HSWMA shall render a final determination on the dispute within twenty (20) days.

11.6 Expedited dispute resolution shall apply whenever the provisions of this Consent Order explicitly reference expedited dispute resolution or upon agreement of both Parties. Under this procedure the dispute shall be submitted directly to the Director, HSWMA and who shall have seven (7) days to resolve the dispute. If unable to resolve the dispute, the Director, HSWMA shall render a final decision resolving the dispute.

11.7 It is the intention of both Parties that all disputes be resolved in accordance with § 11.1 through 11.6. However, alternative dispute resolution methods may be used if mutually agreed upon by the Parties.

11.8 Any individual charged with responsibility to resolve disputes may designate a representative upon mutual consent of the Parties in writing. Decisions under this dispute resolution process shall be in writing.

11.9 The pendency of any dispute under this Section shall not affect any Party'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 usually not to exceed the actual time taken to resolve 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 applicable schedules.

11.10 When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Administrator, CERCLA Program, requests in writing that the work related to the dispute be stopped because, in MDE's opinion, such work is inadequate or defective and such inadequacy or defect is likely to yield an adverse effect on human health or the environment or is likely to have a substantial adverse effect on the remedy selection or implementation process. To the extent possible, the Party seeking a work stoppage shall consult with the other Party prior to initiating a work stoppage request. Following this meeting and further consideration of the issues, the Administrator, CERCLA Program will issue, in writing, a final decision with respect to the work stoppage. The final decision of the Administrator may be subject to expedited dispute resolution as provided for in § 11.6 of this Consent Order.

11.11 Within twenty-one (21) days of resolution of a dispute pursuant to this Section, the Navy shall incorporate the resolution and final determination into the appropriate plan, schedule or pro-

cedures and implement this Consent Order according to the amended plan, schedule or procedures.

12. PERMITS

12.1 The Parties recognize that Maryland law does not provide an exemption from permits for response activities. Consistent with CERCLA § 120(a)(4), State permit requirements shall apply to all removal and remedial actions at all portions of the Federal Facility or Site that are not included on the NPL. The Navy shall obtain all permits as required for response actions carried out both on-site and off-site. This Section is not intended to effect the scope of CERCLA § 121(e) as it may apply to any removal or remedial actions at such portions of the Site that may become listed on the NPL.

12.2 This Consent Order does not affect the requirements, if any, to obtain Federal or State permits for on-going hazardous waste management activities or other activities at the Site.

13. SUBSEQUENT PLACEMENT ON THE NATIONAL PRIORITIES LIST

13.1 The listing of all, or a portion, of the Federal Facility on the NPL, and/or the entry of the Navy into a two-party Interagency Consent Order with EPA shall not terminate, alter, or in any way diminish the full force and effect of this Consent Order. This Consent Order shall remain in effect throughout the performance of the response actions at the Site, regardless of listing on the NPL, unless and until this Consent Order is explicitly replaced by a subsequent three-party Interagency Consent Order executed in

accordance with CERCLA, § 120 (e), 42 U.S.C. 9620(e) to which MDE is a party. Where the three-party Interagency Consent Order replaces only a portion of the Site, the remaining portions or Study Areas shall continue to be covered by the present Consent Order, which shall be appropriately amended to reflect the changes in the Study Areas covered.

14. BASE CLOSURE

14.1 Closure of the facility or portions of the facility will not affect the Navy's obligation to comply with the terms of this Consent Order and to specifically ensure the following:

14.1.1 Continuing rights of access for MDE in accordance with the terms and conditions of § 26, Site Access;

14.1.2 Availability of a Project Manager to fulfill the terms and conditions of this Consent Order;

14.1.3 Designation of alternate DRC members as appropriate for the purposes of implementing § 11, Dispute Resolution;

14.1.4 Adequate resolution of any other problems identified by the Project Managers regarding the effect of base closure on the implementation of this Consent Order.

14.2 Base closure will not constitute a Force Majeure under § 23, Force Majeure and Notification of Delay, nor will it constitute good cause for extensions under § 22, Extensions, unless agreed to by MDE.

14.3 the Navy will continue to have the obligation to reimburse MDE in accordance with § 25, State Reimbursement.

