BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Complainant,

vs.

Lockheed Martin Corporation

Respondent.

/ 

CONSENT ORDER

This Consent Order is entered into between the State of Florida Department of Environmental Protection ("Department") and Lockheed Martin Corporation ("Respondent") to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida’s air and water resources and to administer and enforce the provisions of Chapters 403 and 376, Florida Statutes, and Rule 62-780, Florida Administrative Code. The Department has jurisdiction over the matters addressed in this Consent Order.

2. Respondent is a person within the meaning of Section 403.031(5), Florida Statutes.

3. Respondent is the current tenant and previous owner/operator of an industrial facility located on property at 1600 Tallevast Road, Section 31, Township 35 South, Range 18 East, in Tallevast, Manatee County, Florida ("Property"). This property is where the releases of contaminants described in paragraph 6 below, occurred. The Property is bounded by Tallevast Road to the north, undeveloped and residential areas to the south, 17th Street Court East to the east, and an abandoned industrial facility known as the Former Spindrift Facility, to the west.
Operations at the site included the manufacturing of ultra-precision machine parts where various metals were milled, lathed, and drilled into different components. Some of the manufactured components were finished by electroplating, anodizing, and ultrasonic cleaning. Chemicals used and wastes generated at the facility included oils, petroleum-based fuels, solvents, acids and metals.

4. As a result of assessment conducted by the Department and Respondent, the Property has been found to have the following contaminants present in groundwater in concentrations exceeding the Primary and Secondary Maximum Contaminant levels (MCLs) or applicable Cleanup Target Levels (CTLs) for the following compounds:

   Tetrachloroethene (PCE)

   1, 4-dioxane

   Trichloroethene (TCE)

   1,1-dichloroethene (1,1-DCE)

   1,1-dichloroethane (1,1-DCA)

   cis 1,2-dichloroethene (cis 1,2-DCE)

   trans 1,2-dichloroethene (trans 1,2-DCE)

5. Respondent submitted an Interim Remedial Action Plan (“IRAP”) in accordance with the terms of Consent Order OGC # 04-1328 for the Property entered into by Respondent and the Department on July 28, 2004 (the “Existing Consent Order”). The Existing Consent Order requires that Respondent perform site assessment and remediation activities pursuant to Chapter 62-780, Florida Administrative Code, at the Property. The IRAP proposed the installation, operation, and monitoring of a groundwater pump and treat (“PAT”) system to remediate the area on the east end of the property with elevated solvent contamination levels in the upper and lower surficial groundwater. The PAT system was designed to expedite mass removal and destruction of chemicals of concern (“COCs”) and to provide hydraulic containment of the source area contamination. The IRAP included plans to operate and monitor the effectiveness of the PAT system, and to monitor the actual operation of the PAT system and
report on the impact of the system's operation on the groundwater plume both on and off-site. The IRAP included a response protocol for upset incidents or emergency response actions as detailed in Appendix F (Contingency Plan) to the IRAP. The Department approved the IRAP on April 25, 2006.

6. Based on information provided by community members, sometime between 11:30 a.m. and 1:30 p.m. on Sunday, August 3, 2008, a release of pumped groundwater from the secondary containment unit of the PAT system was observed at the Property. Respondent reported that approximately 5,000 gallons of pumped groundwater were released from the secondary containment unit of the surge tank of the PAT system. Based on the most recent influent concentration data from June 2008, the concentrations of the COCs in the pumped groundwater that was released were estimated to be 1,4-dioxane (0.21 mg/l), PCE (0.14 mg/l), TCE (0.4 mg/l), 1,1-DCA (0.06 mg/l), 1,1-DCE (0.22 mg/l), and cis-1,2-DCE (0.029 mg/l). Respondent assessed the impact of the release on the adjacent groundwater, and the results of the release investigation indicate that the spill from the secondary containment unit of the PAT system had impacted shallow groundwater at the Property in the immediate vicinity of the containment unit. Laboratory analytical results conclude that several on-site groundwater samples taken within approximately 25 feet of the spill location exceeded groundwater standards adopted by Rule 62-520.420(1), Florida Administrative Code. TCE levels exceeded the standard in six locations at a depth of 5-9 feet, 1, 1-DCE levels exceeded the standard in four locations at a depth of 5-9 feet, and PCE levels exceeded the standard in one location at a depth of 25-29 feet.

