

N62661.AR.002880  
NS NEWPORT  
5090.3a

LETTER REGARDING U S NAVY POSITION ON ISSUES RELATING TO THE EXTENSION  
DENIAL DISPUTE REGARDING SUBMISSION OF FINAL DRAFT WORK PLANS FOR  
OPERABLE UNITS 3, 4, 5 AND 6 AND ASSESSMENT OF STIPULATED PENALTIES WITH  
TRANSMITTAL LETTER NS NEWPORT RI  
11/25/1992  
NAVFAC MID ATLANTIC

*Amplitude*

NOV 25 1992

Mr. John Johnson, Chief  
Federal Facilities Branch  
Waste Management Division  
U.S. Environmental Protection Agency  
345 Courtland Street, NE  
Atlanta, GA 30365

40

Re: NAVY POSITION ON ISSUES FOR DISPUTE RESOLUTION UNDER NAS CECIL  
FIELD, FEDERAL FACILITY AGREEMENT (FFA)

Dear Mr. Johnson:

In accordance with the requirements of Section XXVI, Resolution of Disputes of the NAS Cecil Field, Federal Facility Agreement, the enclosed **POSITION SUMMARY** is provided in order to relay to you the Navy's position on those issues relating to the current extension denial dispute. Per our letter of October 30, 1992, the Navy invoked dispute resolution in light of EPA's recent decision to deny our request for an extension in submission of the Final Draft Work Plans for Operable Units 3, 4, 5, and 6, and for your assessment of stipulated penalties under Section XXII Stipulated Penalties of the FFA. You will note that we have identified three primary as well as two secondary issues which we feel need to be discussed in the dispute resolution context.

It is our desire that prior to the initiation of formal dispute resolution discussions that EPA and FDER provide the Navy with similar position statements so that a consensus can be reached as to all relevant issues to be discussed in that forum. We also propose holding the previously agreed upon programmatic issues meeting prior to, yet separate and apart from, these dispute discussions. I have requested Mr. Cliff Casey to coordinate such matters with Mr. James Hudson of your office and the appropriate FDER representatives. Mr. Casey may be reached at (803) 743-0561.

Sincerely,

Copy to:  
FDER

**SIDNEY L. ALLISON**  
**DIRECTOR**  
**ENVIRONMENTAL DIVISION**

Blind copy to:  
ASN (ELA, Pete Kushner)  
CNO (Dave Olsen)  
COMNAVFACENGCOM (Code 18)  
NAS Cecil Field (John Dingwall)  
COMNAVAVNACTS (Jerry Wallmeyer)  
COMNAVAILRANT (Chuck McGuire)

09B  
18  
185 File  
1852  
Daily

18  
09CB  
185  
1852X

## INTRODUCTION

This **POSITION SUMMARY** is provided in accordance with Paragraph C.1 of Section XXVI Resolution of Disputes of the Naval Air Station Cecil Field, Federal Facility Agreement. We hope that this document will serve to facilitate discussions between the FFA parties on those issues which we believe are pertinent to the current schedule extension denial dispute. It is not intended as an all encompassing position statement but rather as an overview of the Navy's position on those issues.

## PRIMARY ISSUES

### **ISSUE I - TIMELINESS OF NAVY EXTENSION REQUEST**

#### **A. Adjustment to Primary Document Due Date**

EPA's denial letter implies that the Navy failed to request an extension for submission of the Final Draft Work Plans for Operable Units 3, 4, 5, and 6, until one day after those documents were due thus making the request untimely. We believe this to be incorrect, however, because the Navy did not receive EPA's final comments on the initial draft work plans for those OUs until April 24, 1992. Therefore, the original August 12, 1992 due date was effectively extended until August 24, 1992. Paragraph G.5 of Section VIII Consultation with USEPA and FDER sets forth the Navy's response obligation as follows:

- "5. ... Within sixty (60) calendar days of the close of the Navy's response period to U.S. EPA and FDER comments on a draft primary document, the Navy shall transmit to U.S. EPA and FDER a draft final primary document, which shall include the Navy's response to all written comments received within the comment period." (emphasis added)

A reasonable interpretation of Paragraph G.5 would lead one to conclude that the 120 day response period started upon the Navy's receipt of both EPA's and FDER's final comments on the draft work plans for OUs 3, 4, 5, and 6. Hence, we believe the Navy's August 13, 1992 request was submitted in a timely fashion. This is not a new interpretation on the Navy's part. By letters dated February 26, 1991 and September 9, 1992, the Navy had previously advised EPA that we viewed our response obligation to start only upon our receipt of both EPA's and FDER's final comments on our draft primary document submissions.

### **B. Prior Notice of Need Provided to EPA**

Even assuming that the above cited FFA language could be interpreted such that the Navy's August 13th request was untimely, EPA was clearly not prejudiced as a result because it was aware as early as December of 1991 that the schedules for all operable units would need to be extended. By letter on December 2, 1991, the Navy notified EPA that the schedules would require modification (based on preliminary field data) during the January to February 1992 timeframe when we estimated that a better understanding of the potential impacts on existing schedules could be obtained. In addition that letter indicated that successive investigative sets (i.e., OU's 3, 4, 5, & 6) would need schedule flexibility. Pending receipt of sufficient information to gauge necessary changes to the current schedule, the SMP was presented in order to satisfy an FFA requirement. By letter dated December 7, 1991, FDER acknowledged this notification of the need to modify schedules in the January/February 1992 timeframe. No comment was received from EPA regarding this initial notice. However, by letter dated December 12, 1991 EPA confirmed that the established schedules were "ambitious."

As a follow-on to our initial notice, the Navy, with EPA and FDER concurrence, scheduled an RPM meeting for 17 December 1991 to discuss schedules. The EPA RPM did not attend nor provide any advance notice that no one from EPA would attend. The Navy subsequently learned that this RPM had been removed from all Florida projects at the request of FDER. The Navy believes that EPA's failure to participate precipitated discontinuity and a lack of coordination in the scheduling of work and necessary modifications to the SMP. Further discontinuity resulted from the follow-on transition in EPA's RPMs.

In a January 15, 1992 letter the Navy again notified EPA that the original schedules needed to be changed referring specifically to our December 2nd letter and a January 9th telephone conversation to that effect. This letter also indicated that in order to effectively manage the amount of work undertaken for Investigative Set #2 (i.e., OU's 3, 4, 5, & 6) that the necessary work plans should be developed after completion of all field work for Set #1 (now expected to be completed by Summer 1993). Further, the Navy also requested a meeting in mid-February to establish schedules agreeable to all parties. EPA responded in a letter dated January 24, 1992, that since the work plans for OU's 3, 4, 5, 6, could be provided by this timeframe that they should be submitted. That letter did not specifically address the Navy's comment/concern regarding our ability to execute the work plans once completed. The Navy submitted its single phase source only work plans to satisfy the SMP schedule but remained concerned about our ability to actually execute these work plans and the utility of proceeding with single phase source only work plans.

