Corrective Action 006142
Naval Weapons Station Yorktown
VA 8170024170
Correspondence - Outgoing

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

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Robert G. Burnley
Director

(804) 698-4000
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September 5, 2003

Robert M. Schonk, Jr., Director
Sewell's Point Compliance Department
Department of Navy
Commander
Navy Region, Mid-Atlantic
6506 Hampton Blvd.
Norfolk, VA 23508-1273

RE: Naval Weapons Station Yorktown, EPA ID No. VA8170024170
Subpart X, OB/OD Interim Status Site – Transfer of Regulatory Oversight Responsibilities from RCRA Permit Program to CERCLA Program (X01 – IS/IN)

Dear Mr. Schonk:

The Department of Environmental Quality (DEQ) has received your correspondence, dated June 9, 2003, regarding the Naval Weapons Station Yorktown (NWSY), Virginia, Subpart X, Open Burn/Open Detonation (OB/OD) Interim Status site (EPA ID No. VA8170024170). The above correspondence documents that the Department of Navy (DON) has concurred with the proposed transfer of the regulatory oversight responsibilities for the OB/OD Interim Status site from the DEQ's Office of Waste Permitting (OWP), Resource Conservation and Recovery Act (RCRA) Permit Program, to the Office of Remediation Programs (ORP) under the CERCLA. The DON formally withdrew the RCRA Permit Application for the NWSY's OB/OD Interim Status site by correspondence to the DEQ, dated September 20, 2000.

The OB/OD units are subject to the Virginia Hazardous Waste Management Regulations (VHWMR) requirements under 9 VAC 20-60, which incorporates by reference the federal regulations 40 CFR Parts 124, 260-266, 268, 270-273, and 279 (RCRA Hazardous Waste Program). Under the VHWMR, these OB/OD units are considered land based "regulated units" which are subject to the requirements of 40 CFR Part 265.

Under 9 VAC 20-60-265, incorporating by reference 40 CFR § 265.90(f) and § 265.110(d), the Director may replace all or part of the requirements of Subparts F and G (and the unit-specific standards in § 265.111(c) applying to a regulated unit), with alternative

requirements developed for groundwater monitoring, closure, and post-closure that are set out in an enforceable document as defined in 40 CFR § 270.1(c)(7), where the Director determines the following:

1. The regulated unit(s) are situated among solid waste management units (SWMUs) or areas of concern (AOCs), a release has occurred, and both the regulated units and one or more of the SWMUs or AOCs are likely to have contributed to the release, and

2. It is not necessary to apply the requirements of 40 CFR Part 265, Subparts F and G, because alternative requirements will protect human health and the environment and the alternative standards for the regulated units will meet the requirements of 40 CFR § 264.101(a) and satisfy the closure performance standard of 40 CFR § 265.111(a) and (b).

It has been determined that NWSY's OB/OD units satisfy the requirements stated above, and in accordance with 40 CFR § 270.1(c)(7), a remedial action under CERCLA meets the definition of an "enforceable document".

Therefore, in accordance with 40 CFR § 265.90(f) and § 265.110(d), the DEQ approves the replacement of the requirements under 40 CFR 265 Subparts F and G for NWSY's Interim Status OB/OD unit with alternative requirements for remediation under the oversight of the ORP's Federal Facilities Restoration Program. Accordingly, the alternative requirements of the CERCLA remedial action will meet the RCRA closure performance standards of 40 CFR § 265.111(a) and (b), and the CA (remediation) requirements of 40 CFR § 264.101(a). Thus, these above regulatory citations should be the basis of the Applicable Relevant and Appropriate Requirements (ARARs) under CERCLA for the remediation of this site.

As previously indicated, no permit application or referral fees will be required for this transfer to the ORP under CERCLA. Partial closure/remediation of the OB/OD site is required as a portion of the OB/OD site will remain open for the Navy's explosive ordnance disposal (EOD) training, explosives testing, and emergency response purposes by the Navy's EOD unit.

Upon a future decision by the Navy to discontinue use of this remaining portion of the OB/OD site for the above stated purposes, the Navy shall initiate the process to provide proper closure, post-closure, and remediation of the remaining active portion of this OB/OD site in accordance with the regulatory requirements under the RCRA and CERCLA, as applicable.

