

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

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

EPA DOCKET NO.
RCRA-02-2007-7301

RCRA § 7003 ADMINISTRATIVE ORDER ON CONSENT

TABLE OF CONTENTS

I. INTRODUCTION	-1-
II. JURISDICTION	-1-
III. PARTIES BOUND	-2-
IV. DEFINITIONS	-2-
V. FINDINGS OF FACT	-4-
VI. CONCLUSIONS OF LAW AND DETERMINATIONS	-16-
VII. ORDER ON CONSENT	-17-
VIII. WORK TO BE PERFORMED	-17-
IX. EPA APPROVALS AND ADDITIONAL WORK	-35-
X. SUSPENSION AND RESUMPTION OF WORK BY THE NAVY	-36-
XI. MODIFICATION OF WORK PLANS	-40-
XII. QUALITY ASSURANCE	-40-
XIII. DOCUMENT CERTIFICATION	-41-
XIV. SAMPLING, ACCESS AND DATA AVAILABILITY	-42-
XV. COMPLIANCE WITH OTHER LAWS	-44-
XVI. RECORD RETENTION	-44-
XVII. FULL TIME EMPLOYEE ASSISTANCE	-45-
XVIII. DISPUTE RESOLUTION	-45-
XIX. STIPULATED PENALTIES	-47-
XX. FORCE MAJEURE	-49-
XXI. RESERVATION OF RIGHTS	-50-

XXII. OTHER CLAIMS-[52-](#)

XXIII. NOTICE OF NON-LIABILITY OF EPA-[52-](#)

XXIV. MODIFICATION OF THIS CONSENT ORDER-[52-](#)

XXV. ENFORCEMENT -[53-](#)

XXVI. FUNDING-[53-](#)

XXVII. TERMINATION AND SATISFACTION-[54-](#)

XXVIII. PUBLIC COMMENT ON THIS CONSENT ORDER AND DECISIONS MADE
PURSUANT TO THIS CONSENT ORDER -[54-](#)

XXIX. SEVERABILITY-[56-](#)

XXX. EFFECTIVE DATE-[56-](#)

XXX1. CONSENT-[56-](#)

ATTACHMENTS

ATTACHMENT I Documentation of Releases at Naval Activity Puerto Rico

ATTACHMENT II Exposure Pathways and Possible Adverse Human Health and/or
Environmental Impacts

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

ATTACHMENT IV Scope of Work for a Corrective Measure Study

I. INTRODUCTION

1. This Administrative Order on Consent (Consent Order) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and Respondent, The United States Department of the Navy. The Order is intended to set out the Navy's corrective action obligations under the Resource Conservation and Recovery Act ("RCRA") and replaces the 1994 RCRA permit as the document memorializing these obligations concerning the Naval Activity Puerto Rico (formerly Naval Station Roosevelt Roads) base.

2. This Consent Order provides for the performance by Respondent of the following: implementation of RCRA Facility Investigations (RFIs) at certain units, implementation of Interim Measures at certain units, completion of Corrective Measures Studies (CMSs) at certain units, submission of work plans to complete CMSs to determine the final remedy for certain units, submission of Corrective Measures Implementation (CMI) plans to implement the selected final remedy(ies), completion of public notice and comment on any CMI plans (and RFI and CMS as appropriate), implementation of those CMI Plans as modified based on public comments, submission to EPA of acceptable Closure Plans for SWMU #3 in lieu of CMS and/or CMI plans for that unit, and documentation that acceptable institutional controls are in effect to prevent future inappropriate usage of portions of the Facility and/or the groundwater in certain portions of the Facility. The Respondent had previously been implementing this work at certain of the units under its RCRA permit issued in 1994. This Consent Order also requires Respondent to perform any Additional Work that may be required by Section VIII Paragraph 22 of this Consent Order (Notification and Additional Work Requirements for Newly-discovered Releases) and/or Section IX (EPA Approvals and Additional Work). The Navy's obligations are, however, subject to the provisions of Section X which allow for the transfer of work responsibility to third parties.

3. In entering into this Consent Order, the mutual objectives of EPA and Respondent are to identify, investigate, remedy, and/or prevent the potential endangerment to human health and/or the environment from activities involving "solid waste" and "hazardous waste" and to ensure that the Work ordered by EPA be designed and implemented to protect human health and the environment. These activities are outlined below in Section VIII (Work To Be Performed). Respondent shall fund and perform the Work in accordance with plans, standards, specifications and schedules set forth in this Consent Order or developed by Respondent and approved by EPA pursuant to this Consent Order.

4. EPA has previously notified the Commonwealth of Puerto Rico of this action pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a).

II. JURISDICTION

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

6. Respondent agrees to undertake and complete all actions required by the terms and conditions of this Consent Order. In any action by EPA to enforce the terms of this Consent Order, Respondent consents to and agrees not to contest the authority or jurisdiction of the EPA to issue or enforce this Consent Order, and agrees not to contest the validity of this Consent Order or its terms or conditions.

III. PARTIES BOUND

7. This Consent Order, and the responsibilities and obligations it imposes, shall apply to and bind Respondent and, in their official capacity, Respondent's employees, agents, successors and assigns.

8. Regardless of Respondent's employ of, or contractual agreement with, any entity, Respondent remains ultimately liable for failure to carry out, or comply with, any term or condition imposed by this Consent Order. It shall not be a defense to any violation of this Consent Order that the supervisory personnel, contractor, laboratory or consultant committing the violation was not informed of the requirements of this Consent Order

9. All contractual agreements entered into by Respondent aimed at satisfying its responsibilities or obligations under this Consent Order shall strictly comply with the terms and conditions of this Consent Order. In addition, Respondent shall, within one week of the effective date of this Consent Order and immediately, upon hiring, provide a copy of this Consent Order, and any relevant attachments, to all Respondent project management personnel and prime contractors, retained to conduct, monitor or perform any work pursuant to this Consent Order. All Respondent personnel and prime contractors shall perform such work in accordance with the requirements of this Consent Order.

10. Respondent shall give notice, and a copy, of this Consent Order to any successor in interest prior to any transfer of ownership or operation of the Facility (as defined in Section IV below) and shall notify EPA's designated contact ninety (90) days prior to any such transfer. Nothing in this Consent Order shall be read to waive any requirements of the Community Environmental Response Facilitation Act, Public Law 102-426.

11. No change in the Navy's organizational form or in the ownership of the "Facility" (as defined in Section IV below) shall in any way alter or alleviate Navy's responsibility and obligation to carry out all the terms and conditions of this Consent Order. However, the Navy and EPA expect that the Navy will sell and/or otherwise convey various parcels or segments of the Facility to various third parties at which time EPA expects to issue a separate order to such third parties requiring the performance of any remaining corrective action tasks related to the transferred parcel and to suspend the tasks to be performed under this Consent Order to reflect such changes. This process is further detailed in Section X, below.

IV. DEFINITIONS

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

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

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

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

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

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

“Facility,” unless otherwise indicated, shall mean the entire Naval Activity Puerto Rico (formerly Naval Station Roosevelt Roads) base which has been operated by the United States Department of the Navy and which is approximately 8,600 acres on the east Coast of Puerto Rico in the municipality of Ceiba, and two adjacent, offshore islands (Pineros and Cabeza de Perro). A fuller description of the Facility appears in Section V.6, below.

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

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

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

“Third Party” shall mean one or more parties, and their successors and assigns, that are not parties to this Order, and may include prospective purchasers of one or more parcels of the Facility and/or other parties that may otherwise acquire one or more parcels of the Facility.

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

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

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

V. FINDINGS OF FACT

13. 1. Navy is an Operator of a Hazardous Waste Storage or Disposal Facility:

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

2. Navy is a "Person":

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

3. Notification and Interim Status:

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

The Navy filed its original Part A of the Hazardous Waste Permit Application on November 7, 1980, and pursuant to 40 CFR § 270.10(e) constituted an “existing Hazardous Waste Management facility” (HWMF). Pursuant to 40 CFR § 270.70 the Navy was subject to the requirement to have a RCRA permit, and pursuant to 40 CFR § 270.70 through 40 CFR § 270.73 has operated since November 7, 1980 as an HWMF.

4. Hazardous Waste Permit Application:

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

D001 -a solid waste exhibiting the characteristic of ignitability.

D002 -a solid waste exhibiting the characteristic of corrosivity.

D006 -a solid waste exhibiting the toxicity characteristic for cadmium.

D007 -a solid waste exhibiting the toxicity characteristic for chromium.

D008 -a solid waste exhibiting the toxicity characteristic for lead.

D009 -a solid waste exhibiting the toxicity characteristic for mercury.

D011 -a solid waste exhibiting the toxicity characteristic for silver.

D018 -a solid waste exhibiting the toxicity characteristic for benzene.

D027 -a solid waste exhibiting the toxicity characteristic for 1, 4-dichlorobenzene.

D035 -a solid waste exhibiting the toxicity characteristic for methyl ethyl ketone.

F001- spent halogenated solvents used in degreasing.

F002- spent halogenated solvents and still bottoms from the recovery of such spent solvents.

F003- spent non-halogenated solvents and still bottoms from the recovery of such spent solvents.

F005- spent non-halogenated solvents and still bottoms from the recovery of such spent solvents.

5. Hazardous Waste Permit

The Navy submitted the Part B of the Hazardous Waste Permit Application on April 26, 1988. The Part B was modified by subsequent amendments dated December 1, 1988; June 15, 1990; October 29, 1991 and January 1, 1992 (hereafter referred to as the Application). Based on the Application, a RCRA permit was issued by EPA and became effective on November 28, 1994. The RCRA Permit authorized continued storage of hazardous waste in containers at designated hazardous waste storage units, all located inside the Defense Reutilization and Marketing Organization (DRMO) compound at the Facility. The RCRA Permit also imposed corrective action investigation and other requirements at solid waste management units (SWMUs) and areas of concern (AOCs) throughout the Facility, where releases of solid and/or hazardous waste and hazardous constituents were considered to have possibly occurred. On June 10, 1999

the Navy submitted a Part B application to renew its RCRA Permit. The renewal application was amended on May 8, 2000, June 1, 2001, July 3 and July 24, 2001, November 8, 2001, March 27, 2002, May 22, 2003, October 6, 2003, March 30, 2004 and Sept. 20, 2004. Pursuant to 40 CFR § 270.51, the Navy's RCRA permit was administratively extended based on the submission of its Part B renewal application.