During a March 17, 1992 RPM meeting in Atlanta, the Navy reiterated to EPA that we needed to extend the schedules for execution of OU's 3, 4, 5, and 6. The Navy presented a handout showing current and proposed expedited schedules and a division of Investigative Set #2 into multiple sets. Agreement could not be reached concerning these schedules and the meeting was adjourned with this issue unresolved. However, in a letter dated April 10, 1992, EPA contended that the Navy had agreed to a August 12, 1992 due date for the draft final work plans for OU's 3 through 6. We would note that the Quarterly Progress Report dated April 22, 1992 clearly contradicts that assertion.

A RPM meeting was scheduled at the request of the Navy on May 21, 1992 with the specific purpose of presenting current site information, to describe the new requirements for groundwater investigations, the resulting changes in timeframes to perform the investigations and the impact to overall schedules in the SMP. In the meeting it was agreed that the Navy would look at the entire process including existing schedules and how we were doing business and develop a new scope and new schedules on account of those major modifications in the field work which had to be implemented. It was certainly our impression that all parties recognized the need to revise the SMP in September and agreed to review proposed changes by the Navy. This meeting concluded with the understanding that schedule modifications were required. This in turn, precipitated the Navy's June 10, 1992 Rescoping and Proposed Changes submission which we believe clearly describes the Navy's approach to the investigations and new schedules for OUs 1, 2 and 7. Additionally, that submission identified the need to revise the work plans for OUs 3, 4, 5 and 6, to include groundwater investigations and proposed a timeframe following completion of a Technical Memorandum for supplemental work activities at OUs 1, 2 and 7. This submission was provided in the general framework of the May 21 RPM meeting. The Navy's rescoping submission specifically provided that in order to accommodate Navy resources, future investigative sets will be grouped as follows:

- Set I Operable Unit 3 (sites 7, 8)
- Set II Operable Unit 6 (site 11)
- Set IV Operable Unit 5 (sites 14, 15)
- Set V Operable Unit 4 (site 10)

In addition to the above, our June 10, 1992 submission further indicated that the work plans for Investigative Set II and succeeding sets will follow the approach identified above and that the work plans for those sets currently under review will be modified to incorporate this approach. EPA responded to this submission with a letter dated July 13, 1992 which did not specifically comment on OUs 3, 4, 5, and 6. The Navy took this as EPA concurrence with our approach since numerous other unrelated comments were

provided. The Navy subsequently documented this understanding in the Quarterly Progress Report dated July 22, 1992. Section 3.3, of that report states:

**"The Navy proposed to review the process and make changes associated with the program. The Navy notified the other RPM's that the schedules were being revised to reflect new information."**

In a telephone call from the cognizant RPM on August 13, 1992, EPA for the first time notified the Navy that our June 10, 1992 submission was not considered to be a formal extension request for OUs 3, 4, 5, and 6. Although we believed that such notice was both untimely and substantively inadequate, the Navy nevertheless prepared and telefaxed our August 13th request to EPA. In that letter we specifically requested that a meeting be held to discuss the matter further.

In sum, the fact is that for quite sometime EPA has been aware that both because of substantial EPA redirection and significantly differing site conditions being encountered at the Cecil Field sites that additional time would be needed to rework the draft work plans so that they would accurately reflect the appropriate measures necessary to effect the timely clean-up of all the operable units. At the very least, as was acknowledged in EPA's extension denial letter, EPA aware from our June 10th letter that the Navy desired to receive an extension for the submission of the draft final work plans for those particular OUs. Hence, we believe that EPA had the obligation consistent with Paragraph D of FFA, Section XXIV Extensions, to indicate in a timely fashion, whether an extension would or would not be considered/granted based upon the grounds presented and if not, why not. In the alternative, we believe that EPA had the obligation to inform the Navy whether our request was being rejected because it failed to meet the minimum FFA requirements. To date, EPA has not provided any specifics on why our revised work plan submission dates are unacceptable. Instead, the only real input we have received from EPA is that our proposed end dates are unacceptable.

Overall, it is our perception that, to date, EPA has essentially attempted to rely upon the technical requirements of Section XXIV as the basis for refusing to recognize the clear need for some significant schedule revisions. We find such a position to be unacceptable because it violates both the general spirit and intent of the FFA. In our view, the essential question surrounding all extension request approval/denial determinations should be whether substantive entitlement exists and not whether document conformity requirements have been satisfied unless such non-compliance literally precludes EPA's ability to assess entitlement. In this instance, should EPA truly have been unable to determine whether or not good cause did exist then it should have rejected that request in a timely fashion with the appropriate rationale provided for doing so.

## ISSUE II - "GOOD CAUSE" BASIS FOR EXTENSION

### A. Relation to Penalty Assessment

Paragraph A of the Cecil Field FFA, Section XXII, Stipulated Penalties, provides that in the event the Navy fails to submit a primary document to the EPA or FDER pursuant to the appropriate timetable or deadline that EPA may assess a stipulated penalty against the Navy. However, Paragraph B states that the Navy shall not be liable for any stipulated penalty assessed if the "failure" in question is determined through the dispute resolution process not to have occurred. Thus, if "good cause" did exist for the granting of an extension for the submission of the draft final work plans for OUs 3, 4, 5, and 6, then there would have been no such "failure" on the part of the Navy to have complied with any applicable FFA deadline. Given the fact that for the reasons provided below that we believe good cause did and still does exist for the extension of the August 24, 1992 due date we likewise believe that EPA's assessment of stipulated penalties in this instance was not appropriate.

### B. Existence of "Good Cause"

#### 1. EPA Directed Scope Changes

One factor which the Navy believes has contributed significantly to the delays encountered in finalizing the Final Draft Work Plans for OUs 3, 4, 5, and 6 has been the inconsistent direction which successive EPA RPMs have given to the Navy as to the proper scope of the site/remedial investigations for all of the OUs at Cecil Field. In such regard we must note that EPA has assigned four different RPMs to this project since the FFA was signed in October of 1990 and that three of those have been within the last year alone.

As pertinent background, the original draft final work plan developed in 1990 by the Navy's contractor Brown & Caldwell addressed initial field work for all the operable units at Cecil Field. That plan was developed consistent with early direction received from the cognizant EPA RPM, Ms. Nancy Dean. The approach developed at that time included a two phase investigation of both source and groundwater contamination consistent with EPA guidance. However, when Ms. Michelle Glenn took over as the Cecil Field RPM in January of 1991, she directed a substantial change in the direction of the site investigation work by requiring that the Navy pursue a single phased "source only" remediation approach with groundwater operable units to be defined and investigated at a later point in time. We presume she did so solely because it would allow EPA to obtain remedial action "credits" much sooner. However, this redirection required the Navy's follow-on contractor, ABB-ES, to rework Brown & Caldwell's work plan. It

also represented the first of two substantial changes to the scope of all work plans which resulted in significant delays and additional costs which, to date, EPA has essentially refused to fully take into account.