As understood, the Navy will notify the EPA that the Federal Facilities Agreement and the Site Management Plan at the NWSY will be modified to include these OB/OD units. The Navy's LANTDIV and the DEQ's ORP will jointly develop an execution plan and an oversight funding profile for this site and the Navy will provide funding to the DEQ for the regulatory

oversight through the Defense State Memorandum of Agreement – Cooperative Agreement Process.

If you should have any questions, please do not hesitate to contact Richard J. Criqui, Jr., C.P.S.S., Environmental Engineer Senior, at (804) 698-4013 or Durwood Willis, Federal Facilities Program Manager, at (804) 698-4192.

Sincerely,

Leslie A Romanchik

for Robert G. Burnley

cc: Hazardous waste files
Leslie Romanchik, DEQ
Robert Weld, DEQ
Richard Criqui, DEQ
Durwood Willis, DEQ
Howard Freeland, DEQ
Maria Williams, DEQ
Steve Mihalko, P.E., DEQ
Harold Winer, TRO, DEQ
Robert Schirmer, LANTDIV, Dept. of Navy
Carolyn Neill, Regional Environmental Group, Mid-Atlantic Region, Dept. of Navy
Cherryl Barnett, Regional Environmental Group, Mid-Atlantic Region, Dept. of Navy
Joanne Cassidy, EPA Region III (3WC21)

Virginia Department Of Environmental Quality
Waste Division
Office of Waste Permitting

Memorandum
629 E. Main St., P.O. Box 10009, Richmond, VA 23240-0009

Subject: Naval Weapons Station Yorktown, Yorktown, Virginia - EPA ID No. VA8170024170 - Subpart X, OB/OD Interim Status site - Transfer of Regulatory Oversight from the Office of Waste Permitting, RCRA Program, to the Office of Remediation Programs, under CERCLA

To: Robert J. Weld, Director, Office of Remediation Programs

Through: Leslie A. Romanchik, Director, Office of Waste Permitting

From: Richard J. Criqui, Jr., C.P.S.S., Environmental Engineer Senior

DATE: August 4, 2003

Copies: Hazardous Waste Files
Karen Sismour, DEQ
Maria Williams, DEQ
Howard Freeland, P.G., DEQ
Richard Doucette, P.G., DEQ
Durwood Willis, DEQ
Steve Mihalko, P.E., DEQ
Harold Winer, TRO, DEQ
Artie Kapell, DEQ
Joanne Cassidy, EPA, Region III (3WC21)

The purpose of this memorandum is to provide the background, the regulatory basis, and rationale for the transfer of the regulatory oversight responsibilities for the Naval Weapons Station Yorktown's (NWSY's) Subpart X, Open Burn/Open Detonation (OB/OD) units from the DEQ's Office of Waste Permitting (OWP), RCRA Program, to the DEQ's Office of Remediation Programs (ORP) under the CERCLA. The OB/OD units are a Subpart X, Interim Status site under the RCRA; the NWSY is identified under the EPA ID No. VA8170024170.

Enclosed is a letter, for Mr. Robert Burnley's signature, to the Department of Navy (DON), which approves the transfer of the regulatory oversight responsibilities from the RCRA Program to the ORP/CERCLA Program. The DON has concurred with the DEQ's proposed transfer between regulatory programs by correspondence from Robert M. Schonk, Jr., Director, Sewell's Point Compliance Department, dated June 9, 2003. (Enclosed.)

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Background

The NWSY's Subpart X, Open Burn/Open Detonation (OB/OD) Interim Status site is approximately 42 acres in size. Approximately 4 acres were in operation between 1960 to 1970, 15 acres were in operation from 1970 to 1980, and 23 acres were in operation from about 1980 to 2000.

An application for a Virginia Hazardous Waste Management Permit under the Virginia Hazardous Waste Management Regulations (VHWMR) was submitted for the OB/OD Interim Status site by the DON, dated September 1994. The VHWMR, 9 VAC 20-60, incorporates by reference the text of the federal regulations of the Resource Conservation and Recovery Act (RCRA).

The DEQ sent the Navy a Notice of Deficiency (NOD), dated March 4, 1998, regarding the submitted permit application. A revised permit application, dated October 5, 1998, was submitted by the Navy in response to the above issued NOD. A second NOD, dated August 17, 1999, was sent to the Navy regarding their revised and resubmitted permit application. The Navy was subsequently provided an extension to resubmit the revised permit application for the OB/OD site.