15. PUBLIC PARTICIPATION

15.1 Response activities at a Site arising out of this Consent Order shall comply with the administrative record and public participation requirements of State laws and regulations and relevant community relations provisions in the NCP.

15.2 Within sixty (60) days of the effective date of this Consent Order, the Navy shall develop and implement a Community Relations Plan addressing Site response activities.

15.2.1 The Navy shall establish and maintain identical administrative records at two (2) locations as follows: a) at the facility; and b) near the facility at a location freely accessible to the public. The administrative record shall provide the documentation supporting selection of each response action and shall be established and maintained in accordance with relevant provisions of State and Federal laws and regulations. The Navy shall provide MDE with a copy of each document placed in the administrative record. The administrative record shall be updated and new documents supplied by the Navy on at least a quarterly basis. An index of documents in the administrative record will accompany each update and a copy of such revised index shall be provided to MDE.

15.2.2 The Community Relations Plan shall include provisions for a Technical Review Committee (TRC) in accordance with 10 U.S.C § 2705 (c). Responsibilities of the TRC are to keep the citizenry informed as to the status of the Navy environmental response activities which are planned or being conducted and to

facilitate public review and comment on proposed actions with respect to releases or threatened releases of hazardous substances. The TRC is intended to maintain an advisory role with regard to technical issues and to provide a forum for local community interaction and communication exchange. Occasionally the TRC members may be asked to review specific draft final primary or other documents and provide written comments to the chairman in a timely manner. TRC membership may include, but is not limited to, representatives of the Navy, MDE, Charles County, local government and community organizations and if they desire, representatives of EPA Region 3. The Navy representative shall chair the TRC. The

TRC shall meet at scheduled times or as otherwise provided in the Community Relations Plan.

15.2.3 Public meetings shall be conducted as provided in the CRP.

15.3 Except in an emergency, any Party issuing a press release or fact sheet with reference to any of the work required by this Consent Order shall advise the other Party of such press release or fact sheet and the contents thereof, and submitted for approval at least forty-eight (48) hours prior to issuance.

16. PERIODIC REVIEW

16.1 Consistent with CERCLA § 121(c) and in accordance with this Consent Order, if the selected remedial action results in any hazardous substances, pollutants or contaminants remaining at the Site, the Navy shall review in writing the remedial action program at least every five (5) years after initiation of the final reme-

orary basis, in his or her stead. A Deputy Project Manager may also be appointed by the Parties to represent the Project Manager in his or her absence or for specific projects. Such changes or designations shall be accomplished by notifying the other Party in writing within five (5) days of the designation.

17.3 The Project Managers shall confer informally at least once each month. Any Party may request additional Project Manager conferences. Such request will not be reasonably refused. Although the Navy has ultimate responsibility for meeting its deadlines and schedules, the Project Managers shall assist in this effort by scheduling meetings to review documents, oversee performance of all environmental monitoring at the Base, review RI/FS and/or RD/RA progress, attempt to resolve disputes informally and make necessary adjustments to deadlines or schedules in accordance with § 21, Deadlines. If the Parties agree that minutes of their conferences shall be kept, the Navy shall be responsible for preparation of the minutes. Within ten (10) days of the conference, the Navy shall send MDE a copy of the minutes for approval. The minutes shall become final if no comments are received by the Navy within seven (7) days after MDE receives the minutes.

17.4 The authority of the Project Managers shall include, but is not limited to:

17.4.1 Taking samples or ensuring that sampling and other field work are performed in accordance with the terms of any final work plan or appropriate final document.

17.4.2 Observing, taking photographs or making other reports on progress of the work subject to the limitations set forth in § 26, Site Access.

17.4.3 Reviewing records, files and documents relevant to the work being performed, subject to § 28, Preservation of Records.

17.4.4 Recommending and requesting minor field modifications to the work to be performed pursuant to a final work plan, or in techniques, procedures or design utilized in carrying out such a work plan.

17.5 The Navy may initiate minor field changes provided that MDE's Project Manager is notified in a timely manner and approves of such change. MDE may propose field modifications subject to concurrence by the Navy. The Navy's Project Manager will make a contemporaneous record of such change in a written log, and a copy of the log entry will be provided in the next progress report by the Navy.