In a rather high level meeting on May 7, 1991, the Navy, EPA and FDER established guidelines for pursuing the aforementioned single phase "source only" site investigations. It was understood by the parties in attendance that should site conditions require additional rounds of field investigations that appropriate extensions would be identified and approved. Thereafter on September 5, 1991, EPA and FDER approved the Navy's "source only" draft final work plan. Consistent with the single phase source only approach, Ms. Glenn provided her comments on our draft 1992 Site Management Plan (SMP) and requested that the Navy provide for separate groundwater OUs. The groundwater OUs were to be initiated subsequent to the completion of the source OUs. Subsequently, on November 20, 1991 the Navy submitted a final revised "source only" 1992 SMP which EPA then approved on December 12, 1991. Thus, it is clear that as late as January of this year, the Navy, based upon EPA direction, was actively pursuing purely a single phased source only approach for the Cecil Field operable units.

The second significant redirection of the Navy's investigative efforts occurred in March of 1992 when the cognizant EPA RPM (Ms. Glenn) directed that the Navy essentially switch back to its pre-1991 approach and incorporate groundwater remediation into its OU work plans. This redirection was documented in a April 22, 1992 QPR (for Jan-Mar 92 timeframe) which stated that:

"The Investigative Set #2 Draft Work Plans currently under review by the FFA parties have followed the first concept (source identification) proposed by the USEPA. The Navy will modify the work plan to include groundwater delineation, the second concept proposed by the USEPA."

At a subsequent May 1992 RPM meeting, the Navy gave a presentation to EPA on the status of its remedial investigations at OU's 1, 2, and 7 and identified data gaps and new field work efforts. At that meeting, EPA's new direction to investigate groundwater was discussed and it was agreed that the Navy would submit a revised approach with realistic schedules and milestones by June 10, 1992. Based upon this discussion, the Navy indicated that it would shelve the development of the work plans for operable units 3, 4, 5, and 6, as the work under those plans would not be achievable in the near future and thus, their early development would be inappropriate. Thereafter, the Navy in attempting to formulate a workable remedial approach which took into consideration current and future human resource demands/limitations decided that the best

approach would be to separate Investigative Set #2 into multiple sets with their own schedules. We felt then, and still believe, that this approach was fully in keeping with the strategy consensus reached at the May RPM meeting.

Although the Navy certainly agrees based upon the data we have obtained to date that the most appropriate approach should be to consider both groundwater and source concurrently, we are having a difficult time accepting EPA's apparent reluctance to recognize the extent of the impact which this simultaneous approach has had upon progress towards expediting remediation. At the very least, the extensive nature of the scoping discussions, reviews and approvals required in light of such redirection have resulted in significant delays. As was so noted in the April 22, 1992 QPR, all parties to the FFA needed to "continue discussions on this aspect to have an agreement in place by the FY 93 Site Management Plan submittal." And as we later noted in our June 10, 1992 Rescoping Document the Navy "intends to revise these work plans immediately following the finalization of the work plan Technical Memorandum for Investigative Set I and concurrent with the second round of Investigative Set I field work."

In sum, because of the nature of those changes which EPA mandated and because we believe that the Navy has responded in a responsible fashion to EPA's directions in such regard by providing technically supportable work plans and proposed work schedules, we find it impossible to accept EPA's current contention that the Navy by it's own accord has failed to meet it's documentary obligations under the FFA.

## 2. Growth in Scope

In addition to EPA's redirection of the Navy's prior investigative efforts at Cecil Field, the overall size and complexity of the scope of effort required for full remediation of the identified operable units has dramatically increased from what was initially anticipated based upon available historical data. Such data was derived from interviews with installation personnel and preliminary investigative reports. As just one example, PSC 3 which was reported to be a 50 foot diameter waste oil pit turned out to be multiple pits and trenches of varying dimensions spread out over several acres. As a result of such findings, additional site investigations have been required in order to finalize the requisite RI/FS reports. Additionally, the ecological risk assessments in support of the Remedial Investigation have had to be significantly expanded in order to address those concerns which have to date, been expressed by all of the Natural Resource Trustees.

Specific support for the Navy's extension request under these circumstances can be found in the terms of the FFA. Paragraph H of Section XXIII Deadlines states in pertinent part:

"...The Parties recognize that one possible basis for

extension of the deadlines for completion of Remedial Investigation and Feasibility Study Reports is the identification of Significant New Site Conditions during the performance of the remedial investigation."

### 3. Prior Extension Approval

In addition to the existence of "good cause" for an extension for Ous 3, 4, 5, and 6, we also believe that the assessment of stipulated penalties in this instance is inappropriate because EPA had already granted the Navy an extension for OU's 3, 4, 5, and 6 until December 1, 1992. Notification to that effect was provided to the Navy via a facsimile letter sent by Ms. Allison Drew (the then cognizant EPA RPM) on August 25, 1992. Because it was routine procedure for EPA to first fax to the Navy copies of correspondence which was to be mailed the Navy had no reason to question the validity of that extension. Although not providing any justification for the date chosen, Ms. Drew's letter did clearly indicate that EPA was extending the due date for the Final Draft Work Plans for OU's 3, 4, 5, and 6, until December 1, 1992 unless prior to such time, an alternate submittal date was agreed to by the parties.

Paragraph G of Section XXIV, Extensions, of the FFA states that following the granting of any extension, an assessment of stipulated penalties may only be sought to compel compliance with the timetable and deadline or schedule "as most recently extended." Although we now understand that EPA wishes to disavow Ms. Drew's unsigned/undated facsimile, we cannot accept that position since we relied upon it the normal course of good-faith dealings with your agency. We would note in such regard that Ms. Drew's facsimile extension was identical in content to both the original facsimile and follow-on signed extension letter for OU's 1, 2, and 7.

## ISSUE III - REASONABLENESS OF THE PROPOSED SCHEDULES

### 1. Acknowledgement of Scope Growth

The Navy believes that the schedules which we have proposed in our submissions to date are reasonable in that they properly take into account the current magnitude and complexity of both the field and project administrative work efforts associated with fully investigating the rescoped operable units at the Cecil Field. The inclusion of groundwater efforts into our assessment and remediation of these units has unquestionably increased the magnitude of the total work effort by several factors. This, in turn, has resulted in the need to pursue these sites consecutively rather than concurrently as had been initially planned and as was originally reflected in our 1992 SMP. Such a shift in

work approach has produced what appears to be a dramatic increase in the some of the timetables associated with achieving complete site remediation at all operable units. However, we fully believe that these schedule adjustments were/are required as a necessary response given such a significant increase in scope.

## 2. Mutual Resource Constraints

In addition to being technically supportable, the Navy believes that the schedules which we have proposed are as realistic as possible taking into account real world resource constraints. We must note that these constraints apply to both parties and we find it difficult that EPA should demand greater schedule acceleration when it's own personnel are unable to meet the expedited review/comment schedules which EPA has already agreed to. Clearly, expedited scheduling is a two edged sword which requires resource commitments by all parties adequate to meet the expected workload demands.