In June 2000, the DON indicated that they no longer were disposing of hazardous waste with the characteristics of reactivity (explosives, ordnance, pyrotechnics, propellants, etc.) at the NWSY OB/OD Interim Status site. The DON indicated that hazardous waste which required treatment at an OB/OD site would be sent to another military base for treatment. However, the DON indicated that a portion of the OB/OD site was still needed for ongoing explosive ordinance disposal (EOD) training, explosives testing, and emergency response by the EOD unit.

In response to the Navy's needs, the DEQ agreed to delay closure of the portion of the OB/OD site, which the Navy needs to use for EOD and emergency response purposes. However, the Navy was advised that the other areas of the OB/OD site, which were not needed for EOD and emergency response purposes, would require partial closure in accordance with requirements of the RCRA Regulations.

The DON formally withdrew the RCRA Permit Application for the NWSY OB/OD Interim Status site by correspondence to the DEQ, dated September 20, 2000.

On October 15, 2001, the Navy submitted correspondence to the DEQ, with a Site Assessment Work Plan, dated October 2001, for Partial Closure and Corrective Action (CA) at the NWSY OB/OD Interim Status Site under RCRA. The DEQ and the DON had agreed in the June 2000 meeting that a site assessment of the OB/OD site was needed to help establish the nature and extent of

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contamination at the site and to establish the nature and design of the RCRA required closure plan.

Concurrent with the above period, the DON has been working with the DEQ's ORP regarding on-going remediation of numerous solid waste management units (SWMUs) under an existing Federal Facilities Agreement and Site Management Plan for the NWSY.

The EPA has agreed that their Hazardous Site Cleanup Division, Federal Facilities Branch, would take responsibility for the cleanup of the NWSY's OB/OD Interim Status site contingent upon the DON's approval of this transfer from the RCRA Program to the ORP under CERCLA. This proposed transfer between regulatory oversight programs is consistent with past and current Corrective Action (CA) or remediation practices at both the EPA and the DEQ.

The OB/OD Interim Status units at the NWSY are subject to the RCRA Regulations requirements under 40 CFR Part 265, Subpart F, Groundwater Monitoring, and Subpart G, Closure and Post-Closure. The groundwater monitoring, closure, and post-closure requirements for these units may be incorporated into CA or remediation under CERCLA in accordance with 40 CFR § 265.90(f) and § 265.110(d). In accordance with the above requirements under the RCRA (VHWMR), the Regional Administrator (Director) may replace all or part of the requirements of groundwater monitoring, closure, and post closure (and the unit-specific standards in § 265.111(c) applying to the regulated unit), with alternative requirements developed for groundwater monitoring and closure that are set out in an approved closure or post-closure plan or in an enforceable document (as defined in 40 CFR § 270.1(c)(7), where the Regional Administrator (Director) determines that:

1. A regulated unit is situated among solid waste management units (or areas of concern), a release has occurred, and both the regulated unit and one or more solid waste management units (or areas of concern) are likely to have contributed to the release.

2. It is not necessary to apply the requirements of these subparts (Subpart F and G) (and/or those referenced herein) because the alternative requirements will protect human health and the environment. The alternative standards for the regulated unit must meet the requirements of 40 CFR § 264.101(a) and satisfy the closure performance standard of § 265.111(a) and (b).

The RCRA Regulations (VHWMR) under § 270.1(c)(7), states: "At the discretion of the Regional Administrator (Director), an owner or operator may obtain, in lieu of a post-closure permit, an enforceable document imposing the requirements of 40 CFR § 265.121. An 'enforceable document' means an order, a plan, or other document issued by EPA or by an authorized State under an

authority that meets the requirements of 40 CFR § 271.16(e) including, but not limited to, a corrective action order issued by EPA under section 30008(h), a CERCLA remedial action, or a closure or post-closure plan. Section 265.121 provides the post-closure requirements for facilities that obtain enforceable documents in lieu of post-closure permits.

The staff believes the OB/OD Interim Status site meets the above requirement for transfer from the RCRA Program to the ORP under CERCLA. In addition, the staff believes this transfer to the ORP under CERCLA will result in appropriate groundwater monitoring, closure, post-closure, and CA or remediation of the OB/OD site, and will allow the continued use of the site by the DON for the above stated EOD purposes. This transfer is also anticipated to expedite or streamline the CA or remediation of the OB/OD site.