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

6. Facility Description:

The Facility, formerly Naval Station Roosevelt Roads, is located on the east coast of Puerto Rico in the municipality of Ceiba, approximately 33 miles southeast of San Juan. The nearest major town is Fajardo, which is 10 miles north of the station. The Facility occupies approximately 8,600 acres and, except for two adjacent, unpopulated offshore islands (Pineros and Cabeza de Perro) off the northeast coast of the Facility, is bordered on all sides but the west by the marine waters of the Atlantic Ocean, Caribbean Sea, Vieques Passage. According to information supplied by the Navy, approximately 2,900 acres of the Facility are designated wetlands. The Facility was used as a military base from 1940 until March 31, 2004. The Facility includes a port facility and a major airfield complex. According to information available to EPA, the Facility contains small arms ranges, but no bombing ranges, and no known waste munition open burning/open detonation areas (OB/OD), except for three possible abandoned areas at the peninsula on Punta Medio Mundo where the currently active small arms range is located. Groundwater has not been used as a drinking water or potable water source at the Facility. For over 30 years, the Facility has obtained drinking and potable water from a water treatment plant that receives raw water from the Rio Blanco.

The Facility ceased operation as an active Naval Station on March 31, 2004, at which point it was designated Naval Activity Puerto Rico. The Navy currently retains jurisdiction, custody and control of the Facility and maintains the Facility in preparation for sale and/or transfer of the property, which is currently targeted to begin in 2006.

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

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

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

2) A total of twenty five (25) additional SWMUs have been identified subsequent to issuance of the 1994 RCRA permit. Two of the new SWMUs (#53 and #54) were first identified in the May 31, 2000 "RCRA Quarterly Progress Report" submitted to EPA by the Navy. A third new SWMU (#55) was previously being addressed in conjunction with the releases from SWMUs #7 & #8 (Tow Way Fuel Farm); however, it was identified as a separate SWMU in EPA's letter of February 24, 2004. In addition, 22 SWMUs have been identified based on the "July 2005 ECP Report Environmental Condition of Property Report" (the July 2005 ECP Report), which was developed by the Navy.

3). Thus, a total of seventy seven (77) SWMUs have been identified at the Facility. They are listed below, and are described more fully in the RFA and July 2005 ECP Report, discussed above. The defined SWMUs at the Facility are:

SWMU 1 - former Army Cremator disposal site

SWMU 2 - former Langley Drive disposal site

SWMU 3 - the Facility's non-hazardous landfill

SWMU 4 - oil/water separator at Building 860

SWMU 5 - miscellaneous metal dumpsters

SWMU 6 - Building 145 - uncontrolled waste paint storage area

SWMUs 7/8 - Tow Way Fuel Farm free product plumes and sludge disposal pits

SWMU 9 - Tanks 212 through tank 217 sludge disposal pits

- SWMU 10 - Transformer Substation 2
- SWMU 11 - interior areas of Building 38 (Old Power Plant)
- SWMU 12 - oil/water separator at Fire Training Area
- SWMU 13 - Building 258 - former Pest Control Area
- SWMU 14 - Fire Training Pit at Crash Crew Area
- SWMU 15 - former hospital incinerator
- SWMU 16 - Building 1666 - waste explosive storage building
- SWMU 17 - Building 1973 - hazardous waste container storage area
- SWMU 18 - Building 2009 - hazardous waste container storage area
- SWMU 19 - Building 121 - closed pesticide storage area
- SWMU 20 - Building 860 waste oil storage area
- SWMU 21 - floating oil spill clean-up “donuts”
- SWMU 22 - Ship Waste Offload Barges
- SWMU 23 - “first stage” oil/water separators at Fuel Pier
- SWMU 24 - “second stage” oil/water separators at Fuel Pier
- SWMU 25 - Defense Reuse and Marketing Organization (DRMO) storage yard
- SWMU 26 - uncontrolled storage area at Building 544
- SWMU 27 - Capehart Sewage Treatment Plant
- SWMU 28 - Bundy Sewage Treatment Plant
- SWMU 29 - Industrial Area wastewater treatment plant
- SWMU 30 - former waste oil incinerator

SWMU 31 - uncontrolled storage are near Building 31 and 2022
SWMU 32 - discarded battery storage area at Building 31

SWMU 33 - waste storage area at Building 379

SWMU 34 - waste oil and fuels storage area at Airfield

SWMU 35 - oil/water separator at Building 396

SWMU 36 - oil/water separator at Berthing Pier

SWMU 37 - waste oil and fuels storage area at hanger 200 at airfield

SWMU 38 - sanitary and storm water sewer systems

SWMU 39 - Building 3158 battery fluid drainage area

SWMU 40 - waste oil accumulation tank at Alpha Company Maintenance
Yard

SWMU 41 - Building 3152 pesticide storage area

SWMU 42 - water purification plant lagoons

SWMU 43 - Building 860 concrete storm water drain

SWMU 44 - Aerial Target Yard storm water drainage ditch

SWMU 45 - exterior areas of Old Power Plant(Building 38)

SWMU 46 - transformer storage pad at Public Works Department

SWMU 47 - miscellaneous “satellite” disposal areas

SWMU 48 - waste oil storage rack near building 3102

SWMU 49 - waste oil accumulation tank near building 3188

SWMU 50 - uncontrolled storage area near building 3166

SWMU 51 - waste storage pad at Building 379

SWMU 52 - waste storage pad at Building 3158

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SWMU 77 (a/k/a ECP 1) - small arms range and possible former open burning/open detonation (OB/OD) areas located on peninsula on Punta Medio Mundo

- B. Areas of Concern (AOC): Pursuant to Section 3005 © of RCRA, 42 U.S.C. 6925© (Section 212 of HSWA), and its corresponding regulations published in 40 C.F.R. § 270.32 (b)(2), the Director of the Division of Environmental Planning and Protection ("the Director") may impose other terms and conditions in a RCRA permit as the Director determines necessary to protect human health and the environment. Under that authority, AOCs requiring corrective action work may be identified. The AOCs that have been identified at the Facility are listed below and described more fully in the RFA and July 2005 ECP Report discussed above.

AOC A - Torpedo Shop

AOC B - uncontrolled waste storage area at former Building 25

AOC C - transformer storage pads near building 2042

AOC D - Ensenada Honda sediments

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

AOC F - Monitored Natural Attenuation Sites 124, 731, 734, 2842B, 1738, and 520¹, and 735 and 1995².

¹ As described in the December 2003 "Year 3 Summary Report for Monitored Natural Attenuation Sites 124, 731, 734, 2842B, 1738, and 520" prepared for the Navy by CH2MHILL.

² As indicated in the April 2004 "Year 2003 Summary Report and Groundwater Test Results for UST Sites 735 and 1995" prepared for Naval Activity Puerto Rico by BoksoMoni Environmental, under contract with Cape Environmental.

C. Determination Of Corrective Action Complete

- 1) Corrective Action Complete determinations are made pursuant to the February 13, 2003 EPA guidance document “*Guidance on Completion of Corrective Action Activities at RCRA Facilities*”, notice of which was published in the Federal Register Volume 68, No 37, February 25, 2003. Two types of Completion Determinations are recognized:
 - a) Corrective Action Complete without Controls, and
 - b) Corrective Action Complete with Controls.
- 2) A determination of Corrective Action Complete with Controls does not preclude the Director from requiring the Respondent to perform continued or periodic monitoring of air, soil, groundwater, surface water or subsurface gas, if necessary to protect human health and the environment, when site-specific circumstances indicate that release(s) of hazardous waste or hazardous constituents are likely to occur from a SWMU or AOC at the Facility.
- 3) A determination of Corrective Action Complete without Controls, or with Controls, does not preclude the Director from requiring the Respondent to perform further investigations, studies, or corrective measures at a later date after a unit or units constituting all or part of a SWMU or AOC is taken out of service and/or if new information or subsequent analysis indicates a release or likelihood of a release from a SWMU or AOC at the Facility that is likely to pose a threat to human health or the environment.
- 4) Subject to completion of public notice and possible changes in response to public comment, Corrective Action Complete without Controls determinations are approved for the following 5 SWMUs and 2 AOCs:

SWMUs #6, #12, #24, #25, #26, and AOC B and AOC D.
The Corrective Action Complete without Controls determination for SWMU # 25 (DRMO Storage Yard) is contingent on the Respondent completing acceptable closure of all hazardous waste container storage units located inside the DRMO compound, as specified in the Navy’s 1994 RCRA permit, 40 CFR § 264.178.
- 5) An additional twenty one³ (21) SWMUs had no further

³ Several SWMUs which had no further actions required under the November 1994 RCRA

actions required under the November 1994 RCRA permit. The 21 SWMUs which had no further action determinations in the 1994 RCRA permit include the following SWMUs: 4, 5, 15, 17, 20, 21, 22, 33, 34, 35, 36, 38, 40, 41, 43, 44, 47, 48, 49, 50, and 52. These are also now considered to have Corrective Action Completed without Controls determinations. However, this determination is subject to Paragraph C.3., above. In addition, this determination for SWMU 38 (sanitary and storm water sewer systems) is contingent on Respondent fully addressing any releases from SWMUs 4, 12, 13, and 14 that have impacted the sanitary and/or storm water sewer systems at the facility, and/or releases from any other SWMU at the facility that has impacted the sanitary and/or storm water sewer systems at the facility.

6) SWMU 19 (pesticide storage area at Building 121) has been clean closed pursuant to 40 CFR Part 265 Subpart G and requirements of the 1994 RCRA Permit. Therefore, SWMU 19 is considered to have achieved the equivalent of a Corrective Action Completed without Controls determination.

7) Subject to completion of public notice and possible changes in response to public comment, Corrective Action Complete with Controls determinations are approved for the following 6 SWMUs: #10, #23, #30, #37, #39, and #51.

a) The Corrective Action Complete with Controls determination for the above SWMUs would be contingent on a demonstration to EPA's satisfaction that acceptable deed restrictions or other institutional and/or engineering controls have been implemented to preclude unacceptable future usages of the lands and/or groundwater impacted by releases from these SWMUs. This demonstration would have to include such detailed information on the restrictions and controls as may be required by EPA to allow EPA to evaluate the adequacy of these restrictions and controls.