It is our perception that EPA has been unwilling to recognize the total level of effort required by both Navy and associated contractor personnel in assessing the adequacy of a proposed schedule. Instead, it appears that EPA simply looks at the proposed end date in order to make that determination. As is reflected in Enclosure (1), the critical path diagram for OUs 1, 2 ,and 7, the Navy has undertaken and will continue to undertake significant labor intensive investigative efforts at NAS Cecil Field. We assume that EPA would agree that the Navy should not commit to work schedules which realistically cannot be met.

In addition to the aforementioned, it has also been our perception that in assessing the reasonableness of the level of effort the Navy was expending or was willing to expend in the future towards remediation at naval facilities under Region IV jurisdiction, EPA has generally failed to keep in mind the fact that the Navy's Installation Restoration Program is nationwide in scope. This program essentially commits the Navy to identify, assess and remediate literally hundreds of contaminated sites at numerous installations throughout the country within the annual resource constraints established by Congress through the Defense Environmental Restoration Account (DERA) appropriations process. In our view, if EPA would choose to look at the Navy's efforts in this context, a better understanding could be reached regarding the general negative effect that resource requirement changes (i.e., the compression of remediation schedules) at one installation will have upon similar schedules at other installations. We believe this "ripple effect" which will only become more pronounced in the future as the Department of Defense further reduces in size, must be factored into EPA's "reasonable progress" equation.

The Navy believes that the most effective avenue for promoting meaningful progress towards final environmental restoration is for EPA Region IV and SOUTHDIV

to work together to identify those sites at which measured remedial efforts will yield maximum return. We feel we have proposed a mixed approach for site remediations at Cecil Field which will address not only "worst first" considerations but will provide adequate evidence to Congress and the general public that appropriate steps are being taken to deal with existing installation environmental problems.

In the context of jointly working to promote expeditious site remediation it must be recognized that reciprocal reductions in timelines are not always possible. In the past, when EPA has indicated a willingness to reduce comment or review periods, it always seems to demand that a similar timeline reduction be agreed to by the Navy. However, as we have previously expressed to EPA, the Navy agrees to timeline schedules based upon critical path considerations. Thus, our general approach in developing reasonable timelines/deadlines has been to submit our "best expectations" up front. Obviously, a failure to meet one or more of these agreed to requirements without adequate justification can result in stipulated penalty liability. Hence, while EPA can offer timeline consolidations without monetary risk, the Navy, unfortunately, cannot. Therefore, reciprocity has significant limitations based upon such unshared risk.

It is our intent to initiate separate discussions in the near future with both EPA Region IV and FDER representatives on how to best streamline the regulatory concurrence process. Under a SOUTHDIV Total Quality Leadership (TQL) initiative, we have been analyzing the CERCLA driven Navy Installation Restoration (IR) program in hopes of improving the various processes encompassed under it and have developed a macro flow chart which should serve to facilitate such discussions.

## SECONDARY ISSUES

### ISSUE I - RETROACTIVE APPLICATION OF PENALTIES

Apart from the issue of the whether it was appropriate for EPA to have asserted stipulated penalties in this instance, the Navy believes that the retroactive application of such penalties as so indicated in EPA's denial letter would not be consistent with FFA requirements for two reasons. First, as called for in Paragraph B of FFA Section XXII, Stipulated Penalties, EPA failed to provide timely notice to the Navy that EPA believed we had failed to meet an appropriate deadline and that on account of such failure stipulated penalties were accruing. And secondly, since EPA did not officially notify the Navy of it's extension denial decision with respect to Ous 3, 4, 5, and 6 until it's October 20, 1992 letter, that consistent with Paragraph G of FFA Section XXIV, Extensions, an assessment of stipulated penalties should not have begun until after that decision had been reached. Paragraph G states in pertinent part:

"G. A timely and good faith request for an extension shall toll any assessment of stipulated penalties or application for judicial enforcement of the affected timetable and deadline or schedule until a decision is reached on whether the requested extension will be approved..."<sup>1</sup>

## **ISSUE II - LEVEL OF JOINT COOPERATION**

In the extension denial letter EPA contends that the Navy has shown an unwillingness to cooperate as evidenced by our supposed refusal to provide reasonable schedules which demonstrate "an acceptable level of commitment" to timely site remediation. The Navy flatly rejects this contention and can only attribute the same to an apparent change in EPA position on what constitutes "meaningful" progress towards site remediation.

Historically, the agreed upon approach for site prioritization has been to attack the worst sites first. Typically though, the worst sites are often also the largest and most complicated and require the most time in studies to evaluate. This has resulted in the perception that the Navy is moving too slowly with resulting pressure to move faster. EPA has received very similar criticism and resulting pressure to do more cleanups. The October 20th remediation initiative we sent to you was geared to address this perception of slow progress and was provided in the spirit of our September 18th meeting. It reflects a change in the NAS Cecil Field IR program to include early remedial action opportunities. However, it must be recognized that the 1991 and 1992 SMPs which were agreed to by all parties were not in this direction. And while developing such initiatives may well produce earlier remediations, even they will take some time. In addition, it must be recognized that since Navy's IR program is a rather massive effort, rapid changes can be disruptive and that as a result, efforts must be made to keep such disruptions to a minimum.

Successful execution of RI/FS studies relies upon a willingness by all parties to work in a cooperative manner. The Navy's willingness to work with all parties has been evidenced by our response to EPA's direction changes including the rewriting of work plans. As the field activities were performed and changes in approach to the investigations became evident the Navy initiated efforts to redirect resources and propose

---

<sup>1</sup> The Navy recognizes, however, that pursuant to the remainder of Paragraph G that should our extension request be denied through dispute resolution channels that stipulated penalties could be assessed from August 24, 1992, the draft final document due date.

new schedules and milestones to the FFA parties. Through numerous letters, memorandums and telephone discussions the Navy has clearly shown a willingness to cooperate. However, the Navy cannot agree to unachievable schedules or the commitment of resources which is inefficient or ineffective.

Administratively, the Navy believes that EPA has failed to provide decision-making RPMs as it agreed to do in our May 7, 1991 meeting. This fact in conjunction with the high rate of EPA RPM turnover evidences a lack of commitment by EPA. In addition, in our view, those RPMs which have been assigned have tended to impose an enforcement attitude at meetings and in correspondence which we believe interferes with their oversight role.

EPA has not allowed for a working level meeting even at the request of the Navy and continues to press for reciprocal reductions in document preparation/review times. Along with the SMP the FFA parties developed an informal expedited schedule. However, the attachment of aggressive schedules to a process with many unknowns requires flexibility by all parties. We believe that EPA's reluctance to modify schedules in light of changing criteria has significantly obstructed the remedial progress.