7. The Department finds that the following violations occurred:

Section 376.302(1)(a), Florida Statutes. Discharge of pollutants or hazardous substances into or upon the surface or ground waters of the state or lands. Approximately 5,000 gallons of untreated groundwater contaminated with PCE, TCE, and 1,4-dioxane were released.
Section 403.161(1)(b), Florida Statutes. Failure to comply with any rule, regulation, order, permit, or certification adopted or issued by the Department. Failure to operate the PAT system in accordance with the IRAP approved by the Department pursuant to the Existing Consent Order. The shut-off sensor in the secondary containment structure of the PAT system was not functioning.

Section 403.161(1)(b), Florida Statutes. PAT system modification, replacing rigid SCH 80 PVC in the Department-approved design with flexible PVC piping, was not in compliance with the IRAP approved by the Department.

Section 403.161(1)(b), Florida Statutes. Failure to install, maintain, or use a pollution control system or device required under the Department-approved IRAP. Secondary containment for the PAT system did not function as intended and thus, resulted in the release of polluted groundwater.

Section 403.161(1)(b), Florida Statutes. Failure to make required notification to the Department and to adequately respond to an emergency. The State Warning Point was not notified by Respondent of the release/emergency.

8. Lockheed Martin has initiated an Interim Source Removal ("ISR") involving groundwater recovery as allowed by Rule 62-780.500(3) of the Florida Administrative Code (F.A.C.) in the area of the spill. Progress reports will be provided to the Department weekly during the extraction activities. The duration of the groundwater recovery cannot exceed 30 days unless Lockheed Martin demonstrates to the Department that extended groundwater recovery will not result in the spread of contamination as provided in Rule 62-780.500(3) F.A.C.

9. On September 19, 2008, Lockheed Martin submitted a Corrective Action Plan to the Department that provides details on the proposed physical and operational modifications to the existing interim PAT system. An amendment to the Corrective Action Plan was submitted on September 30, 2008.

Respondent neither admits nor denies the findings in paragraphs 3 through 9 above. Having reached resolution of the matter the Department and Respondent mutually agree and it is,
ORDERED:

10. Lockheed Martin shall submit an ISR Status Report to the Department that documents the recovery progress and summarizes all recovery activities resulting from the short term groundwater recovery interim removal action identified in paragraph 8 above within 60 days after the completion of the groundwater recovery ISR action.

11. Lockheed Martin shall complete construction of corrective actions to the PAT system within 50 days after the Department approval date of the Corrective Action Plan.

12. Respondent shall not resume operation of the PAT system at the Property until operation of the PAT system is authorized in writing by the Department. Lockheed Martin shall implement the operational changes in the approved Corrective Action Plan upon startup of the PAT system.

13. Within 60 days after the completion of construction, Respondent shall submit a final Incident Corrective Action Report that includes the record drawings, the final Operation and Monitoring Plan and Contingency Plans documenting all modifications made or proposed for the PAT system. Subsequently, the Department will:

   (a) Provide Respondent with written approval of the Incident Corrective Action Report; or

   (b) Notify Respondent in writing, stating the reason(s) why the Incident Corrective Action Report does not satisfy the requirements of this Paragraph.

14. If the Incident Corrective Action Report is incomplete in any respect, the Department will inform Respondent of the deficiencies in writing, and Respondent shall submit to the Department an Incident Corrective Action Report Addendum that addresses the deficiencies within 60 days after receipt of the written notice provided in accordance with this Paragraph.