8) Based on the July 15, 2005 *ECP Report* determination that six (6) ECP sites have not been impacted by past and present operations at the Facility (i.e., the Navy has found no evidence of a release relating

permit have been determined to now warrant Phase I RFIs, as the Respondent is closing the NAPR facility and plans to sell or transfer all lands to other, mostly non-federal entities. This includes: SWMU 16 (Building 1666 - waste explosive storage building), SWMU 42 (water purification plant lagoons), and AOC A (Torpedo Shop).

to these SWMUs), EPA is proposing Corrective Action Complete without Controls determinations for the following SWMUs/ECP sites:

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

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

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

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

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

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

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

8. Documentation of Release:

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

B. Based on the July 15, 2005 *Phase I/II Environmental Conditions of Property Report* the following 18 ECP sites, which are now identified as SWMUs or AOCs, have documented releases of solid and/or hazardous waste and hazardous constituents:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SWMU 77 (a/k/a ECP 1) - Small Arms Range (and former open burning/open detonation (OB/OD) areas located on peninsula on Punta Medio Mundo)

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

AOC F - Monitored Natural Attenuation Sites

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

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

Potentially complete exposure pathways are present at the Facility that could result in both unacceptable adverse human health and environmental impacts (e.g., exposure pathways are present creating a potential hazard of imminent and substantial endangerment). The potentially complete exposure pathways at the Facility that could result in unacceptable adverse human health impacts are discussed in Attachment II of this Consent Order. The complete exposure pathways described in Attachment II are based on expected future land usage being similar to the land usage patterns currently in place. However, changes in future land usage from the present pattern of development/land usage at the Facility could result in additional receptors (such as on-site residents, if new housing areas are established; or on-site child-care or school populations, if

new child-care or school facilities are established on-site) being impacted via complete exposure pathways that currently are not considered complete (e.g., such receptors are either not present or exposure pathways have been interrupted either by man-made conditions or by temporary natural conditions). Potentially complete exposure pathways are present at the Facility that could also result in unacceptable adverse environmental impacts to biota at the Facility which have been listed by either the federal or Commonwealth governments as threatened, endangered, or vulnerable (Commonwealth only), and/or to critical habitat. According to the July 2005 ECP Report, the Facility supports a variety of biota that have been listed by either the federal or Commonwealth governments as threatened, endangered, or vulnerable (Commonwealth only), including 5 sea turtle species (Green, Loggerhead, Hawksbill, Leatherback, and Olive Ridley), 1 snake (Puerto Rican Boa), 12 birds (including the yellow-shouldered blackbird), 1 mammal (the West Indian Manatee), and 1 plant (Cobana negra). The species observed at the Facility that are classified as endangered under Federal law include: Hawksbill and Leatherback sea turtles, the Puerto Rican Boa, the yellow-shouldered blackbird, the Brown pelican, and the West Indian Manatee. Table 2-2 of the July 2005 ECP Report lists the threatened, endangered, or vulnerable species at the Facility. According to the July 2005 ECP Report, the only designated critical habitat at the Facility is for the yellow-shouldered blackbird. That habitat is the subject of a 1980 agreement between the Navy and the United States Fish and Wildlife Service (USFWS). A 1996 study performed for the Navy by GMI determined that the mangrove habitats constitute the most important habitats for the yellow-shouldered blackbird at the Facility. Three species of mangroves occur at the Facility: the red, black, and white mangrove. Approximately 2,900 acres of the Facility are designated wetlands. Of the designated wetland areas, approximately 60% are mangrove habitats. The mangroves themselves are not considered endangered, though the black mangrove is classified as threatened, under Federal law. Since the mangrove areas are considered wetland areas, those areas are protected under Federal law. All the wetland areas at the Facility, including the mangrove areas, are depicted in Figure 2-8 of the July 2005 ECP Report. The waters surrounding the offshore islands Pineros and Cabeza de Perro contain habitat for sea turtles (five species at the Facility are endangered or threatened) and manatees (an endangered species). The beaches on Pineros and Cabeza de Perro provide potential habitat for nesting sea turtles.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

14. This Section is based on the Findings of Fact set forth above, and the administrative record supporting this Consent Order:
 - a. The Navy is a Department of the Executive Branch of the Federal government and is subject to the requirements of Section 6001 of RCRA, 42 U.S.C. § 6961.
 - b Respondent is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
 - c. The “D” and “F” wastes listed in the above Findings section are each a “solid waste” as defined in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27). Each such solid waste is

also a “hazardous waste” as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5).

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

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

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

VII. ORDER ON CONSENT

15. Based upon the administrative record for the Facility and the Findings of Fact (Section V) and Conclusions of Law and Determinations (Section VI) set forth above, the following is hereby agreed to by the parties and ordered by EPA. Respondent shall comply with all provisions of this Consent Order, including, but not limited to, all Attachments to this Consent Order and all documents incorporated by reference into this Consent Order. (If there is any conflict between the language in the main text of this Order and the language in the text of the Attachments, the text of the Order shall be followed, unless otherwise agreed by the parties.)

16. Respondent shall fund and perform the Work in accordance with this Consent Order (subject to the limitations specified in Section XXVI, Funding, below), plans, standards, specifications and schedules set forth in this Consent Order or developed by Respondent and approved by EPA pursuant to this Consent Order.

VIII. WORK TO BE PERFORMED

17. Respondent shall undertake and complete all of the Work to the satisfaction of EPA, pursuant to RCRA § 7003, 42 U.S.C. § 6973.

18. Respondent’s obligation to perform the Work will begin on the Effective Date of this Consent Order.

19. The Work undertaken pursuant to this Consent Order shall be conducted in compliance with all applicable EPA guidances, policies and procedures, and with this Consent Order, and is subject to EPA approval.

20. Any Work Plan shall include a schedule of the Work to be performed. The Work Plan shall be submitted to EPA for approval. Following EPA’s approval or modification of the Work Plan pursuant to Section IX of this Order, Respondent shall implement the Work Plan in accordance with the schedule and provisions approved by EPA.

21. RCRA FACILITY INVESTIGATIONS ("RFIs"):

A) For all SWMUs and/or AOCs required to have either a Phase One or Full RFA under the 1994 RCRA Permit, acceptable RCRA Facility Investigations have been completed, except for SWMU #14 (Fire Training Pit area adjacent to the Crash Crew training adjoining the base's airfield). The Respondent has submitted a draft work plan to complete the RFI for SWMU 14.

a) Within sixty (60) days of the Respondent's receipt of EPA's written approval of that work plan, Respondent shall commence its implementation, unless an alternative date is approved in writing by EPA.

b) If based on the results of the RFI investigations, a Corrective Measures Study (CMS) is determined to be required for SWMU #14, Respondent shall submit a work plan for a CMS for that SWMU that meets the requirements of the Scope of Work for a Corrective Measures Study set forth in Attachment IV of this Order. This submittal shall be made within ninety (90) days of the Respondent's receipt of EPA's written notification that a CMS is required, unless an alternative date is approved in writing by EPA.

B) Under the November 1994 RCRA permit, SWMU 16 (Building 1666 - waste explosive storage building), and AOC A (Torpedo Shop) had no further actions required as both sites were restricted access sites at an active military Facility. The Facility is now closed. And, based on the nature of the past operations conducted at SWMU 16 and AOC A, there was a clear potential for releases of hazardous waste or constituents to have occurred at those two sites. Therefore, within forty five (45) days of the effective date of this Consent Order, the Respondent shall submit to EPA for approval an acceptable work plan to implement Phase I RFI investigations at SWMU 16 and AOC A, to determine whether or not releases of hazardous waste or hazardous constituents are present at those two sites.

a) If based on the results of those Phase I RFI investigations, a Full RFI is determined to be required for either SWMU 16 or AOC A, Respondent shall submit a work plan for a Full RFI for that SWMU or AOC that meets the requirements of the Scope of Work for a Full RCRA Facility Investigation set forth in Attachment III of this Order. This submittal shall be made within sixty (60) days of the Respondent's receipt of EPA's written notification that a Full RFI is required, unless an alternative date is approved in writing by EPA.

b) If based on the results of the Full RFI investigations, a Corrective

Measures Study (CMS) is determined to be required for either SWMU 16 or AOC A, Respondent shall submit a work plan for a CMS for that SWMU or AOC that meets the requirements of the Scope of Work for a Corrective Measures Study set forth in Attachment IV of this Order. This submittal shall be made within ninety (90) days of the Respondent's receipt of EPA's written notification that a CMS is required, unless an alternative date is approved in writing by EPA.

C) In addition, within forty five (45) days of the effective date of this Consent Order, the Respondent shall submit to EPA for approval an acceptable work plan to implement a Phase I RFI at SWMU 42 (water purification plant lagoons), to determine whether releases of hazardous waste or constituents have occurred at this unit.

a) If based on the results of that Phase I RFI investigation, a Full RFI is determined to be required for SWMU 42, Respondent shall submit a work plan for a Full RFI for SWMU 42 that meets the requirements of the Scope of Work for a Full RCRA Facility Investigation set forth in Attachment III of this Order. This submittal shall be made within sixty (60) days of the Respondent's receipt of EPA's written notification that a Full RFI is required, unless an alternative date is approved in writing by EPA.

b) If based on the results of the Full RFI investigations, a Corrective Measures Study (CMS) is determined to be required for SWMU 42, Respondent shall submit a work plan for a CMS for that SWMU that meets the requirements of the Scope of Work for a Corrective Measures Study set forth in Attachment IV of this Order. This submittal shall be made within ninety (90) days of the Respondent's receipt of EPA's written notification that a CMS is required, unless an alternative date is approved in writing by EPA.

D) Based on the July 2005 ECP Report, 10 ECP sites which are identified as SWMUs and/or AOCs under this Consent Order require additional investigation. Therefore, within forty five (45) days of the effective date of this Consent Order, the Respondent shall submit to EPA for approval an acceptable work plan to complete the equivalent of Phase I RFI investigations at the following SWMUs and/or AOCs:

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

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

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

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

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

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

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

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

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

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

a) If based on the results of those Phase I RFI investigations, a Full RFI is determined to be required for any of those SWMUs or AOC, Respondent shall submit a work plan for a Full RFI for those SWMUs or AOC that meets the requirements of the Scope of Work for a Full RCRA Facility Investigation set forth in Attachment III of this Order. This submittal shall be made within sixty (60) days of the Respondent's receipt of EPA's written notification that a Full RFI is required, unless an alternative date is approved in writing by EPA.

b) If based on the results of the Full RFI investigations, a Corrective Measures Study (CMS) is determined to be required for one or more of those SWMUs or AOC, Respondent shall submit a work plan for a CMS for that SWMU or SWMUs or AOC that meets the requirements of the Scope of Work for a Corrective Measures Study set forth in Attachment IV of this Order. This submittal shall be made within ninety (90) days of the Respondent's receipt of EPA's written notification that a CMS is required, unless an alternative date is approved in writing by EPA.

E) Within sixty (60) days of the effective date of this Consent Order, the Respondent shall submit to EPA for approval a work plan to address the contamination at all sites constituting AOC F. This work plan shall conform with EPA's April 21, 1999 Directive on "Use of Monitored Natural Attenuation at Superfund, RCRA Corrective Action, and Underground Storage Tank Sites" (OSWER Directive Number 0200.4-17P); or other applicable guidance. The work plan shall include proposals to complete additional site characterization at sites 520, 1738, and 2842, as required. In addition, the work plan shall include: clearly defined clean-up levels/objectives, estimates of the time required to achieve such clean-up levels at each of the sites constituting AOC F, the monitoring points and analytical parameters, and implementation and reporting schedules.