In addition to the aforementioned "unwillingness to cooperation" contention EPA's extension denial letter also indicated that the Navy was unwilling to "address key programmatic issues which EPA feels are central to progress at Naval installations in general and that at this meeting the Navy simply reiterated the point that the schedules in their present form are realistic and little or no change could be made due to contract administration requirements. We believe that these statements do not accurately characterize what was discussed and mutually agreed to by all parties.

It is our perception that it was specifically agreed that the parties would limit discussions that afternoon to the specific problems at Cecil Field and that broader programmatic issues would be discussed at a later point in time. The Navy never refused to discuss those issues. In addition, contrary to the indication that the Navy merely reiterated that no schedules changes could be made, the fact is that we specifically agreed to submit a revised Site Management Plan with new schedules which would specifically focus on potential remediation opportunities. Consistent with that agreement we submitted on October 20 a new SMP and Early Assessment and Removal Initiative wherein we proposed expediting remediation at PSC 11.

## CONCLUSION

The Navy believes that the aforementioned primary and secondary issues need to be addressed so that the FFA parties can best promote our common interests in facilitating remedial activities at Cecil Field as well as the other Navy activities.

We look forward to meeting with EPA and FDER representatives to discuss these issues as well as any related issues others which either agency may wish to discuss. We believe that those broader programmatic issues which may be of interest to all the parties should be addressed in a separate forum tailored for that purpose. In such regard, the Navy pledges to cooperate in any joint effort to arrange such discussions at an appropriate place and time.

copy to:  
FDER

**NAS CECIL FIELD  
IR PROGRAM  
KEY EVENTS**

| DATE                                  | EVENT  | COMMENTS  |
|---------------------------------------|--|---|
| 1. March 1990                         | USEPA letter to Navy   | Substantiates the original approach towards site investigations is phased.  |
| October 26, 1990                      | FFA signed for NAS Cecil Field   |   |
| 2. November 1, 1990                   | Notification of USEPA RPM  | Nancy Dean is the first USEPA RPM under FFA.  |
| December 1990                         | RPM Meeting<br>Draft Final Workplan prepared by Brown & Caldwell                                   | Addresses field work for all OUs.   |
| January 1991                          | USEPA Switches RPM<br>USEPA redirects investigation process<br>ABB-ES completely revises Workplans | Michelle Glenn named new USEPA-RPM<br>Source investigation only to be accomplished.   |
| 3. February 26, 1991                  | Navy's response procedure letter   | Navy's letter indicates the start of a revision or response period begins only after the receipt of comments from both FDER and USEPA.                        |
| 4. March 28, 1991<br>*(April 1, 1991) | USEPA letter comments on draft workplan for OUs 1, 2 & 7   | High priority should be given to sites with high levels of contamination. 157 additional comments were made to workplan which was previously reviewed by EPA. |
| May 7 & 8, 1991                       | Navy/USEPA/FDER meeting  | Discussed the Site Management Plan (SMP) concept and schedules for Naval Activities. Guidelines established for source investigation.                         |
| 5. May 13, 1991                       | Minutes of May 7,8 meeting see above.  |   |
| 6. July 29, 1991                      | Navy letter to USEPA regarding comments/correspondence   | USEPA comments are judgmental and not conducive to a working relationship.  |

| <p style="text-align: center;"><b>NAS CECIL FIELD<br/>IR PROGRAM<br/>KEY EVENTS</b></p> |   |   |
|---|---|---|
| DATE  | EVENT   | COMMENTS  |
|   | Draft Final Workplan approved by USEPA/FDER   | Source Investigation only.  |
| 7. September 5, 1991  |   |   |
| September 6, 1991<br>*(September 6, 1991)   | USEPA Letter provides comments on the Draft Site Management Plan dated August 28, 1991.         | USEPA requests Navy to provide <u>separate</u> Groundwater OUs.   |
| October 5 1991  | Field work began  |   |
| 8. October 31, 1991   | Navy's response to USEPA comments on SMP  | Groundwater OUs discussed.  |
| November 5, 1991  | USEPA and FDER visit work sites   | Meeting held to discuss field work activities and progress.   |
| November 20, 1991   | Navy submitted revised SMP  | Source Investigation only.  |
| 9. December 2, 1991   | Navy's letter indicates 1992 SMP schedules will require revision based on field screening data. | Field investigation screening data indicates extent of contamination is greater than reported site history.                     |
| 10. December 7, 1991  | FDER approval of 1992 SMP   | FDER acknowledges schedules will require modification in January/February 1992 timeframe.                                       |
| 11. December 12, 1991<br>*(December 16, 1991)   | USEPA approves SMP  | USEPA RPM, Michelle Glenn states schedules are ambitious  |
| December 17, 1991   | RPM Meeting   | USEPA does not attend and did not give notice. Navy/FDER attends. Navy discussed new site information and changes in schedules. |
| 12. January 2, 1992   | USEPA advises Navy by letter of changes in RPM  | Allison Drew named new RPM effective January 10, 1992.  |
| 13. January 15, 1992  | Navy letter forwarded to USEPA and FDER   | Significant new Site Information-Affects Schedules. Navy notifies EPA that OUs 3, 4, 5 and 6 schedules must be revised.         |
| 14. January 22, 1992  | Navy Quarterly Progress Report  | Significant new findings, Groundwater needs to be investigated concurrently with source investigation.                          |

| NAS CECIL FIELD<br>IR PROGRAM<br>KEY EVENTS |   |   |
|---|---|---|
| DATE  | EVENT   | COMMENTS  |
| 15. January 24, 1992                        | USEPA letter indicating not to separate Groundwater and Source OUs.   | Submit addendum for OUs 1,2 & 7. Schedule work to coincide with execution of field work for OUs 3,4,5 & 6. Under this scenario all field work for all sites would take place simultaneously.  |
| February 14, 1992                           | USEPA/Navy/FDER meeting   | Tour of NAS Cecil Field for new RPM. Discussed impacts of new site information on schedules.  |
| February 16, 1992                           | Workplan for OUs 3,4,5 & 6 submitted                                  | Source only investigations.   |
| 16. March 17, 1992                          | Handout at RPM meeting  | Shows SET II divided into multiple sets similar to June 10, 1992 submittal. First revision of schedules for OU's 3,4,5 & 6 provided to USEPA.   |
| 17. March 17, 1992                          | Internal notes of RPM meeting in Atlanta                              | Navy provided to USEPA/FDER validated data packages. Additional field work required at OUs 1,2 & 7 as a result of findings during initial round of field work. Navy indicates schedules for all OUs are being impacted. USEPA directs Navy to include Groundwater investigation. USEPA requires Workplan Addendum for additional field activities. New schedules for RI/FS reports discussed. Navy provided copy of revised schedule for OUs 3,4,5 & 6 to USEPA/FDER. Additionally, Navy indicates need to prevent failure of program by building in adequate time frames. At conclusion of meeting Navy requested additional discussions on these schedules. |
| 18. April 10, 1991<br>*(April 15, 1992)     | USEPA provides partial comments on draft workplan for OUs 3,4,5 and 6 | These comments were due March 18, 1992 according to expedited schedule.   |
| April 15, 1992                              | Workplan addendum OUs 1,2 & 7 submitted by Navy                       | Prepared in accordance with March 17, 1992 meeting.   |