17.6 The Navy's Project Manager or designated representative shall be responsible for all field work at the Site and shall be present at the Site or reasonably available to supervise work during all hours of work performed pursuant to this Consent Order.

17.7 A contractor may not serve as Project Manager unless the other Party consents in writing.

17.8 The absence of MDE's Project Manager from the Site shall not be cause for work stoppage of activities taken under this

Consent Order, unless MDE had requested in advance that the Project Manager be present.

18. QUALITY ASSURANCE

18.1 The Navy shall designate a Quality Assurance Officer ("QAO") who shall insure that all work is performed in accordance with approved work plans, sampling plans and Quality Assurance Plans ("QAPPs"). The QAO shall maintain for inspection a log of quality assurance field activities and provide a copy to MDE upon request. A contractor may serve as QAO for the Navy.

18.2 The Navy shall submit with each RI/FS Work Plan a copy of all the protocols to be used for sampling and analysis to MDE for review and comment. The Navy shall also ensure that any laboratory used for analysis is a participant in a quality assurance/quality control program that is consistent with Federal and State laws, regulations and guidance.

18.3 The Navy shall also ensure that any appropriate MDE personnel or their authorized representatives will be allowed access to any laboratory used by the Navy in implementing this Consent Order. Such access shall be for the purpose of validating sample analysis, protocols and procedures required by the QAPP.

19. SAMPLING AND DATA AVAILABILITY

19.1 The Navy shall make all sampling results, test results, and other data, including computer modeling information generated through implementation of this Consent Order available to MDE. Upon request of MDE the information shall be provided on appro-

priate computer disk. At MDE's request, the Navy shall provide any of the raw data and/or field notes under its custody or control relating to investigations or monitoring at this Site, within thirty (30) days of receipt of such request.

19.2 At the request of MDE, the Navy shall allow to the extent practicable, split or duplicate samples to be taken by MDE, or its authorized representatives, of any samples collected pursuant to the implementation of this Consent Order. Each Party shall notify the other Party no fewer than fourteen (14) days in advance of any sample collection activity unless otherwise agreed to by the Parties.

19.3 All sampling will be done in accordance with existing Federal Facility health and safety requirements and regulations. If MDE plans to sample in an area without an appropriate site safety plan, the Navy will develop, in a timely manner, the appropriate plan before sampling. MDE and the Navy will jointly approve the plan. Disputes regarding plan approval are subject to dispute resolution, § 11.

20. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

[INSERT LANGUAGE IF APPROPRIATE]

20.1

21. DEADLINES

21.1 Deadlines agreed upon before the effective date of this Consent Order are included in Appendix C. These deadlines shall satisfy the requirements of this Section and remain in effect, in accordance with §§ 21.3 through 21.7, and shall be incorporated into the appropriate work plans.

21.2 The list of Study Areas, as of the effective date of this Consent Order, is set forth in Appendix D. Appendix D shall be revised by MDE as additional Study Areas are identified. This revision shall be made without triggering § 30, Termination or Modification of Consent Order, and MDE will provide a copy of the Revised Appendix D to the Navy.

21.3 The following deadlines shall be met for the submittal of draft primary documents, not included in § 21.1, for activities at Sites or Study Areas identified in Appendix D:

21.3.1 SOW: Within twenty-one (21) days of the effective date of this Consent Order, or of the receipt of MDE's comments on initial documents for Sites or Work Areas identified in Appendix D which are under review as of the effective date of this Consent Order, the Navy shall submit appropriate SOWs. Each SOW shall contain a deadline for submittal of an associated WP or other appropriate primary document.

21.3.2 SI Work Plans: the Navy shall submit a WP, including a Sampling and Analysis Plan and QAPP in accordance with the deadlines established in the SOW.

21.3.3 RI/FS Work Plans: the Navy shall submit a WP, including a Sampling and Analysis Plan, and a QAPP, in accordance with the deadlines established in the SOW.

21.3.4 Baseline Risk Assessment: Within twenty-one (21) days of the effective date of this Consent Order, the Navy shall submit to MDE a SOW for the Site-wide Baseline Risk Assessment.

21.3.5 Each WP shall propose deadlines for completion of the following documents as appropriate: RI reports, FS reports, Proposed Plans, Community Relations Plan, and Baseline Risk Assessment (for the Study Area).