22.

INTERIM MEASURES

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

(a) Following each semi-annual groundwater sampling event, within 60 days of the Respondent's receipt of the validated analytical results from that event, Respondent shall submit to all EPA offices indicated in Paragraph 23, below, a complete report of the results of that groundwater sampling event, including validated analytical results.

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

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

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

B) For SWMU 11 (interior areas of Building 38 (Old Power Plant)),

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

b) Thereafter, on an annual basis, Respondent shall submit, or cause to be submitted, acceptable certification that acceptable deed restrictions or other institutional and/or engineering controls have been implemented and are being maintained to preclude access to the interior areas of Building 38 (Old Power Plant) and any usage of

Building 38 and the lands and/or groundwater potentially impacted by releases from Building 38.

23. CORRECTIVE MEASURES STUDY ("CMS")

A) For the following SWMUs a CMS has previously been determined to be required, and a CMS work plan has been approved by EPA; however, implementation has not been fully completed: SWMU 1; SWMU 2; SWMUs 7/8 (Tow Way Fuel Farm); SWMU 9, SWMU 45, SWMU 54 and SWMU 55. Therefore, the Respondent shall complete implementation of the CMSs for those 8 SWMUs, and within sixty days of completion of all activities required under the CMS Work Plan for that SWMU, shall submit a draft CMS Final Report meeting the requirements of Paragraph (H) below. Any unacceptable impacts to AOC D (Ensenada Honda sediments) which have been caused by releases from SWMUs shall be evaluated as part of the respective CMSs for SWMUs #1 and #2 (the two former littoral landfills) and have previously been evaluated for at SWMUs #7 and #8 (Tow Way Fuel Farm).

B) In lieu of a CMS plan to determine the final remedy for SWMU #3, as well as a CMI plan to implement any selected remedy for that SWMU, Respondent has submitted draft Closure Plans to close SWMU #3. Pursuant to the requirements of this Consent Order, Respondent shall close SWMU #3 in a manner that is substantively equivalent to requirements set forth at 40 CFR § 264.310. Upon written notification by EPA that the draft closure plan(s) for SWMU #3 is (are) acceptable, Respondent shall arrange for public review of that draft closure plan(s) in a manner that is substantively equivalent to requirements set forth at Section XXVIII of this Consent Order. If based on that public review, substantive revisions of the closure plan(s) for SWMU #3 appear warranted, Respondent shall revise the draft closure plan(s) to address relevant comments received. Respondent shall submit the draft Closure Plan(s) and any revised closure plan(s) for SWMU #3 to EPA for its approval pursuant to Section IX of this Consent Order, prior to its implementation.

C) Based on the July 15, 2005 *Phase I/II Environmental Conditions of Property Report*, 6 ECP sites require remediation. Therefore, within forty five (45) days of the effective date of this Consent Order, Respondent shall submit to EPA an acceptable work plan to complete site characterization for each of the below SWMUs and a CMS to determine the final remedy for the following SWMUs/ECP sites:

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

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

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

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

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

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

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

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

E) EPA may require a CMS under the following conditions:

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

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

(c) If the concentrations of hazardous constituents in groundwater, surface water/sediment, soil, or air do not exceed individual action levels or generic risk-based concentration (RBC) levels for human

health and/or ecological screening values, but still pose a potential threat to human health or the environment, given site-specific exposure conditions.

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

(a) The CMS Work Plan shall provide:

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

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

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

(iv) The schedule for conducting the study; and

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

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

G) No later than thirty (30) calendar days after the Respondent has received written approval from EPA for the CMS Work Plan, the Respondent shall begin to implement the CMS according to the schedules specified in the CMS Work Plan.

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

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

(b) Provide a detailed description of the corrective measures evaluated and include an evaluation of how each corrective measure

alternative meet the standards set forth in paragraph 24(A) of this Order;

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

(d) Contain any additional information to support EPA in the corrective measure selection decision-making process, described in paragraph 24(B) of this Order.

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

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

24. CRITERIA FOR CORRECTIVE MEASURES SELECTION:

A. For any SWMUS and/or AOCs where the final corrective measures have not yet been selected, and which are determined to require corrective measures, the Director shall select, based on the results of the RFI, the CMS, and any further evaluations, the corrective measure(s) that will:

(a) Be protective of human health and the environment;

(b) Control the source(s) of release(s) so as to reduce or eliminate, to the maximum extent practicable, further releases of hazardous waste, including hazardous constituents, that might pose a threat to human health and the environment; and

(c) Meet all applicable waste management requirements.

B. In selecting the corrective measure(s), the Director shall consider the following evaluation factors, as appropriate:

(a) Long-term reliability and effectiveness. Any potential corrective measure(s) may be assessed for the long-term reliability and effectiveness it affords, along with the degree of certainty that the corrective measure(s) will prove successful. Factors that shall be considered in this evaluation include:

(I) Magnitude of residual risks in terms of amounts and concentrations of hazardous waste, including hazardous constituents, remaining following implementation of the corrective measure(s), considering the persistence, toxicity, mobility and potential to bioaccumulate of such hazardous wastes, including hazardous constituents;

(ii) The type and degree of long-term management required, including monitoring, operation and maintenance;

(iii) Potential for exposure of humans and environmental receptors to remaining hazardous wastes, including hazardous constituents, considering the potential threat to human health and the environment associated with excavation, transportation, redispersion or containment;

(iv) Long-term reliability of the engineering and institutional controls, including uncertainties associated with land disposal of untreated hazardous wastes, including hazardous constituents, and residuals; and

(v) Potential need for replacement of the corrective measure(s).

(b) Reduction of toxicity, mobility and volume. A potential remedy(ies) may be assessed as to the degree to which it employs treatment that reduces toxicity, mobility or volume of hazardous wastes and/or hazardous constituents. Factors that shall be considered in such assessments include:

(I) The treatment processes that the corrective measure(s) employs and materials it would treat;

(ii) The amount of hazardous wastes, including hazardous constituents, that would be destroyed or treated;

(iii) The degree to which the treatment is irreversible;

(iv) The residuals that will remain following treatment, considering the persistence, toxicity, mobility and propensity to bioaccumulate of such hazardous wastes, including hazardous constituents; and

(v) All concentration levels of hazardous wastes, including hazardous constituents in each medium that corrective measure(s) must achieve to be protective of human health and the environment.

(c) The short-term effectiveness of a potential corrective measure(s). This may be assessed by considering the following:

(I) Magnitude of reduction of existing risks;

(ii) Short-term risks that might be posed to the community, workers, or the environment during implementation of such a corrective measure(s), including potential threats to human health and the environment associated with excavation, transportation, and redispersion or containment; and

(iii) Time until full protection is achieved.

(d) Implementability. The ease or difficulty of implementing a potential corrective measure(s) may be assessed by considering the following types of factors:

(I) Degree of difficulty associated with constructing the technology;

(ii) Expected operational reliability of the technologies;

(iii) Need to coordinate with and obtain necessary approvals and permits from other agencies;

(iv) Availability of necessary equipment and specialists;

(v) Available capacity and location of needed treatment, storage, disposal services; and

(vi) Requirements for removal, decontamination, closure, or post-closure of units, equipment, devices or structures that will be used to implement the corrective measure(s).

(e) Cost. The types of costs that may be assessed include the following:

(I) Capital costs;

(ii) Operational and maintenance costs;

(iii) Net present value of capital, and operation and maintenance costs; and

(iv) Potential future corrective action costs.

(f) Clean-up Preferences. The degree to which the remedy satisfies the public's and Commonwealth clean-up preferences.

25. CORRECTIVE MEASURE IMPLEMENTATION (CMI), INSTITUTIONAL CONTROLS, CLOSURE OF BUILDINGS 2009 AND 2009 A-D, AND CONTINGENT

CORRECTIVE ACTION REQUIREMENTS

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

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

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

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

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

SWMU #53 “Final CMI Design Package for Soil Remediation” dated September 20, 2004.

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

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

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

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

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

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

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

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

F) Land Use, Institutional, and Engineering Controls. For all SWMUs and/or AOCs where either a Corrective Action Complete Determination or a clean-up action has been based on a site usage scenario other than an unrestricted (residential) usage scenario, the Respondent shall ensure that acceptable Land Use Controls or other institutional and/or engineering controls are established and maintained so as to preclude future site usage that is incompatible with the site usage and exposure scenarios upon which the Corrective Action Complete Determination for that SWMU or AOC was made, and, for all SWMUs and/or AOCs where no Corrective Action Complete Determination has been made, Respondent shall ensure that acceptable Land Use Controls are established and maintained until either a Corrective Action Complete Without Controls Determination has been approved or a clean-up action based on unrestricted site usage has been completed and approved by EPA. Respondent shall also submit the required reports as provided in Paragraph 27 (Reporting), below.

G) Completion of Closure of Buildings 2009 and 2009 A-D.

a) If, at the time of issuance of this Order, Respondent has not completed closure of the permitted hazardous waste container storage units, Respondent shall complete closure of the former permitted hazardous waste container storage units located at Buildings 2009, 2009-A, 2009-B, 2009-C, and 2009 D. Unless otherwise agreed, closure shall comply with requirements set forth at 40 CFR § 264.178, the Closure Plan included as Attachment E of the Facility's 1994 RCRA Permit, the December 2004 "Final Site-Specific Sampling and Analysis Plans for Buildings 2009, 2009 A, and 2009 B-D", and the October 27, 2005 and November 17, 2005 letters from Lieutenant Commander A. Ferguson to Mr. Timothy Gordon of EPA, and any other conditions imposed by EPA for such Closure.

H) Contingent Investigation and Corrective Action Requirements for SWMUs 27, 28, and 29.

a) Respondent shall submit to EPA for review and approval a work plan for a Phase I RFI for all sludge drying beds at each of the following units. The work plan for each unit will be submitted within ninety (90) days of the date when usage of that unit ceases.

SWMU 27 - Capehart Sewage Treatment Unit

SWMU 28 - Bundy Sewage Treatment Plant

SWMU 29 - Industrial Area wastewater treatment plant

b) If based on the results of those Phase I RFI investigations, a Full RFI is determined to be required for any of those SWMUs, Respondent shall submit a work plan for a Full RFI for that SWMU or SWMUs that meets the requirements of the Scope of Work for a Full RCRA Facility Investigation set forth in Attachment III of this Order. This submittal shall be made within sixty (60) days of the Respondent's receipt of EPA's written notification that a Full RFI is required, unless an alternative date is approved in writing by EPA.

c) If based on the results of the Full RFI investigations, a Corrective Measures Study (CMS) is determined to be required for any of those SWMUs, Respondent shall submit a work plan for a CMS for that SWMU or SWMUs that meets the requirements of the Scope of Work for a Corrective Measures Study set forth in Attachment IV of this Order. This submittal shall be made within ninety (90) days of the Respondent's receipt of EPA's written notification that a CMS is required, unless an alternative date is approved in writing by EPA.