| NAS CECIL FIELD<br>IR PROGRAM<br>KEY EVENTS |   |   |
|---|---|---|
| DATE  | EVENT   | COMMENTS  |
| April 20, 1992<br>*(April 24, 1992)         | Last of USEPA comments received on Workplan for OUs 3,4,5 & 6   | EPA misses expedited schedule due date of March 18, 1992. Substantiates EPA's scope direction from source only to source and groundwater investigation. USEPA is 38 days late per expedited schedule.   |
| 19. April 22, 1992                          | Navy Quarterly Progress Report  | Substantiates change in scope direction by USEPA from source only to source and GW delineation.   |
| 20. May 8, 1992<br>*(May 13, 1992)          | USEPA provides comments on OUs 1,2 and 7 workplan addendum  | USEPA recommends modification of expedited schedules. Substantiates scope change by USEPA.  |
| 21. May 21, 1992                            | Internal notes, RPM Meeting in Tallahassee.   | Presentation made by Navy on status of Remedial Investigation at OUs 1,2 & 7. Data Gaps identified and new field work efforts discussed. Requirement to investigate Groundwater discussed. Need to revise approach and schedules discussed and Navy agrees to submit plan by June 10, 1992. |
| 22. June 10, 1992                           | Navy submits letter to USEPA and FDER outlining changes to approach and schedules for all OUs                                     | Navy indicates substantial changes in scope, funding and technical considerations. Reference January 15, 1992 letter, March 17, 1992 RPM meeting and May 21, 1992 RPM meeting.  |
| June 24, 1992                               | Navy holds Natural Resources Trustees (NRT) Meeting at NAS Cecil Field  | Meeting and site visit. Expanded scope of field program and ecological assessment discussed.  |
| 23. July 13, 1992                           | USEPA responds Via Fax to Navy's June 10th letter (Navy has not received FDER comments-FDER response received September 8, 1992.) | USEPA agrees in general to extend enforceable due dates for RI/FS reports for OUs 1,2 & 7 and requests acceptable due dates be provided in 20 days.   |
| *(July 18, 1992)                            | USEPA July 13, 1992 letter received (see above)   |   |
| 24. July 22, 1992                           | Navy Quarterly Progress Report  | No deliverables planned for OUs 3-6 through next quarter  |

**NAS CECIL FIELD  
IR PROGRAM  
KEY EVENTS**

| DATE                                      | EVENT   | COMMENTS   |
|---|---|--|
| 25. August 13, 1992                       | Navy memo sent to USEPA on OUs 3, 4, 5 & 6 to clarify June 10th letter for extensions for OUs 3,4, 5 & 6 Workplans. Navy requests a Remedial Project Management Meeting to be held in mid September | Navy provided schedules for OUs 3,4,5 and 6 and formally requested extension for these OUs. Purpose of meeting is to resolve schedule differences.   |
| 26. August 24, 1992<br>*(August 26, 1992) | USEPA extension letter extended due date for RI/FS reports OU for 1,2 & 7 to December 1, 1992 (enforceable due date)  | No specific justification on rationale provided for December 1, 1992 due date.   |
| 27. Undated<br>(August 25, 1992)          | Undated USEPA letter extended submittal date for Workplan 3,4, 5 & 6 to December 1, 1992 (enforceable due date)   | Telefaxed letter is similar to USEPA August 24, 1992 letter extending due date for OUs 1,2 and 7.  |
| 28. August 25, 1992                       | Navy memo to FDER   | Forwarded extension request of August 13, 1992.  |
| 29. August 31, 1992                       | 1993 SMP submitted by Navy  | Schedules for all OUs provided. First version of 1993 SMP. No comments were received from USEPA.   |
| 30. September 1, 1992                     | FDER comments on Navy June 10, 1992 Rescoping Document  | FDER conceptually agrees with rescoping; revised schedule for OU 1 is acceptable. Request conference call to resolve issues and schedules for OUs 2 & 7.   |
| September 9, 1992                         | Meeting between Navy (Sid Allison/Joe McCauley) and USEPA (M. Hartnett and J. Kutzman)  | Meeting was general in nature and not to specifically address NASCF.   |
| 31. September 9, 1992                     | Navy letter to USEPA responding to USEPA July 13, 1992 comments on revised approach and schedules (June 10th Submittal)   | Navy requests RPM management meeting for 17 September 1992 to discuss schedule. Navy does not agree with USEPA's extension date of December 1, 1992 for RI/FS on OUs 1,2 and 7. Navy indicates USEPA directed change in scope from approved workplans. Navy requests rationale and details for executing work to meet December 1, 1992 deadline. |
| 32. September 14, 1992                    | Navy responds to EPA's telefaxed extension letter for OUs 3-6.  | Navy does not agree with extension deadline. EPA now disavows their telefaxed extension.   |

| <b>NAS CECIL FIELD<br/>IR PROGRAM<br/>KEY EVENTS</b> |   |  |
|--|---|--|
| <b>DATE</b>  | <b>EVENT</b>  | <b>COMMENTS</b>  |
| 33. September 16, 1992                               | Navy letter to FDER (copy to USEPA) responding to FDER comments on Navy's June 10, 1992 submittal                       | Navy indicates problems associated with schedules due to negotiations on Navy's position and lead agency authority/recognition.  |
| 34. September 18, 1992                               | RPM Meeting, Atlanta (Navy originally scheduled meeting for 17 September 1992)  | USEPA is looking for removal action in 1993 for "bean" counting. Navy agreed to review SMP schedules and revision. USEPA modifies strategy that sets priority on highly contaminated sites to incorporate removal actions at lower priority sites.                   |
| 35. September 21, 1992<br>*(September 24, 1992)      | USEPA letter names James Hudson as RPM effective October 1, 1992  | This is fourth RPM under FFA.  |
| 36. September 29, 1992                               | Technical Memorandum for Supplemental Sampling at OUs 1,2 and 7 submitted to USEPA & FDER                               | Submittal meets Navy's revised approach to OUs 1,2 and 7.  |
| 37. October 1, 1992<br>(memo dated on October 1992)  | NAVY/USEPA phone call   | USEPA advises that undated letter faxed August 25, 1992 is unofficial and currently being rewritten.   |
| 38. October 20, 1992                                 | Navy submits revised draft SMP and Early Assessment and Removal Action Initiative to USEPA and FDER.                    | Minor modification to SMP proposed. Removal Action at OU 6 included. No written comments received from EPA on either first or latest SMP as of 25 November.  |
| 39. October 20, 1992<br>*(October 23, 1992)          | USEPA letter informs Navy of stipulated penalties accumulating on failure to provide final Workplan for OUs 3,4,5 and 6 | EPA denies request for extension for OUs 3, 4, 5 and 6. Navy's position with regards to letter: Navy initiated 18 September 1992 RPM meeting; FDER provided copy of 13 August 1992 Extension. The USEPA assertion that Workplan was due 12 August 1992 is incorrect. |
| 40. October 30, 1992                                 | Navy letter invokes dispute resolution.   |  |
| 41. November 5, 1992                                 | Navy notifies USEPA of impact to schedules from dispute resolution and disagreement on lead agency authority            | Navy will notify FFA parties of the extent of delay once it is apparent.   |