21.4 Within thirty (30) days after the close of the public comment period on the Proposed Plan and consideration of comments received, the Navy shall submit a draft ROD for review by MDE.

21.5 Within thirty (30) days of issuance of any ROD, the Navy shall submit a SOW which contains proposed deadlines for completion of the following documents as appropriate: RD, RA, Periodic Review Assessment Report.

21.6 The deadlines set forth in this Section, or to be established as set forth in this Section, may be extended pursuant to § 22, Extensions. The Parties recognize that a possible basis for extension of RI/FS reports is the identification of significantly new conditions during the performance of the remedial investigation.

21.7 The criteria for deadlines as specified in this section shall be followed for Sites or Study Areas which are identified

after the effective date of this Consent Order. Additional study Areas may be identified by either MDE or the Navy, and upon identification shall be incorporated into a Revised Appendix D.

21.8 Within twenty-one (21) days of the inclusion of a Site or Study Area in Appendix D, the Navy shall submit a SOW for that Site or Study Area, and the procedures set forth in this section shall be followed.

22. EXTENSIONS

22.1 The Navy may request a time extension of any deadline by submitting to MDE's project manager a request for extension. The request shall provide notification of any delay or anticipated delay in achieving compliance with any requirement of this Consent Order. Such notification shall be made orally as soon as possible, but no later than two (2) business days after the Party or any of its agents or contractors becomes aware of such delay, or through the exercise of due diligence should have become aware of such delay, and in writing no later than seven (7) days after the Navy or any of their agents or contractors become aware, or through the exercise of due diligence should have become aware, of such a delay or anticipated delay. The written notification shall describe fully the nature of the delay, the reasons the delay is beyond the control of the Navy (if applicable), the actions that will be taken to mitigate, prevent and/or minimize further delay, the anticipated length of the delay, the timetable according to which the actions to mitigate, prevent and/or minimize the delay will be taken, and

the extent to which any other deadline would be affected if the extension were granted.

22.2 At its discretion, MDE receiving the request for extension may grant the request, and adjust the deadlines as appropriate. It is the intention of the Parties, that for good cause, deadlines will be appropriately extended, but that time extensions should not be utilized to excuse undue delay or non-performance of the requirements of the Consent Order. In the event there is a dispute regarding extensions, the expedited dispute resolution procedures, § 11.7, may be utilized.

23. FORCE MAJEURE AND NOTIFICATION OF DELAY

23.1 The Navy shall perform the requirements of this Consent Order within the time limits and manner set forth herein, unless the performance is prevented or delayed by events which constitute a force majeure event. The burden of proving a force majeure event shall rest with the Navy. A force majeure event is defined as any event arising from causes not reasonably foreseeable and beyond the control of the Navy, which cannot be overcome by the Navy's best efforts to avoid the delay, and which delays or prevents performance by a date or manner required by this Consent Order. The requirement that the Navy exercise "best efforts to avoid the delay" includes using best efforts to: (1) anticipate an event which may cause delay prior to its occurrence; and (2) minimize the delay to the greatest extent practicable. Force majeure events do not include difficulties caused by reasonably foreseeable weather conditions which could have been overcome by best efforts, failure

to obtain Federal, State or local permits, increased costs of performance of the terms of this Consent Order, or changed economic circumstances.

23.2 Any delay that results from a force majeure event that cannot be overcome by the Navy's best efforts to avoid the delay shall not be deemed to be a violation of its obligation(s) under this Consent Order and shall not make the Navy liable for stipulated penalties provided in § 24. To the extent a delay is caused by a force majeure event, the schedule affected by the delay shall be extended for the time necessary to complete the work on an expedited basis not to exceed the period of the delay directly resulting from the force majeure event. the Navy shall adopt all reasonable measures to avoid and minimize any such delay.

23.3 Failure of the Navy to comply with the notice requirements of this § 22, Extensions, shall constitute a waiver of the Navy's right to claim force majeure for that event.