D) Contingent Investigation and Corrective Action Requirements for SWMU 77.

a) The Navy has informed EPA that it will likely convey the area comprising SWMU 77 to the Federal Department of Homeland Security (DHS) for continued usage as a small arms training range.

b) Within 90 days of DHS' cessation of usage of the area of SWMU 77 as a small arms training range, the Respondent shall cause DHS to submit to EPA for review and approval a work plan for a Phase I RFI work plan to determine whether releases of hazardous waste or solid waste and/or hazardous constituents are present at SWMU 77.

c) If based on the results of the Phase I RFI investigations, a Full RFI is determined to be required for some or all of the area comprising SWMU 77, Respondent shall submit a work plan for a Full RFI for that SWMU that meets the

requirements of the Scope of Work for a Full RCRA Facility Investigation set forth in Attachment III of this Order. This submittal shall be made within sixty (60) days of the Respondent's receipt of EPA's written notification that a Full RFI is required, unless an alternative date is approved in writing by EPA.

d) If based on the results of the Full RFI investigations, a Corrective Measures Study (CMS) is determined to be required for some or all of the area comprising SWMU 77, Respondent shall submit a work plan for a CMS that meets the requirements of the Scope of Work for a Corrective Measures Study set forth in Attachment IV of this Order. This submittal shall be made within ninety (90) days of the Respondent's receipt of EPA's written notification that a CMS is required, unless an alternative date is approved in writing by EPA.

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

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

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

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

work plan for any other necessary actions, including remedial measures for such releases within ninety (90) days of written notification by EPA.

27. REPORTING.

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

(a) Chief, Caribbean Section, RCRA Programs Branch (1 paper copy and 1 Compact Disc in .pdf format)

EPA Region 2
290 Broadway, 22nd Floor
New York, NY 10007-1866

(b) Project Coordinator (Mr. Timothy Gordon)

(1 paper copy and 1 Compact Disc in .pdf format)
RCRA Programs Branch
EPA Region 2
290 Broadway, 22nd Floor.
New York, NY 10007-1866

(c) Director (Mr. Carl Soderberg)

(1 paper copy and 1 Compact Disc in .pdf format)
U. S. Environmental Protection Agency
Caribbean Environmental Protection Division
Centro Europa Building, Suite 417
1492 Ponce de Leon Ave
Santurce, PR 00907-4127

(d) Puerto Rico Environmental Quality Board

Director, Land Pollution Regulation Program
(1 paper copy and 1 Compact Disc in .pdf format)
National Plaza Building
431 Ponce de Leon Ave
Hato Rey, PR 00917

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

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

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

submittals may be granted by EPA in writing.

G) Annual Reports. (a) For all SWMUs and/or AOCs where either a Corrective Action Complete Determination or a clean-up action has been based on a site usage scenario other than an unrestricted (residential) usage scenario, commencing sixty (60) days following the effective date of this Order, Respondent shall submit, or cause to be submitted, on an annual basis, acceptable certification that acceptable Land Use Controls or other institutional and/or engineering controls have been implemented and are being maintained to preclude unacceptable future usages of the lands and/or groundwater potentially impacted by releases from these SWMUs and AOCs; and (b) Annual Status Report on Transferred Parcels. Each year on the anniversary of the execution of this Order, Respondent shall submit, or cause to be submitted, to EPA a Report addressing the status of each parcel that is subject to a third party order and that has been previously transferred to an owner or operator other than Respondent, noting the following: the name and address of the new owner and operator; the address of the parcel and information describing the parcel and its boundaries including, if available, a map and, if known, Global Position System locational data; a statement whether or not all corrective action at the parcel is complete or on-going, and whether any institutional controls are in place or are pending; and the name and phone number of the contact person(s) for the parcel. This report will be updated each year to incorporate the then current information.

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

28. Project Coordinator. On or before the Effective Date of this Consent Order, Respondent shall designate its Project Coordinator. Respondent shall notify EPA in writing within five (5) days of the Effective Date of this Consent Order of the name, address, phone number, electronic mail address and qualifications of its Project Coordinator. The EPA Project Coordinator will be Timothy Gordon, 212-637-4167, 290 Broadway, New York, NY 10007-1866. EPA may also designate an Alternate Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Order. EPA and Respondent have the right to change their respective Project Coordinators. The other party must be notified in writing at least 10 days prior to the change.

29. The EPA Project Coordinator shall be EPA's designated representative for the Facility. Unless otherwise provided in this Consent Order, all reports, correspondence, notices, or other submittals relating to or required under this Consent Order shall be in writing and shall be sent to the EPA Project Coordinator at the address specified in Paragraph 23A, above, unless notice is given in writing to Respondent of a change in address. Reports, correspondence, notices or other submittals shall be delivered by U.S. Postal Service, private courier service or electronic mail. All correspondence shall include a reference to the case caption EPA Docket No. RCRA- 02-2007-7301, and the Facility's EPA Identification Number.

30. Within 25 days of the Effective Date of this Consent Order, Respondent shall notify EPA in writing of the names, titles and qualifications of the personnel, including agents, contractors, subcontractors, consultants and laboratories, to be used in carrying out the work. EPA's Project Coordinator will provide Respondent with the necessary qualification standards and Respondent's Project Coordinator shall ensure that Respondent's contractors, subcontractors, consultants and laboratories meet such requirements. All persons under the direction and supervision of Respondent's Project Coordinator must possess all necessary professional licenses required by federal and Commonwealth law. In addition, all agents, contractors, subcontractors, consultants, and laboratories must implement any work done under this Order pursuant to an EPA approved Quality Management Plan (QMP), developed in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/241/B-01/002, March 2001), or equivalent documentation as determined by EPA. EPA's approval of the QMP(s) shall be pursuant to procedures set forth in Section IX of this Order.

31. Health and Safety Plan. Respondent shall develop a Health and Safety Plan and it shall be implemented during the Work performed under this Consent Order. The Health and Safety plan shall comply with applicable Occupational Safety and Health Administration (OSHA) regulations.

IX. EPA APPROVALS AND ADDITIONAL WORK

32. Unless otherwise specified, EPA will review any plan, report, specification, program, documentation, notification, proposal or schedule submitted pursuant to, or required by this Consent Order, and agrees to endeavor to provide within 90 calendar days of receipt of that document by EPA, EPA's written request for modification, approval, or disapproval, with comments and/or modifications ("EPA's response"), to Respondent. Respondent may request, in the cover letters to its submittals, that EPA provide Respondent with EPA's response, with comments and/or modifications, within an alternative specified period of time. Unless EPA either: (1) provides Respondent with EPA's acceptance of the alternative specified time period for completing its response; or (2) notifies Respondent in writing of a revised alternative time when EPA expects to provide its response, the normal time period for EPA to provide its response will be within 90 calendar days of receipt of that document by EPA. EPA will notify Respondent whenever additional time is needed to provide its response to any submittals required pursuant to this Consent Order. The Parties agree that if during EPA's review of any submittals by Navy

required by this Consent Order, Navy's funding expires for work related to that submittal, then such expiration may constitute a delay as provided in Section XXVI of this Consent Order until such time as funding is secured, provided that Navy pursues all necessary funding at all times with due diligence.

33. Within fifteen (15) days of Navy's receipt of EPA's response, Respondent may request a meeting with EPA to discuss EPA's response. Within thirty (30) days of such meeting, or if no meeting is requested, within forty-five (45) days of receipt of EPA's response, Respondent shall either: (1) notify EPA of its intention to amend or modify the submission to incorporate all of EPA's comments and proposed modifications and to submit the amended submittal to EPA within thirty (30) days thereafter or according to a mutually agreed schedule; or (2) provide EPA with a written notice of dispute, setting forth Respondent's position, any actions which Respondent considers necessary to resolve the dispute, and the basis for Respondent's position. Any such written notice of dispute shall be subject to the dispute resolution procedures as set forth in Section XVIII of this Consent Order.

34. As part of the review of any plan, report, specification, program, documentation, notification, proposal or schedule submitted pursuant to, or required by this Consent Order, EPA or Navy may determine that certain tasks and deliverables required pursuant to Section VIII (Work to be Performed) of this Consent Order may require additional work.

(A) If EPA determines that such additional work is necessary, EPA shall identify, in writing, the additional work required and shall specify the reasons for that determination, and the time period during which the additional work shall be performed.

(B) Within thirty (30) calendar days after the receipt of such request, Navy shall have the opportunity to meet or confer with EPA to discuss the additional work required, and if it deems it necessary it shall within thirty (30) calendar days invoke the Dispute Resolution provisions of this Consent Order.

(C) If the Navy does not invoke Dispute Resolution, such additional work shall be performed in accordance with the terms of this Consent Order.

(D) Any additional work performed by Navy, whether at the request of EPA under (A) above, or at the initiative of the Navy, shall be subject to review and approval by EPA under the terms of this Consent Order.

35. Any noncompliance with an EPA approved document or an EPA determination under the Dispute Resolution provision of this Consent Order constitutes noncompliance with this Consent Order.

X. SUSPENSION AND RESUMPTION OF WORK BY THE NAVY

36. A. The Navy has informed EPA that it intends to sell or otherwise transfer parcel(s) and/or parts of the Facility to one or more Third Party(s) who will assume responsibility for corrective action on the real property it acquires. The Navy has informed EPA that before such transfer the Navy will screen prospective purchasers for their financial and technical capability to perform any required corrective action and once the Navy has approved a potential bidder the Navy will require the potential bidder to enter into an administrative order on consent with EPA and comply with its terms.