In addition to the above, this proposed transfer from RCRA Program to the ORP under CERCLA will remove the tracking of the closure, post-closure, and CA activities of this Interim Status site from the RCRA CA Program's Government Performance and Results Act (GPRA) Baseline. According to GPRA requirements, all RCRA sites listed under the GPRA baseline, which are not permitted, must close by December 31, 2005. Therefore, the transfer of the OB/OD site to the CERCLA Program will remove the requirement to fully close by this above imposed deadline.

The DEQ's correspondence, dated September 26, 2002, was sent to Mr. Robert M. Schonk, Jr., which requested concurrence from the Navy regarding the proposed transfer of regulatory oversight for the OB/OD Interim Status site from the RCRA Program to the ORP under CERCLA.

Correspondence from Mr. Schonk, dated December 13, 2002, provided the Navy's RCRA Program's concurrence with the transfer of the closure and remediation CA activities from the RCRA Program to the CERCLA/FFR Program. However, the DON soon contacted the DEQ and advised that the Navy's Federal Facilities Remedidation (FFR) Program under CERCLA had not yet concurred with the proposed transfer. A conference call between the DEQ and DON was held on March 27, 2003, to discuss various regulatory aspects of the proposed transfer from RCRA Program to the CERCLA Program. The DON's funding aspects for CA remediation of the site were also discussed. The DON's letter of approval for transfer of this site, dated June 9, 2003, reflects concurrence from their RCRA and CERCLA Programs. (Enclosed.)

Please review the enclosed letter authorizing this transfer between regulatory programs and advise me if you have any questions or if changes are necessary. If acceptable, upon written concurrence from Mr. Weld, Leslie will sign the letter of transfer for Mr. Burnley.

Enclosures

DEPARTMENT OF THE NAVY
COMMANDER
NAVY REGION, MID-ATLANTIC
6506 HAMPTON BLVD.
NORFOLK, VA 23508-1273

IN REPLY REFER TO:
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JUN 11 2003
OFFICE OF WASTE PERMITTING

Mr. Richard J. Criqui
Department of Environmental Quality
Office of Waste Permitting
Post Office Box 10009
Richmond, VA 23240-0009

Dear Mr. Criqui:

SUBJECT: NAVAL WEAPONS STATION YORKTOWN, TRANSFER OF OPEN BURN/ OPEN DETONATION (OB/OD) SITE FROM RCRA TO CERCLA/ FEDERAL FACILITIES (EPA ID #VA8170024170)

This letter is in response to the telephone conference held on March 27, 2003, between the Virginia Department of Environmental Quality (VDEQ) and the Department of the Navy (DON) regarding the transfer of the Naval Weapons Station Yorktown OB/OD units from the Resource Conservation and Recovery Act (RCRA) Hazardous Waste Permitting Program to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)/ VDEQ's Office of Remediation Programs (ORP). The DON has agreed to the proposed transfer of the regulatory oversight responsibilities for closure, post-closure, groundwater monitoring, and corrective action (CA) of the OB/OD Interim Status site from the RCRA Permit Program to the CERCLA/ORP.

Once the site is transferred to the CERCLA/ORP, the OB/OD units will be removed from the RCRA regulatory process. All regulatory activities associated with the OB/OD Interim Status site will be completed entirely under the CERCLA statutory and regulatory process with the DON as the Lead Agent. The VDEQ's ORP will oversee regulatory activities at this site to assure compliance with the alternative technical and regulatory remediation or CA requirements associated with this transferred site.

Under the CERCLA authority, alternative requirements will be developed for the RCRA closure, post-closure, groundwater monitoring, and remediation or CA such that they are protective of human health and the environment.

Partial closure of the OB/OD units will be conducted under CERCLA/ORP and no permit application or referral fees will be required to transfer the OB/OD site to the CERCLA/ORP. Partial

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closure of this site is required as a portion of the OB/OD site will remain open for the DON's explosives ordnance disposal (EOD) training, explosives testing, and emergency response purposes by the DON's EOD unit.

Upon a future decision by the DON to discontinue use of this remaining portion of the OB/OD site for the above stated purposes, the DON shall initiate the process to provide proper closure, post-closure, and remediation or CA of the remaining active portion of this OB/OD site in accordance with the requirements under CERCLA/ORP.