23.4 In the event that MDE and the Navy cannot agree that any delay in achieving compliance with the requirements of this Consent Order has been or will be caused by a force majeure event, the dispute shall be resolved in accordance with the provisions of § 11 of this Consent Order. In any such dispute, the Navy shall have the burden of proving that the delay was caused by a force majeure event which could not have been overcome by the Navy's best efforts, and that the Navy took all reasonable measures to avoid and minimize delay.

24. ENFORCEABILITY AND PENALTIES

24.1 The Parties agree that this Consent Order, and all of its requirements and conditions, is enforceable in both administrative or judicial forums.

24.2 For each day, or any portion thereof, that the Navy fails to submit a report or document or otherwise fail to comply with the requirements of this Consent Order at the time and in the manner set forth herein, the Navy shall be jointly and severally liable for, and shall pay, to MDE, upon demand, the stipulated penalties set forth below. Payment shall be due and owing within thirty (30) days following receipt of MDE's demand letter. Interest at the rate of the current annualized treasury bill rate shall begin to accrue on the unpaid balance at the end of the thirty (30) day period, in conformance with regulations of the United States Treasury.

24.5 Checks in payment of the stipulated penalties shall specifically reference the Site, be made payable to the State Hazardous Substance Control Fund and be addressed initially, until otherwise notified to:

ATTN: Mr. Jack Kerns
Maryland Department of the Environment
Fiscal Services Division
Cash Receipts Unit
2500 Broening Highway
Baltimore, Maryland 21224

24.6 Stipulated penalties shall accrue in the amount of \$1000 for each calendar day of violation for the first thirty (30) days, and thereafter \$10,000 for each day of violation.

24.7 The stipulated penalties set forth in this Section do not preclude MDE from pursuing other remedies or sanctions available to MDE for failure to comply with the requirements of this Consent Order.

25. STATE REIMBURSEMENT

25.1 The Navy shall reimburse MDE for all expenditures from the State Hazardous Substance Control fund made by MDE in response to a release or a threatened release of a hazardous substance at the Federal Facility or the Site, pursuant to Environment Article, § 7-221(a), and CERCLA § 107(a), 42 U.S.C. 9607.

25.2 Unless otherwise specified on an invoice or accounting provided by MDE, all reimbursements shall be submitted to:

ATTN: Mr. Jack Kerns
Maryland Department of the Environment
Fiscal Services Division
Cash Receipts Unit
2500 Broening Highway
Baltimore, Maryland 21224

25.3 Reimbursable expenditures that the parties anticipate include, but are not limited to, the items set forth in Appendix B.

25.4 Reimbursement for State expenditures funded by the Defense Environmental Restoration Program (10 U.S.C. Section 2801 et seq.) shall be in accordance with the provisions of the Defense/State Memorandum of Consent Order ("DSMOA") and its Cooperative Consent Order, executed on November 26, 1990, between MDE and the Department of Defense, and as subsequently amended, for as long as such agreements are in effect.

25.5 The parties understand that there may be MDE expenditures that are reimbursable under State or Federal law, but not covered by the DSMOA for any of a variety of reasons, including but not limited to the following: the termination or lapse in the effect of the DSMOA; State actions fall outside of the scope of eligibility for DERA funding as determined by DOD; or the Navy utilizes non-DEIRA funds for its response actions. In the event that the DSMOA does not provide the method for reimbursement, the following process shall be used:

25.5.1 Within ninety (90) days after the end of each quarter of the federal fiscal year or within sixty (60) days after notification by DOD that some portion of costs will not be reimbursed under an existing DSMOA, MDE will submit to the Navy a quarterly accounting of all State costs incurred during that quarter, that have not already been reimbursed under the DSMOA process.

25.5.2 The Navy shall reimburse MDE in the amount set forth in the quarterly accounting within sixty (60) days of receipt of the accounting provided.

25.6 Reimbursement for Emergency Response Actions.

In an emergency situation involving a threat to public health or the environment, the State agrees to notify the Navy, unless the nature of the emergency does not permit notification, prior to taking removal action in order to be reimbursed for its costs. Disagreements that arise under this subsection are subject to dispute resolution.

25.7 Reimbursement for Actions Taken Prior to Consent Order.

Within sixty (60) days after the effective date of this Consent Order, MDE will submit to the Navy an accounting of expenses to be reimbursed for the period prior to the effective date of the Consent Order. The Navy shall reimburse MDE in the amount set forth within sixty (60) days of receipt of the accounting provided.