B. Except as provided herein below, once an order on consent has been executed between EPA and the Third Party for work on a specified part of the Facility, the work requirements of this Consent Order with the Navy which are being assumed by the Third Party for that specified part of the Facility are suspended. Any suspension in the Navy's responsibility for work related to the transferred parcel will be conditioned on the satisfactory and timely performance by the Third Party, and will take effect following the effective date of the order to the Third Party. The Navy shall continue to abide by the provisions of this Order which are not suspended. EPA will suspend all of the Navy's obligations under this Order with respect to any given parcel, with the following exceptions:

- Section VIII (Work To Be Performed), unless otherwise agreed in writing by the parties to this Order, the Navy shall complete any Work for which EPA has approved a work plan (or similar documents such as groundwater monitoring plan or monitored natural attenuation plan) and all Work which Navy has initiated;
- Section VIII (Work To Be Performed), the Navy shall retain responsibility for the maintenance of institutional (excluding zoning) and engineering controls unless otherwise agreed in writing by the Navy and the Third Party and approved by EPA, and shall provide EPA with an annual certification of the Land Use Controls or other institutional and engineering controls, and an annual report on the transferred parcels, as required in paragraph 27(G).
- Section X (Suspension and Resumption of Work by the Navy);
- Paragraphs 48, 51-54 in Section XIV (Sampling, Access and Data Availability);
- Section XVI (Record Retention);
- Section XXVI (Funding); and,
- Paragraph 122 in Section XXVIII (Public Comment on this Consent Order and Decisions Made Pursuant to this Consent Order).

C. a. Should EPA later determine that the Third Party has failed to satisfy its corrective action responsibility and is not likely to be able to satisfy its responsibility to perform the work in a timely and satisfactory manner, then EPA may find the Third Party to be in "Default." Before making any Default finding, EPA will undertake the following actions outlined in sub-paragraphs D through and including M, below.

b. EPA expects to use its available enforcement authorities in the event of third party noncompliance with a consent order. However, EPA's decision on whether and

when to initiate any enforcement action against a Third Party for noncompliance with such an order shall be within EPA's, and/or the United States Department of Justice's, sole enforcement discretion, and shall not be subject to dispute resolution under this Order.

D. Initial Notice of Noncompliance and Stop Work. Following EPA's preliminary finding that a Third Party has failed to comply with a requirement of another order issued to that party for work at some or all of the Facility, EPA may give that Third Party written notification of the same, and describe the noncompliance ("Initial Notice of Noncompliance"). EPA may also give the Third Party written notification that it should stop work on all or any portion of its corrective action activities at the Facility until EPA determines that the Third Party has remedied such noncompliance ("Notice to Stop Work") or until receipt of written notification from EPA that the Third Party may proceed with such activities as specified in the notification. If requested by the Third Party within ten calendar days of its receipt of the Initial Notice of Noncompliance, EPA and the Third Party will meet within 30 days of that request, or an alternative time period approved by EPA, to discuss the situation.

E. Second Notice of Noncompliance. If EPA later determines that the Third Party has not adequately addressed the issues identified in EPA's Initial Notice of Noncompliance, EPA may then issue a written Second Notice of Noncompliance and will copy the Navy on such Second Notice. EPA's determination may be based on its finding that the Third Party is not performing the work, not performing the work adequately despite EPA's guidance, not performing the work in a timely manner, or for any other reason which causes EPA to conclude that the Third Party is not willing or able to satisfy its obligations under the applicable order. If requested by the Third Party within ten calendar days of its receipt of the Second Notice, EPA and the Third Party will meet to discuss the finding by EPA within 30 business days after receiving from EPA the Second Notice, or an alternative time period approved by EPA. EPA may in its discretion invite the Navy to the meeting.

F. Following the conclusion of the meeting referenced immediately above, if EPA still believes the noncompliance has not been remedied and believes the noncompliance jeopardizes the successful completion of work required under the Order issued to the Third Party, EPA will promptly notify the Navy and allow the Navy a short period to investigate and to attempt to resolve the issues outlined by EPA.

G. Initial Finding of Default and Dispute Resolution. Assuming the situation is not promptly resolved to EPA's satisfaction during the above-noted time period, the matter will be elevated to the EPA Region 2, RCRA Programs Branch Chief and the NAPR Base Closure Manager. If the matter is not resolved to the EPA Branch Chief's and the NAPR Base Closure Manager's mutual satisfaction within thirty (30) days or such other time as mutually agreed, EPA may issue its Initial Finding of Default.

H. Dispute Resolution. Within ten (10) business days of the Navy's and the Third Party's respective receipt of EPA's issuance of its Initial Finding of Default, both the Navy and the Third Party may trigger the Dispute Resolution procedures provided in their respective consent orders. (With regard to the Third Party, the Dispute Resolution procedures of the Order issued to that party shall apply.) With regard to the Navy, it shall elevate the matter to the EPA Regional Administrator and the Deputy Assistant Secretary of the Navy (Environment) by serving upon EPA a written Statement of Dispute setting forth the basis for the Navy's position and the information upon which it is relying to support its position. EPA may provide the Regional Administrator with a written Response to the Statement of Dispute. If EPA deems it efficient, EPA may take such steps as it deems appropriate to integrate any dispute process invoked by the Navy with any invoked by any Third Party.

I. After review of the Statement of Dispute and the Response to the Statement of Dispute, if any, the EPA Regional Administrator, or his or her designated representative, shall confer with the Deputy Assistant Secretary of the Navy (Environment), or his or her designated representative, and shall provide the Navy with a written Final Decision setting forth resolution of this matter.

J. Resolution of a dispute in accordance with these provisions constitutes a final resolution of that dispute. The Final Decision of the Regional Administrator will be based on his/her sole and unreviewable discretion, and the Parties shall seek no further review of that resolution. The Navy and EPA shall abide by all terms and conditions of any final resolution of dispute obtained in accordance with these provisions and the Navy shall have no further opportunity to invoke dispute resolution on the issues addressed in the dispute pursuant to this Paragraph after EPA issues the Third Party a Final Finding of Default.

K. Final Finding of Default. In the event of an EPA determination (following any dispute resolution process, if invoked) that a Default has occurred, EPA will issue the Third Party a written Final Finding of Default, with a copy to the Navy. The Final Finding of Default will provide the basis for EPA's determination and will specify whether the Third Party may continue to perform the Work, or any portion of the Work, while the Navy prepares to resume the required corrective action activities under this Order.

L. Resumption of Corrective Action Work by the Navy. Subject to Section XXVI (Funding) and Section XX (Force Majeure), within thirty (30) days of receipt of the Final Finding of Default, or such other time period as is agreed to by EPA following consultation with the Navy, the Navy shall resume work under this Order concerning the required corrective action activities that were previously being performed by the Third Party found to be in Default. EPA and the Navy shall endeavor to meet within sixty days of receipt of the Final Finding of Default to discuss the Navy's resumption of work.

M. In the event that the Navy reassumes corrective action responsibility, it will not challenge or dispute any remedial decisions made by EPA prior to EPA's Final Finding of

Default, and it will continue to perform all corrective actions selected by EPA prior to that Final Finding of Default in accordance with the pertinent EPA decision document; provided however, that for any corrective action workplans for investigations or for the implementation of any selected remedy that were approved prior to EPA's Final Finding of Default, the Navy may, within six months of its receipt of EPA's written Final Finding of Default, propose to EPA, for its review and approval, modifications to the relevant work plan(s). The Navy may not, however, initiate Dispute Resolution pursuant to Section XVIII of this Order on the previously approved workplans or EPA's decision with respect to its proposed modifications to them.

N. Notwithstanding any other provision of this Order, EPA reserves its right not to negotiate with and/or issue an administrative order(s) to a new party (or parties) for work at the Facility should EPA determine in its sole discretion that it cannot be reasonably assured that it will have adequate resources to negotiate additional order(s), review new or revised workplans under such order(s), and/or perform the tasks required to implement and oversee the work by such additional party (parties) under such order(s).

XI. MODIFICATION OF WORK PLANS

37. If at any time during the implementation of Work, Respondent identifies a need for a compliance date modification or revision of an existing EPA approved Work Plan, Respondent shall document in a written request to EPA the exact modification or revision requested and the basis for that modification or revision. EPA will determine if the modification or revision is warranted and will provide written approval or disapproval. Any approved modified compliance date or Work Plan modification will be incorporated by reference into this Consent Order.

38. Emergency Response. In the event of any action or occurrence during the performance of Work that constitutes an emergency situation or may present an immediate threat to human health and the environment, Respondent shall immediately take all appropriate action to minimize such emergency or threat, and shall immediately notify the EPA's Project Coordinator. Respondent shall take such immediate and appropriate actions in consultation with EPA's Project Coordinator. Respondent shall submit to EPA written notification of such emergency or threat at the Facility within three (3) calendar days of such discovery. Respondent shall thereafter submit to EPA for approval, within 20 days, a plan to mitigate this threat. EPA will approve or modify this plan, and Respondent shall implement this plan as approved or modified by EPA. In the case of an extreme emergency, Respondent may act as it deems appropriate to protect human health or the environment. However, Respondent's actions are subject to EPA review and approval and EPA may require Respondent to take additional response actions.

XII. QUALITY ASSURANCE

39. As part of each new Work Plan, unless otherwise agreed, or unless a Master Quality Assurance Project Plan (QAPP) has been previously approved by EPA for usage under this

Consent Order and it is appropriately cited in the new Work Plan, Respondent shall include a Quality Assurance Project Plan (QAPP) for EPA review and approval. The QAPP shall address quality assurance, quality control, and chain of custody procedures for all sampling, monitoring and analytical activities. Respondent shall follow "EPA Requirements for Quality Assurance Project Plans" (QA/R5)" (EPA/240/B-01/003, March 2001), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998), and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/b-01/002, March 2001) (or later versions of these documents) as well as other applicable documents identified by EPA. The QAPP shall be incorporated into this Consent Order by reference.

40. As part of the Work Plan, Respondent shall include Data Quality Objectives for any data collection activity to ensure that data of known and appropriate quality are obtained and that data are sufficient to support their intended use as required by this Consent Order.

41. Respondent shall ensure that laboratories used by Respondent for analysis perform such analysis according to the latest approved edition of "Test Methods for Evaluating Solid Waste (SW-846)" or other methods approved by EPA. If methods other than EPA methods are to be used, Respondent shall specify all such protocols in the applicable Work Plan. EPA may reject any data that does not meet the requirements of the approved Work Plan and EPA analytical methods and may require resampling and additional analysis.

42. Respondent shall ensure that all laboratories it uses for analyses participate in a quality assurance/quality control (QA/QC) program equivalent to the program that EPA follows. Respondent shall, upon EPA's request, make arrangements for EPA to conduct a performance and QA/QC audit of the laboratories chosen by Respondent, whether before, during, or after sample analyses. Upon EPA's request, Respondent shall have its laboratories perform analyses of samples provided by EPA to demonstrate laboratory QA/QC and performance. If the audit reveals deficiencies in a laboratory's performance or QA/QC, Respondent shall submit a plan to address the deficiencies and EPA may require resampling and additional analysis.