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

345 COURTLAND STREET, N.E.  
ATLANTA, GEORGIA 30365

DEC 14 1992

4WD-FFB

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Joe McCauley  
Department of the Navy - Southern Division  
Naval Facilities Engineering Command  
2155 Eagle Dr., P.O. Box 10068  
Charleston, South Carolina 29411-0068

Re: NAS Cecil Field, NPL Site  
Jacksonville, Florida

Dear Mr. McCauley:

The U.S. Environmental Protection Agency (EPA) has determined that NAS Cecil Field has violated Section XXIII of the Federal Facilities Agreement (FFA), dated October 23, 1990, by failing to submit a draft Remedial Investigation/Feasibility Study Report (RI/FS) for Operable Units (OUs) 1, 2 and 7 by December 1, 1992. Therefore, EPA has begun to assess stipulated penalties which continue to accrue from December 1, 1992, as per the terms of Section XXII of the FFA.

According to the Site Management Plan (SMP) for Fiscal Year 1992 (FY92) the draft RI/FS for OUs 1, 2 and 7 was due on or before July 14, 1992. By letter dated July 13, 1992, EPA conditionally granted NAS Cecil Field twenty (20) days, until August 12, 1992, to submit acceptable revised schedules for OUs 1, 2 and 7, including, and not limited, to the Draft RI/FS Report per our July 13, 1992 letter. If the Navy failed to submit an acceptable revised schedule for these OUs, then the enforceable date as stated in the SMP FY92, remained in effect.

After failing to respond to EPA's request, by letter dated August 24, 1992, EPA set the enforceable due date of December 1, 1992, to submit the RI/FS Report for OUs 1, 2, and 7. Because NAS Cecil Field has failed to meet the enforceable due date, stipulated penalties have begun to accrue as of December 1, 1992.

5090  
Code 1852

12 4 DEC 1992

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Greer Tidwell  
Regional Administrator  
U.S. Environmental Protection Agency, Region IV  
345 Courtland Street, NE  
Atlanta, Georgia 30365

Subj: INVOCATION OF DISPUTE RESOLUTION  
RI/FS REPORT - OPERABLE UNITS 1,2 AND 7  
NAS CECIL FIELD

Dear Mr. Tidwell:

The Navy has received your letter dated 14 December 1992, regarding stipulated penalties for a Remedial Investigation/Feasibility Study (RI/FS) Report for Operable Units (OU's) 1, 2 and 7. In accordance with Part XXVI section C(1) of the Federal Facility Agreement for NAS Cecil Field, the Navy invokes dispute resolution of the assessment of stipulated penalties.

The Navy has provided two separate submittals of the 1993 Site Management Plan (SMP) since 30 September 1992 that have not been responded to prior to your 14 December 1992 letter. The SMP's provided the date of submission of the RI/FS reports for OU's 1,2 and 7 based on rescheduling due to a significant change in the scope of work directed by the United States Environmental Protection Agency (USEPA). The Navy has never agreed to the dates proposed by the USEPA of 1 December 1992, in fact we have stated it is unrealistic given the work efforts that will be required. The USEPA's methodology and supporting rationale for completion of the work by 1 December 1992, was requested by the Navy in a 9 September 1992 letter. The USEPA has not responded.

The Navy's position with regards to this issue is addressed in the Position Summary provided 25 November 1992 for Resolution of Disputes for Operable Units 3,4, 5 and 6. Accordingly, the resolution of dispute for the SMP, the Work Plans for OU's 3,4,5,6 and the RI/FS Report for OU's 1,2 and 7 should be resolved together as these issues have common elements and consequences.

18  
09B  
185 File  
1852  
AR File  
Daily/J:\1852\JLTR

18  
185  
1852

EPA REGION IV/NAVY/FLORIDA  
ENVIRONMENTAL RESTORATION  
PARTNERSHIP

PARTNERING CHARTER - APRIL 1, 1993

Goal: To characterize and respond as appropriate to additional risk posed by release of hazardous substances on public health and welfare and the environment at Navy and Marine Corps Installations.

Mission: To structure an effective program for prompt environmental restoration that will be a model for similar efforts elsewhere.

Vision: Teams are empowered and operate cohesively to achieve our environmental restoration goal.

We, the partners, commit to teamwork to achieve these objectives:

- Develop ways to determine acceptable program risk in fostering progress
- Eliminate barriers to a faster more cost-effective program
- Clarify roles and responsibilities of each party
- Make our processes more efficient
- Create organizational cultures able to accommodate change
- Provide for a greater exchange of lessons learned
- Obtain consensus on short and long-term budget and implementation plans
- Promote success and cooperation
- Develop innovative ways to acquire and administer contracts
- Demonstrate and use innovative technologies
- Foster community participation
- Resolve conflicts through a coordinated work effort to avoid adversarial relations
- Maintain professionalism and enthusiasm and encourage communication to make the partnership educational and enjoyable
- Reinforce the partnered relationship with honest feedback and continual improvement

*Michael G. K...  
Joe...*

*W. A. Swadlow*

*James Malan*

*Bob ...*      *Jon D. Johnston*      *Fishy L. Albain*  
*Byron C. Brant*      *Eric S. Nuzic*      *James J. Crane*  
*Alvin W. ...*      *Joseph T. Waller*      *David ...*



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

345 COURTLAND STREET, N.E.  
ATLANTA, GEORGIA 30365

SEP 14 1993

4WD-FFB

Mr. Sid Allison  
Remedial Activities Branch  
Department of the Navy - Southern Division  
Naval Facilities Engineering Command  
2155 Eagle Drive, P.O. Box 10068  
Charleston, South Carolina 29411-0068

RE: RESOLUTION OF DISPUTE FOR NAVAL AIR STATION CECIL FIELD,  
Jacksonville, Florida

Sid:

The members of the Dispute Resolution Committee, (DRC) [i.e., U.S. Environmental Protection Agency (EPA), the Florida Department of Environmental Protection (FDEP), and the Department of the Navy (Navy)] have agreed unanimously to resolve the formal Resolution of Dispute pursuant to the process outlined in Section XXVI of the Federal Facilities Agreement (FFA).

Attached are three (3) copies of the DRC's Resolution of Dispute document memorializing the DRC's decision on this dispute. Please sign all three (3) copies and forward them to:

Mr. Jim Crane  
Florida Department of Environmental Protection  
Twin Towers Office Building  
2600 Blair Stone Road  
Tallahassee, Florida 32399-2400

An original document with signatures of all three (3) DRC members will be forwarded to you.