15. Within 45 days of the effective date of this Consent Order, Respondent shall pay the Department $49,047 representing penalties and costs in settlement of the matters addressed in
this Consent Order. This amount includes $250 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Consent Order. The civil penalty in this case includes five violations of $2,000.00 or more. Payment shall be made by check, money order or electronic fund transfer. The instrument shall be made payable to the “Department of Environmental Protection” and shall include thereon the OGC number assigned to this Consent Order and the notation “Ecosystem Management and Restoration Trust Fund.” Payment shall be sent to the Department of Environmental Protection, 13051 North Telecom Parkway, Temple Terrace, Florida 33637.

16. Respondent agrees to pay the Department stipulated penalties in the amount of $10,000 per day for each and every day Respondent fails to timely comply with any of the timelines required in paragraphs 10 through 14 of this Consent Order. A separate stipulated penalty shall be assessed for each violation of this Consent Order. Within 30 days of written demand from the Department, Respondent shall make payment of the appropriate stipulated penalties to "The Department of Environmental Protection" by check, money order or electronic fund transfer, and shall include thereon the OGC number assigned to this Consent Order and the notation "Ecosystem Management and Restoration Trust Fund." Payment shall be sent to the Department of Environmental Protection, 13051 North Telecom Parkway, Temple Terrace, Florida 33637. The Department may make demands for payment at any time within one year after violations occur. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any of the terms of this Consent Order. The Department may extend any deadline under this Consent Order for a good cause shown, in which case stipulated penalties shall not run during the extension period. Any penalties assessed under this paragraph shall be in addition to the settlement sum agreed to in paragraph 15 of this Consent Order. If the Department is required to file a lawsuit to recover stipulated penalties under this Paragraph, the Department will not be foreclosed from seeking civil penalties for violations of this Consent Order in an amount greater than the stipulated penalties due under this Paragraph.

17. The Department, for and in consideration of the complete and timely performance by Respondent of the obligations agreed to in this Consent Order, hereby waives its right to seek judicial imposition of damages or civil penalties for alleged violations outlined in this Consent Order; provided, however, should Respondent not completely implement the Incident Corrective
Action Plan consistent with the requirements of Chapter 62-780, Florida Administrative Code, and the Department’s approval; the Department expressly reserves its right to seek restitution from Respondent for environmental damages. Within 20 days of receipt of Department’s written notification of its intent to seek said restitution, Respondent may pay the amount of the damages or may, if it so chooses, initiate negotiations with the Department regarding the monetary terms of restitution to the state. Respondent is aware that should a negotiated sum or other compensation or environmental damages not be agreed to by the Department and Respondent within 20 days of receipt of Department written notification of its intent to seek restitution, the Department may institute appropriate action, either administrative through a Notice of Violation, or judicial, in a court of competent jurisdiction through a civil complaint, to recover Department assessed environmental damages as provided by law.

18. Respondent acknowledges and waives its right to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes, on the terms of this Consent Order. Respondent acknowledges its right to appeal the terms of this Consent Order pursuant to Section 120.68, Florida Statutes, and waives that right upon signing this Consent Order.

19. Respondent shall publish the following notice in a newspaper of daily circulation in Manatee County, Florida. The notice shall be published one time only within 14 days after the effective date of the Consent Order. Proof of publication shall be submitted to the Department within 7 days of publication date.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

NOTICE OF CONSENT ORDER

The Department of Environmental Protection gives notice of agency action of entering into a Consent Order with Lockheed Martin Corporation pursuant to Section 120.57(4), Florida Statutes. The Consent Order addresses the release of hazardous substances and spill response actions at 1600 Tallevast Road in Tallevast, Manatee County, Florida. The Consent Order is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Department of Environmental Protection, 13051 North Telecom Parkway, Temple Terrace, Florida 33637.
Persons whose substantial interests are affected by this Consent Order have a right to petition for an administrative hearing on the Consent Order. The Petition must contain the information set forth below and must be filed (received) in the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida 32399-3000, within 21 days of receipt of this notice. A copy of the Petition must also be mailed at the time of filing to the District Office named above at the address indicated. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes.