26. SITE ACCESS

26.1 MDE and its authorized representatives, including its oversight representatives, shall have the authority to enter the Site at all reasonable times for the purpose of conducting inspections, reviewing operating logs and contracts related to the implementation of this Consent Order, observing the Navy's progress in implementing this Consent Order; conducting such tests as MDE deems necessary; collecting soil, water and/or air samples; using a camera, sound recording or other documentary type equipment; and verifying data submitted to MDE by the Navy. In addition, MDE and/or its authorized representatives shall have the authority to enter with escort at all reasonable times, all areas in which records related to the performance of the recovery system are maintained. The Navy shall permit such persons to inspect and copy all records, files, photographs, or other documents, including all sampling and monitoring data, which in any way pertain to work undertaken pursuant to this Consent Order. Nothing herein shall be interpreted as limiting the inspection and information gathering authority of MDE under Federal or State laws and regulations.

26.2 To the extent that property included in the area under study is presently owned or controlled by parties other than the Navy, the Navy shall use all reasonable efforts to obtain Site access agreements from the present owners within the time period required to meet applicable deadlines for the work to be performed. Such agreements shall provide reasonable access for the Navy, MDE and their representatives. If agreement cannot be obtained, then the Navy shall pursue any administrative or judicial remedies before ceasing its efforts and notifying MDE that access cannot be obtained. The Department may, in its sole discretion, take steps to secure access in accordance with applicable law.

27. NOTIFICATION

27.1 The Navy shall provide MDE with at least one (1) week advance notice prior to performance of any of the work tasks performed pursuant to this Consent Order, or any Work Plans, and Remedial Action Plans.

27.2 All Parties shall transmit primary and secondary documents, and comments thereon, and all notices required herein by next day mail, hand delivery, or facsimile (and followed by an original by first class mail). Time limitations shall commence upon receipt.

27.3 Notice to the individual Parties pursuant to this Consent Order shall be sent to the attention of the Project Manager, to the addresses specified by the Parties. Initially these shall be as follows:

27.3.1 [Federal Facility INSERT ADDRESS]

and

Mark Schoppet
Indian Head Project Manager
CERCLA Program
Hazardous and Solid Waste Management
Administration
Maryland Department of the Environment
2500 Broening Highway
Baltimore, Maryland 21224

27.3.2 All routine correspondence may be sent via first class mail to the above addresses.

28. PRESERVATION OF RECORDS

28.1 The Navy agrees to preserve during the pendency of this Consent Order and for a minimum of seven (7) years after its termination, the original or one (1) legible copy of all documents in the Administrative Record, and any additional records and documents in its possession, or in the possession of its divisions, officers directors, employees, agents, contractors, successors, and assigns, retained in the ordinary course of business which relates to the actions carried out pursuant to this Consent Order or to hazardous substance management and/or disposal at the Site or to investigations by the Navy or any other person of hazardous substance contamination and/or geological or hydrogeological conditions at the Site. After this 7 year period, the Navy shall notify MDE at least forty-five (45) days prior to destruction of any such documents. MDE shall have the option of taking possession

of any documents designated for destruction and shall notify the Navy in writing of its decision.

29. TRANSFER OF REAL PROPERTY

29.1 The Navy recognizes its obligations pursuant to Section 120(h) of CERCLA, 42 U.S.C. § 9620(h), concerning the transfer of real property. At least thirty (30) days prior to any conveyance subject to section 120(h) of CERCLA, the Navy agrees to notify MDE of the transfer of any real property subject to this Consent Order and the provisions made for any additional remedial actions, if required.

29.2 Transfer of real property does not release the Navy of any response obligations under this Consent Order with respect to the transferred property.

30. TERMINATION OR MODIFICATION OF CONSENT ORDER

30.1 The provisions of this Consent Order shall be deemed satisfied and terminated upon: 1) receipt by the Navy of written notice from MDE that the Navy has demonstrated that all the terms of this Consent Order, except continuing obligations such as to conduct five (5) year reviews and to conduct operation and maintenance, have been completed, and, if applicable, 2) the entry by the Parties into a superseding agreement that governs any continuing obligations such as periodic review and operation and maintenance of remedies. If MDE denies or otherwise fails to grant a termination notice, MDE shall provide a written statement of the basis for its denial and describe the Navy actions which in the

view of MDE, would be a satisfactory basis for granting a notice of completion. Such denial shall be subject to dispute resolution.