*Received in  
Mail Room  
9/13/93  
0926  
AA*

If you have any questions please call me at (404) 347-3016.

Sincerely,



Jon D. Johnston, Chief  
Federal Facilities Branch  
Waste Management Division

Enclosure

cc: Gordon Davidson, OFFE  
Jim Crane, FDEP  
Eric Nuzie, FDEP  
David Criswell, SOUTHDIVNAVFACENGCOM  
William Quade, NAVFACENGCOM-HQ

## STATEMENT OF RESOLUTION

### I. Purpose and Scope

1. The U.S. Environmental Protection Agency ("EPA"), the Florida Department of Environmental Protection ("FDEP") and the U.S. Department of the Navy ("Navy") consistent with the provisions of Section XXVI Resolution of Disputes of the Naval Air Station ("NAS") Cecil Field, Federal Facility Agreement ("FFA") voluntarily execute this STATEMENT OF RESOLUTION in order to resolve disputed issues concerning past impediments to the progress of investigative and remedial activities ongoing at contaminated sites onboard NAS Cecil Field, Jacksonville, Florida.

### II. Background Summary

The following facts are the basis of dispute, regardless of any previous statements by the Parties:

1. On 21 December 1989, NAS Cecil was placed on the National Priorities List. On 23 October 1990, EPA, FDEP and the Navy entered into an FFA pursuant to Section 120 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended; the Resource Conservation and Recovery Act (RCRA), as amended; and Executive Order 12580.
2. Under the NAS Cecil Field FFA, the Navy is required to submit yearly Site Management Plans ("SMPs") to EPA and FDEP for review, comment and approval. Pursuant to the first approved SMP the Parties agreed to divide all response activities into two Investigative Sets. Investigative Set #1 included contaminated areas identified as Operable Units (OUs) 1, 2 and 7. Investigative set #2 included contaminated areas identified as Operable Units (OUs) 3, 4, 5, and 6.
3. On 20 October 1992, EPA formally notified the Navy that it had denied the Navy's request for an extension of the time to submit the Remedial Investigation/Feasibility Study (RI/FS) Draft Workplan for OUs, 3, 4, 5, and 6 and advised that stipulated penalties were accruing retroactively from 12 August 1992. On 30 October 1992, the Navy invoked formal dispute resolution in connection with this extension denial and penalty accrual. On 14 December 1992, EPA notified the Navy that it was accruing stipulated penalties on account of the Navy not submitting the Draft RI/FS Report for OUs 1, 2, and 7, by 1 December 1992. On 24 December 1992, the Navy invoked dispute resolution as to this penalty issue.

Since the time of invocation of formal dispute resolution EPA, FDEP and the Navy have held joint discussions concerning the identification and elimination of past impediments to the progress of those investigative and remedial activities currently ongoing onboard NAS Cecil Field. These discussions also concerned revised deadlines for the Navy's submission of the following primary documents:

- a. The Site Management Plan for FY 1993
- b. The RI/FS Report for Investigative Set #1 (OUs 1, 2, & 7)
- c. The RI/FS Workplan and for Investigative Set #2 (OUs 3, 4, 5, & 6)

### III. Terms for Concluding Dispute Resolution

1. We, the members of the Dispute Resolution Committee, do hereby unanimously resolve the previously disputed issues between EPA, FDEP and the Navy as follows:

a. That the Navy shall prepare and the Parties shall use best efforts to negotiate a mutually acceptable combined Site Management Plan for calendar years 1993 and 1994 for finalization by 30 October 1993. This SMP shall include specific dates for submission of all primary documents for specific response actions (e.g., removals, Interim Records of Decision).

b. The Navy shall implement two (2) additional source removal projects for completion during FY 1994. These will be identified in the required SMP. (see item a.)

c. That the Navy shall continue to coordinate with and provide needed inputs to the appropriate Department of Defense and U.S. Army Corps of Engineers representatives in order to ensure continued funding is provided to FDEP through the cooperative agreement under the Department of Defense/State Memorandum of Agreement for technical support for remediation at NAS Cecil Field.

d. That consistent with recent Headquarters EPA and DOD initiatives, the Parties shall establish a NAS Cecil Field BRAC Clean-up Team (BCT) made up of each agency's remedial program managers or BRAC Environmental Coordinators (BEC); senior level representatives from each agency which have, to date, been involved in partnering discussions concerning this facility shall continue to meet or consult as appropriate. Team members shall

meet on a quarterly basis or more often as determined necessary by all Parties. The purpose of this Team will be to conduct a thorough "bottom-up" review of the program in order to identify and eliminate all continuing impediments to remediation efforts. The Team shall also review and attempt to resolve prior to the invocation of dispute resolution by any Party, those specific technical and/or programmatic issues which cannot be resolved between the assigned remedial program managers. The BCT shall operate in keeping with the existing FFA unless and until the FFA is modified by mutual agreement of the Parties.

e. That the NAS Cecil Field BCT Team shall initiate discussions by October 15, 1993, on needed revisions to the language and provisions now contained in the NAS Cecil Field FFA for the purpose of eliminating apparent errors, inconsistencies and/or omissions as well as for addressing those perceived causes of the remedial activity implementation problems which the Parties have encountered to date including, but not be limited to, issues concerning lead agency authority, program management and funding.

f. That consistent with the Parties recent Partnering Charter (Enclosure) and initiatives each Party shall ensure that appropriate internal agency emphasis is placed upon the need for all assigned representatives to work in a cooperative framework utilizing partnering principles so as to minimize the need to resort to either formal or informal dispute resolution procedures in order to resolve fundamental technical and/or program management issues.

g. That in order to best promote both program management and regulatory oversight continuity the Parties hereby agree to minimize program impact as a result of personnel reassignments and in accordance with partnering principles.

h. If the items listed in Paragraphs a., b., d. and e. are accomplished and a mutually agreeable SMP is finalized by October 30, 1993, EPA will not proceed with assessment of stipulated penalties for non-submittal of both primary documents and an acceptable SMP. However, EPA reserves its right to assess stipulated penalties for the non-submittal of acceptable documents prior to and after October 30, 1993 if this deadline is not met. In the event this deadline is not met or not extended by mutual agreement, the Parties agree to proceed with the formal dispute resolution procedures set forth in the FFA regarding any penalties assessed to the Navy by EPA.

IV. Execution

The aforementioned terms for final resolution of the invoked formal dispute resolution are hereby agreed to by the undersigned representatives:

For EPA, Region IV:

\_\_\_\_\_/\_\_\_\_\_  
Jon D. Johnston, Chief  
Federal Facilities Branch  
Waste Management Division

For the Navy:

\_\_\_\_\_/\_\_\_\_\_  
Sidney L. Allison  
Director  
Environmental Division  
Southern Division, Naval  
Facilities Engineering Command

For FDEP:

\_\_\_\_\_/\_\_\_\_\_  
James J. Crane  
Administrator,  
Technical Review Section