43. Any laboratory used by Navy to perform chemical analysis pursuant to this Order must be certified under EPA's National Contract Laboratory Program ("CLP"), or the Navy must obtain prior written approval from EPA for usage of a non-CLP laboratory by Navy to perform chemical analysis pursuant to this Order. Navy shall ensure that EPA personnel and authorized representatives have access to the laboratories and personnel performing any analyses. In the event that EPA or its representatives cannot satisfactorily obtain access to the laboratories for any reason for the purposes of auditing protocols and technical proficiency, then EPA shall so inform the Navy and the Navy shall, as soon as practicable thereafter, substitute another CLP certified, or EPA approved, laboratory which provides access in a manner deemed satisfactory to EPA.

XIII. DOCUMENT CERTIFICATION

44. Any report or plan or other document submitted by Respondent pursuant to this Consent

Order which addresses work plans, or makes recommendations as to whether or not further actions are necessary, or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Consent Order shall be certified by a responsible civilian official or military officer of Respondent with authority to make such a certification.

45. The certification required by Paragraph 44, above, shall be in the following form:

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

Signature: _____

Name:

Title:

Date:

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

XIV. SAMPLING, ACCESS AND DATA AVAILABILITY

46. All results of sampling, testing, modeling or other data generated (including raw data if requested) by Respondent, or on Respondent's behalf, during implementation of this Consent Order shall be validated by Respondent and submitted to EPA within 30 days of Respondent's receipt of the data (unless a different schedule is agreed to in writing). Respondent shall submit all data in a format consistent with EPA Region 2's *Electronic Data Deliverable (EDD) Specification Manual*, Version 2.1, dated December 2003, or the most recent version, if such exists. EPA will make available to Respondent data generated by EPA for the purposes of oversight of the Work unless it is exempt from disclosure by any federal or Commonwealth law or regulation.

47. Respondent shall orally notify EPA at least 20 days prior to conducting field sampling. At EPA's request, Respondent shall allow split or duplicate samples to be taken by EPA or EPA's representative.

48. Facility Access. Pursuant to RCRA § 3007(a), 42 U.S.C. § 6927(a) and other authority, Respondent shall provide access to the Facility during regular business hours (and at other times

if reasonable under the circumstances) to both EQB and EPA, and EQB's and EPA's contractors and oversight officials. Respondent shall also provide the above-noted entities with access at reasonable times, as noted above, to all records and documentation in its possession or control, including those records and documents in the possession or control of Respondent's contractors and employees, related to the conditions at the Facility and the actions conducted pursuant to this Consent Order. Respondent shall use its best efforts to gain access to areas owned by or in the possession of someone other than Respondent, as necessary to implement this Consent Order, as described in Paragraph 50. The above-noted entities shall be permitted to move freely about the Facility and appropriate off-site areas in order to conduct actions that EPA and EQB determine to be necessary. The above-noted entities shall notify Respondent of their presence at the Facility by presenting their credentials. All entities with access to the Facility under this Paragraph shall comply with all approved health and safety plans and regulations.

49. Pursuant to this Section, any denial of access at reasonable times to any portion of the Facility property where a request for access was made shall be construed as a violation of the terms of this Consent Order subject to the penalty provisions outlined in Section XIX (Stipulated Penalties) of this Consent Order.

50. Access Agreements. Where action under this Consent Order is to be performed in areas owned by, or in possession of, someone other than Respondent, and that other party is not responsible for the work, Respondent shall use its best efforts to obtain all necessary access agreements within 45 days of approval of any Work Plan for which access is necessary or as otherwise specified, in writing, by the EPA Project Coordinator. Any such access agreement shall provide for access by EQB and EPA and their representatives to move freely in order to conduct actions that EQB and EPA determine to be necessary. The access agreement shall specify that Respondent is not EQB's or EPA's representative with respect to any liabilities associated with activities to be performed. Respondent shall provide EQB's and EPA's Project Coordinators with copies of any access agreements. Respondent shall immediately notify EQB and EPA if after using Respondent's best efforts it is unable to obtain such agreements within the time required. Best efforts as used in this Paragraph shall include, at a minimum, a letter sent by certified mail from Respondent to the present owner of such property requesting access agreements to permit Respondent, EQB, EPA, and their authorized representatives to enter such property, and the offer of payment of sums of money (if reasonable under the circumstances) in consideration of granting access. Respondent shall, within 10 days of its receipt of a denial of access, submit in writing, a description of its efforts to obtain access. EQB and EPA may, at their discretion, assist Respondent in obtaining access. In the event EQB and/or EPA obtains access, Respondent shall undertake the Work on such property and EPA reserves any right it may have to seek reimbursement from Respondent for all costs and attorney fees incurred by the EPA and the United States Department of Justice acting on EPA's behalf in connection with obtaining such access.

51. Confidential Information. Respondent may assert, pursuant to 40 C.F.R. §2.203(b), a confidentiality claim, if appropriate, covering part or all of the information required by this

Consent Order. Such an assertion shall be adequately substantiated (e.g., data or other information related to Facility production methods or processes). Any assertion of confidentiality shall be accompanied by sufficient documentation to satisfy the requirements of 40 C.F.R. § 2.204(e)(4). Information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies this information when it is submitted to EPA, it may be made available to the public by EPA, without further notice to Respondent. No confidentiality claim shall be made with regard to any analytical data.

52. Privileged Documents. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege in lieu of providing documents, Respondent shall provide EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the author's name and title; (4) the name and title of each addressee and recipient; (5) a description of the contents; and (6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Consent Order shall be withheld on the grounds that they are privileged.

53. All data, information, and records created or maintained relating to any solid or hazardous waste found at the Facility shall be made available to EQB and EPA upon request unless Respondent asserts a claim that such documents are legally privileged from disclosure. Respondent shall have the burden of demonstrating to EPA by clear and convincing evidence that such privilege exists.

54. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Facility.

55. Nothing in this Consent Order shall be construed to limit EQB's and EPA's right of access, entry, inspection, and information gathering pursuant to applicable law, including but not limited to RCRA and CERCLA.

XV. COMPLIANCE WITH OTHER LAWS

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

XVI. RECORD RETENTION

57. Respondent shall preserve, during the pendency of this Consent Order and for at least

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

58. Except where Respondent, and EPA otherwise agree, subsequent to the termination of the aforementioned seven (7) year period, Respondent shall provide written notification to EPA sixty (60) days prior to the destruction of any data, records or documents that relate in any way to this Consent Order, its implementation, or to hazardous waste management practices and/or disposal at its Facility. At EPA's request, Respondent shall then make such records available to EPA for inspection and/or EPA's retention or shall provide copies of any such records to EPA prior to discarding.

59. Respondent shall make a good faith effort to preserve all documents pertaining to this Consent Order in a centralized location to afford ease of access by EPA or its representatives. Where Respondent finds such a requirement impossible, Respondent shall minimize the number of locations used and shall maintain in a central location a list detailing the location of such documents.

60. All data, information, and records concerning, created for, or maintained by the Respondent, in connection with this Consent Order, shall be made available to EPA upon request in accordance with the provisions of Section XIV. All employees of the Respondent and all persons, including contractors and subcontractors who engage in activity under this Consent Order, shall be made available to and shall cooperate with EPA if information is sought.

61. Nothing in this Section shall be read to shorten any document retention requirement otherwise applicable to the Navy or other entity.

62. Administrative Record. EPA will maintain an administrative record file. The administrative record supporting issuance of this Consent Order and the work being required under it shall be available for public review at EPA's Region 2 offices, 290 Broadway, New York, NY. The Navy shall maintain a public repository in Puerto Rico, where copies of all documents regarding the work performed pursuant to this Consent Order shall be available for public inspection. The requirements for this public repository are discussed in Section XXVIII, Paragraph 122, of this Order.

XVII. FULL TIME EMPLOYEE ASSISTANCE

63. EPA and the Navy are in the process of negotiating Full Time Employee (FTE) assistance for EPA. At this time, the Navy has agreed that for Fiscal Year 2006 it will provide EPA, pursuant to the Navy's Base Realignment and Closure (BRAC) authority, two Full Time Equivalent (FTE) positions. The parties agree to negotiate in good faith concerning arrangements for future years.

XVIII. DISPUTE RESOLUTION PROCEDURES

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

65. EPA and Navy shall make reasonable efforts to informally resolve disputes at the Project Coordinator or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this part shall be implemented to resolve the dispute.

66. Within thirty (30) days of the date when Navy is informed of an action by EPA that leads to or generates a dispute, Navy shall submit to EPA a written statement of dispute setting forth the nature of the dispute including any elements of work, submittals, or actions affected by the dispute, Navy's position with respect to the dispute, and the information Navy is relying upon to support its position, and any impact such dispute may have on specified schedules, elements of work, submittals, or actions required by this Consent Order. If Navy does not provide such written statement to EPA within this thirty (30) day period, Navy shall be deemed to have agreed with the action taken by EPA which led to or generated the dispute.

67. Upon receipt of the written statement of dispute, EPA and Navy shall engage in dispute resolution among the Project Coordinators and/or their immediate supervisors. EPA and Navy shall have twenty (20) days from the receipt by EPA of the written statement of dispute to resolve the dispute. During this period the Project Coordinators shall meet as many times as are necessary to discuss and attempt resolution of the dispute. Any agreed resolution shall be in writing, signed by EPA and Navy. If agreement cannot be reached on any issue within this twenty (20) day period, Navy may, within ten (10) days of the conclusion of the twenty (20) day dispute resolution period, submit a written notice to EPA escalating the dispute to the Dispute Resolution Committee ("DRC") for resolution. If Navy does not elevate the dispute to the DRC within this ten (10) day escalation period, Navy shall be deemed to have agreed with EPA's position with respect to the dispute.

68. The EPA representative on the DRC is the Director, Division of Environmental Planning and Protection, EPA Region II. The Navy representative on the DRC is the Director, BRAC Program Management Office. These representatives may be changed and they may designate other individuals to act for them. Notice of any change in the representative and delegation of authority from a party's designated representative on the DRC shall be provided to the other parties.

69. The DRC will serve as a forum for resolution of disputes for which agreement has not been reached informally. EPA and Navy shall each designate one individual and an alternate to serve on the DRC. Following escalation of a dispute to the DRC, the DRC shall have twenty (20) days to resolve the dispute. Any agreed resolution shall be in writing and signed by EPA and Navy. If the DRC is unable to resolve the dispute within this twenty (20) day period, Navy may, within ten (10) days of the conclusion of the twenty (20) day dispute resolution period, submit a written Notice of Dispute to the Senior Executive Committee (SEC) for resolution. In the event that the dispute is not escalated to the SEC within the designated ten (10) day escalation period, Navy shall be deemed to have agreed with EPA's position with respect to the dispute.