30.2 This Consent Order may only be modified by mutual agreement of the Parties. Any such modification shall be in writing and shall be effective when fully executed.

31. OTHER CLAIMS

31.1 Nothing in this Consent Order shall constitute or be construed as a bar or release from any claim, cause of action or demand in law or equity by or against any person, firm, partnership or corporation not a signatory to this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Federal Facility.

31.2 Unless specifically agreed to in writing by the Parties, the State shall not be held as a party to any contract entered into by the Navy to implement the requirements of this Consent Order.

32. INDEMNIFICATION OF THE STATE OF MARYLAND

32.1 Neither the State of Maryland, nor any agency thereof, shall be liable for any injuries or damages to persons or property from acts or omissions of the Navy, its employees, agents, representatives, contractors, consultants, receivers, trustees, or assigns in implementing this Consent Order. The Navy agrees to indemnify and save and hold harmless the State of Maryland, its

agencies, departments, agents, and employees, from any and all claims or causes of action arising from or on account of acts or omissions of the Navy or its agents, employees, representatives, independent contractors, receivers, trustees and assigns in implementing this Consent Order.

33. EFFECTIVE DATE

33.1 This Consent Order shall be effective upon the date of complete execution.

APPENDIX A
PRIMARY DOCUMENTS

- (1) Statements of Work
- (2) SI Work Plans
- (3) RI/FS Work Plans, including Sampling and Analysis Plan, Quality Assurance Plan (QAPP), and plan for obtaining Site access agreements where applicable
- (4) Baseline Risk Assessment Work Plan
- (5) PA and SI Reports
- (6) RI Reports
- (7) FS Reports including Focused Fss
- (8) Proposed Plans
- (9) Remedial Designs (at about 95% stage)
- (10) Remedial Action Work Plans
- (11) Baseline Risk Assessment

(12) Community Relations Plan

(13) Periodic (Five Year) Review Reports

(14) Operations and Maintenance Plan

APPENDIX B

REIMBURSABLE STATE OVERSIGHT AND REGULATORY ACTIVITIES

B.1 Planning and Review

B.1.1 Review, comment and make recommendations and determinations on existing and subsequent documents and data pertaining to removal, preresidential, remedial, other response actions.

B.1.2 Identify and explain State applicable or relevant and appropriate requirements (ARARs).

B.1.3 Participate in Technical Review Committees.

B.1.4 Designate a project manager(s) to participate in all activities as spelled out in Subject. 2.1 through 2.5.

B.1.5 Participate in dispute resolution.

B.2 Technical Activities

B.2.1 Conduct site visits to review, and provide management assistance for, response actions.

B.2.2 Obtain split samples and subsequent analysis of these samples.

B.2.3 Provide for independent quality assurance and quality control (QA/QC) of up to ten percent (10%) of samples collected.

B.2.4 Participate in establishing extent of off-post contamination through sampling, including installation of off-post monitoring well, if required, and analysis.

B.2.5 Perform other technical services which are appropriate for MDE to perform to aid in response actions.

B.3 Community Relations

B.3.1 Participate with the Navy and other Parties in the conduct of public education and community relations.

B.4 Legal and Financial Activities

B.4.1 Prepare cost estimates and documentation of State costs relevant to this Consent Order.

B.4.2 Prepare, negotiate, amend and administer funding agreements and arrangements.

B.4.3 Review and take necessary action to assure compliance with this Consent Order.

B.4.4 Review, comment and make recommendations on documents and data regarding prioritization of sites, including model development, testing and application.

B.4.5 Negotiate, amend and participate in the dispute resolution process.

B.5 General

B.5.1 Employ a contractor to assist MDE in conducting its responsibilities as outlined in § B.1 through § B.5.

B.5.2 Perform other activities consistent with MDE's authorities to require and to oversee response actions and to protect the public health and the environment.

Mercury Contamination
of Sewage System
(from Bldg 102)

SI?

Mercury