The DON will notify the Environmental Protection Agency (EPA) that the Federal Facilities Agreement and the Site Management Plan at Naval Weapons Station Yorktown will be modified to include the OB/OD units. The DON's Atlantic Division, Naval Facilities Engineering Command and the VDEQ's ORP will jointly develop an execution plan and an oversight funding profile for this site. The DON will provide funding to the VDEQ for regulatory oversight through an agreement currently being discussed.

The DON will await correspondence from the VDEQ of the actual referral of these units from the RCRA Program to the CERCLA/ORP.

If additional information is needed, please contact Ms. Lora Fly at (757) 444-3009, extension 362.

Sincerely,

Robert M. Schonk

ROBERT M. SCHONK, JR.
Director
Sewell's Point Compliance Department
By direction of the Commander

Copy to:
Atlantic Division, Naval Facilities Engineering Command
(EV22 R. Schirmer, L. Archie Barnes)
Public Works Center Norfolk (Codes 950, 950.06)

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Criqui Richard

From: Weld Robert
Sent: Thursday, September 04, 2003 8:40 AM
To: Romanchik Leslie; Criqui Richard
Cc: Willis Durwood; Miller Debra
Subject: RE: NWSY OB/OD Transfer

Leslie,

As we discussed this morning, ORP staff has reviewed your letter dated Sept. 5, 2003 to Mr. Robert M. Schonk, Jr. at the Department of the Navy regarding the transfer of the regulatory oversight for the OB/OD Site at Yorktown from the OWP to ORP. Based on this review, I concur with the content of the letter as well as the transfer of regulatory oversight responsibilities from OWP to ORP. Thanks for your assistance on this issue. If you have any questions, please let me know.

Thanks,
Robert

Robert J. Weld
Director, Office of Remediation Programs
Virginia Department of Environmental Quality
804-698-4227; rjweld@deq.state.va.us

-----Original Message-----
From: Romanchik Leslie
Sent: Tuesday, September 02, 2003 12:29 PM
To: Criqui Richard
Cc: Weld Robert; Willis Durwood; Miller Debra
Subject: RE: NWSY OB/OD Transfer

Richard,

I have reviewed the attached letter with changes suggested by Debbie. I concur with the changes. However, I have made some minor typographical/editorial changes. These are shown on the attached redline version. I have also attached a "clean" version as well.

Please printout the revised version of the letter and send with the package to Robert so that we may obtain his concurrence.

Thanks, Leslie

<< File: NWSY Transfer Letter redline.doc >> << File: NWSY Transfer Letter clean.doc >>

-----Original Message-----
From: Miller Debra
Sent: Thursday, August 14, 2003 4:26 PM
To: Romanchik Leslie
Cc: Weld Robert; Willis Durwood; Criqui Richard
Subject: NWSY OB/OD Transfer

Hi, Leslie.

Robert asked me to review the NWSY referral letter for the IS OB/OD units. I have made changes to the letter to clarify that the referral is for replacement of the Subpart F and G requirements of 40 CFR 265 with the remedial program under CERCLA, as administered by our Federal Facilities Restoration Program. I did remove references to the 40 CFR 265.121 and

270.1©(7) which refers to obtaining an enforceable document in lieu of a post-closure permit. Note, these units are not in the process of obtaining a post-closure permit, and we will not be issuing an enforceable document in lieu of a permit. We are replacing the monitoring and closure/post-closure requirements of 40 CFR 265 Subpart F and G with alternative requirements of remediation under CERCLA, which will protect human health and the environment. Our main concern is that under 265.121, the requirements for any groundwater monitoring program must adhere to under 264.91-100 [in conflict of our goal to replace these same requirements with the alternative requirements of a CERCLA remedial action]. Under CERCLA remediation, the groundwater will be investigated and remediated, as necessary, and in some cases, monitoring may be required. However, this program is not likely to include all the restraints of the RCRA post-closure monitoring program under 264.91-100. Unfortunately, Robert is out this week, and not available for discussion. Therefore, I have sent you the modified letter [note, I did not attempt to modify Rick's memo]. If the changes are acceptable, please post-date and sign, and I will meet with Robert next week to explain the changes made. Thanks again for the opportunity to review. Have a good vacation next week!!

<< File: NWSY Transfer Letter.doc >>

Debra A. Miller
Remedial Project Manager
Federal Facilities Restoration Program
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