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

71. Upon escalation of a dispute to the Administrator of the EPA pursuant to Paragraph 70, above, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the EPA Administrator shall meet and confer with the Secretary of the Navy to discuss the issues under dispute. Upon resolution, the Administrator shall provide the Navy with a written final decision setting forth the resolution of the dispute. The duties of the Administrator and the Secretary set forth in this Section shall not be delegated.

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

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

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

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

XIX. STIPULATED PENALTIES

76. In the event that the Navy fails to comply with the requirements of this Consent Order EPA may assess a stipulated penalty against the Navy as set forth below. A stipulated penalty may be assessed in an amount not to exceed \$3,000.00 for the first week (or part thereof), and \$6,000.00 for each additional week (or part thereof) for which a failure occurs.

77. Upon determining that the Navy is liable for stipulated penalties, EPA shall so notify the Navy in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the Navy shall have fifteen (15) days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. The Navy shall not be liable for the stipulated penalty assessed by EPA if the failure is determined, through the dispute resolution process, not to have occurred. Penalties shall accrue but need not be paid during the dispute resolution period. No assessment of a stipulated penalty shall be final until the conclusion of the dispute resolution procedures related to the assessment of the stipulated penalty.

78. Stipulated penalties assessed pursuant to this Part shall be payable to the U.S. Treasury only in the manner and to the extent allowed by law. Should dispute resolution not be invoked or should the Navy be found liable for the penalty pursuant to the dispute resolution process, the Navy shall pay the stipulated penalty following the procedures in Paragraph 79, below. If funds to pay the penalty are not available to the Navy at the time any such penalty becomes due, the Navy shall request the appropriate funding to pay the penalty in the next available budget request. Upon Congressional authorization, and, if necessary, appropriation of the funding the Navy shall be obligated to pay the stipulated penalty, and such payment shall be made in accordance with Paragraph 79, below.

79. Subject to Congressional authorization and if necessary, appropriation, Respondent shall make payments by money order, certified check, electronic funds transfer, or cashier's check payable to the Treasurer of the United States within thirty (30) days of the EPA's notice under paragraph 77, above, or if dispute resolution is invoked within thirty (30) days of the resolution of the dispute. In the event funds to pay the stipulated penalty are not immediately available, the Navy shall pay the stipulated penalty within sixty (60) days after Congressional authorization of and if necessary, appropriation for the payment of the stipulated penalty. Such payment shall be submitted to the following address:

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

80. The caption information (In the Matter of The Department of the Navy) on this Consent Order and the Docket No. RCRA-02-2007-7301 should be clearly typed on the check and any cover letter to ensure proper credit. Respondent shall send simultaneous notices of such payments, including copies of the money order, certified check, company check, electronic funds transfer, or cashier's check to the following:

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

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

XX. FORCE MAJEURE

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

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

84. Within ten (10) working days of the events or events that Respondent contends are responsible for the delay, for which event Respondent is asserting "force majeure", Respondent shall deliver to EPA in writing the: (1) reasons for, and anticipated duration of such delay, (2) the measures taken and to be taken by Respondent to prevent or minimize the delay, (3) the deadlines in the Order and the accompanying work plan that will be affected by the "force majeure", and (4)

the timetable for implementation of the measures taken and to be taken by Respondent to prevent or minimize the delay. Such written notification is to be sent to EPA's Project Coordinator noted in Section VIII.

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

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

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

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

XXI. RESERVATION OF RIGHTS

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

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

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

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

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

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

95. This Consent Order shall not relieve Respondent of its obligation to obtain and comply with any federal, commonwealth or local permit nor is this Consent Order intended to be, nor shall it be construed to be, a ruling or determination on, or of, any issue related to any federal, commonwealth or local permit. However, to the extent provided in CERCLA Section 121(e)(1), the Navy shall not be required to obtain permits for any CERCLA removal or remedial action conducted entirely at the Facility; any CERCLA response actions undertaken at the Facility, including the off-shore islands, shall comply with CERCLA, 42 U.S.C. § 9601, et seq. and the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300. Nothing in this Agreement shall alter the Navy's authority with respect to removal actions conducted pursuant to CERCLA Section 104(a)(2), 42 U.S.C. §9604(a)(2).

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

97. Notwithstanding compliance with the terms of this Consent Order, Respondent is not released from liability for the costs of any response actions taken by EPA. EPA reserves any rights it may have to seek reimbursement from the Respondent for any such costs incurred by the

EPA. Respondent reserves any rights it may have to challenge such an action.

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

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

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

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

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

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

XXII. OTHER CLAIMS

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

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

106. In any subsequent proceeding initiated by EPA or on behalf of EPA for injunctive or other appropriate relief relating to the Facility, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue

preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by EPA or on behalf of EPA in the subsequent proceeding were or should have been raised in the present matter.

XXIII. NOTICE OF NON-LIABILITY OF EPA

107. By issuance of this Consent Order, EPA assumes no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. EPA shall not be deemed a party to any contract involving the Navy and relating to activities at the Facility and shall not be liable for any claim or cause of action arising from or on account of any act, or the omission of the Navy, its officers, employees, contractors, receivers, trustees, agents or assigns, in carrying out the activities required by this Order.

XXIV. MODIFICATION OF THIS CONSENT ORDER

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

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

XXV. ENFORCEMENT

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

XXVI. FUNDING

111. It is the expectation of the Parties to this Agreement that all obligations of the Navy arising under this Agreement will be fully funded. The Navy agrees to seek sufficient funding through its budgetary process to fulfill its obligations under this Agreement. Failure to obtain adequate funds or appropriations from Congress does not, in any way, release Navy from its obligation under this Consent Order to comply with RCRA, or any applicable law or regulation. If sufficient funds are not appropriated by the Congress as requested and existing funds are not

available to achieve compliance with the schedules provided in this Consent Order, EPA reserves its right to initiate any other action which would be appropriate absent this Consent Order.

1. Any requirement for the payment or obligation of funds, including penalties, by the Navy established by the terms of this Agreement shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted. In the event of the Navy reassuming responsibility for work pursuant to Section X of this Consent Order, Navy's obligations are suspended in the event of insufficient availability of appropriated funds, if the Navy, upon resumption of its responsibilities, makes a timely request to Congress for such funds.

2. Navy has informed EPA that funding authorized and appropriated annually by Congress under the BRAC appropriation in the Department of Defense Appropriations Act and proceeds made available to the BRAC account will be the sources of funds for activities required by this Agreement. However, should these sources be inadequate in any year to meet the total Navy's implementation requirements under this Agreement, the Navy will prioritize and allocate that year's appropriation or funds available. In the event of the Navy reassuming responsibility for work pursuant to Section X of this Order, the Navy will use best efforts to find funding to allow the work to proceed without delay and if complete funding cannot be obtained immediately, to proceed with work that can be funded. The Navy's obligations are suspended in the event of insufficient availability of funds, provided that the Navy, upon resumption of its responsibilities, makes a timely request to Congress for such funds. Navy has informed EPA that the Navy plans to treat its activities implementing this Order as Installation Restoration matters consistent with Title 10 Chapter 160, which requires that those activities be consistent with CERCLA and the NCP.

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

XXVII. TERMINATION AND SATISFACTION

4. The provisions of this Consent Order shall be deemed satisfied and the obligations of Respondent under this Consent Order shall terminate upon Respondent's receipt of a written statement from EPA stating that Respondent has completed, to EPA's satisfaction, as noted in Paragraph 116, below, the terms of this Consent Order. Termination of this Consent Order will be subject, unless otherwise agreed, to Respondent's on-going obligations to comply with provisions within Sections VIII (Work To Be Performed), the annual reports on Land Use Controls or other institutional and engineering controls, and transferred parcels (Paragraph 27(G)); XIV (Sampling, Access and Data Availability)(Paragraphs 48, 51-54); XVI (Record Retention); XXI (Reservation of Rights); XXVI (Funding); and XXVIII (Public Comment on this Consent Order and Decisions Made Pursuant to this Consent Order)(Paragraph 122) of this Consent Order, and to maintain

institutional and engineering controls and to satisfy any other on-going obligations. So long as Respondent is performing work pursuant to, or required by this Consent Order, this Consent Order shall not be deemed terminated or satisfied.

5. Upon the satisfactory completion of all required actions, including all corrective action for which the Navy and all Third Parties are responsible, and upon written request by Respondent, EPA shall endeavor to send to Respondent a written notice of satisfaction of the terms of this Consent Order as soon as practicable. The notice will state that EPA considers Respondent to have satisfied the terms of this Consent Order.

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

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

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

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

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

10. Following the public review and comment on the draft Final CMS Report and, as warranted the draft Final CMI Work Plan, EPA shall notify Respondent in writing of the

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

11. Respondent shall establish and maintain a Public Repository, located within 5 miles of the Facility, where the public may inspect all documents developed pursuant to this Consent Order or referenced in this Consent Order. Within ten (10) days of the effective date of this Consent Order Respondent shall place at least one (1) paper copy of all documents developed pursuant to this Consent Order or referenced in this Consent Order in the Public Repository, or for documents developed following the effective date of this Consent Order, within twenty one (21) days of EPA's request that such document be placed in the Public Repository. Respondent shall continue to maintain this Public Repository until this Consent Order is terminated pursuant to Paragraph 116 of Section XXVII, above. Respondent shall provide Spanish translations of the documents noted below (following EPA's conditional approval of the English version of the document), and as directed by EPA: Public Notices; Fact Sheets and other descriptive summaries of important documents to assist in public outreach; and summary sections of important reports and/or of work plans (but not the full report/work plan). The intention of the parties is to provide translations consistent with EPA, Region 2's Policy on Translations and Interpretations, dated December 10, 1997. EPA reserves its right to ask Respondent to translate additional materials consistent with this Policy, where EPA deems such translation to be important. If EPA requests that the Navy translate additional materials, this, upon the Navy's request, will be subject to approval by the EPA Deputy Regional Administrator and if approved, the Navy will be provided with a writing confirming the Deputy's approval of EPA's request.

XXIX. SEVERABILITY

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

XXX. EFFECTIVE DATE

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

XXXI. CONSENT

In The Matter of:

United States Department of the Navy
Naval Activity Puerto Rico,
formerly Naval Station Roosevelt Roads
Puerto Rico

Agreed this 12 day of January, ~~2006~~ 2007.

By: Signature:  _____

Print Name: B. J. Penn: _____

Title: Assistant Secretary of the Navy for Installations and Environment (ASN (I & E))

Respondent's name and address: United States, The Department of the Navy

In The Matter of:

United States Department of the Navy
Naval Activity Puerto Rico,
formerly Naval Station Roosevelt Roads
Puerto Rico

It is so ORDERED and Agreed this 24th day of January, 2007.

By: Alan J. Steinberg
Alan J. Steinberg
Regional Administrator
Region 2, U.S. Environmental Protection Agency