The petition shall contain the following information:

(a) The Department’s Consent Order identification number and the county in which the subject matter or activity is located; (b) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner’s representative, if any, which shall be the address for service purposes during the course of the proceeding; (c) An explanation of how the petitioner’s substantial interests will be affected by the Consent Order; (d) A statement of when and how the petitioner received notice of the Consent Order; (e) A statement of all material facts disputed by petitioner, if any; (f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Consent Order; (g) A statement of which rules or statutes the petitioner contends require reversal or modification of the Consent Order; and (h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Consent Order.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Consent Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569
and 120.57, Florida Statutes, and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, Florida Administrative Code.

A person whose substantial interests are affected by the Consent Order may file a timely petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes, or may choose to pursue mediation as an alternative remedy under Section 120.573, Florida Statutes, before the deadline for filing a petition. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The procedures for pursuing mediation are set forth below.

Mediation may only take place if the Department and all the parties to the proceeding agree that mediation is appropriate. A person may pursue mediation by reaching a mediation agreement with all parties to the proceeding (which include Respondent, the Department, and any person who has filed a timely and sufficient petition for a hearing) and by showing how the substantial interests of each mediating party are affected by the Consent Order. The agreement must be filed in (received by) the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, within 10 days after the deadline as set forth above for the filing of a petition.

The agreement to mediate must include the following:

(a) The names, addresses, and telephone numbers of any persons who may attend the mediation;

(b) The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;

(c) The agreed allocation of the costs and fees associated with the mediation;

(d) The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;
(e) The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen;

(f) The name of each party’s representative who shall have authority to settle or recommend settlement; and

(g) Either an explanation of how the substantial interests of each mediating party will be affected by the action or proposed action addressed in this notice of intent or a statement clearly identifying the petition for hearing that each party has already filed, and incorporating it by reference.

(h) The signatures of all parties or their authorized representatives.

As provided in Section 120.573, Florida Statutes, the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Florida Statutes, for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons whose substantial interests will be affected by such a modified final decision of the Department have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above, and must therefore file their petitions within 21 days of receipt of this notice. If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing processes under Sections 120.569 and 120.57, Florida Statutes, remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.

20. If any event, including administrative or judicial challenges by third parties unrelated to Respondent, occurs which causes delay or the reasonable likelihood of delay, in complying with the requirements of this Consent Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of Respondent and could not have been or cannot be overcome by Respondent’s due diligence.
Economic circumstances shall not be considered circumstances beyond the control of Respondent, nor shall the failure of a contractor, subcontractor, materialman or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines be a cause beyond the control of Respondent, unless the cause of the contractor's late performance was also beyond the contractor's control. Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department orally within 24 hours or by the next working day and shall, within seven calendar days of oral notification to the Department, notify the Department in writing of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay and the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended for a period equal to the agreed delay resulting from such circumstances. Such agreement shall adopt all reasonable measures necessary to avoid or minimize delay. Failure of Respondent to comply with the notice requirements of this Paragraph in a timely manner shall constitute a waiver of Respondent's right to request an extension of time for compliance with the requirements of this Consent Order.

21. Nothing herein shall be construed to limit the authority of the Department to undertake any action against Respondent in response to or to recover the costs of responding to conditions at or from the site that require Department action to abate an imminent hazard to the public health, welfare or the environment.

22. Respondent shall provide within a reasonable time at its expense a permanent safe drinking water supply meeting all drinking water standards set forth in Chapter 62-550, Florida Administrative Code, to replace any potable water well that is shown by chemical and hydrogeologic analyses to be contaminated by the release described in paragraph 6 above.

23. Entry of this Consent Order does not relieve Respondent of the need to comply with applicable federal, state or local laws, regulations or ordinances.
24. The terms and conditions set forth in this Consent Order may be enforced in a
court of competent jurisdiction pursuant to Sections 120.69 and 403.121, Florida Statutes.
Failure to comply with the terms of this Consent Order shall constitute a violation of Section
403.161(1)(b), Florida Statutes.

25. Respondent is fully aware that a violation of the terms of this Consent Order may
subject Respondent to judicial imposition of damages, civil penalties up to $25,000 per day per
violation and criminal penalties.

26. Respondent shall allow all authorized representatives of the Department access to
the Property and PAT system at reasonable times for the purpose of determining compliance
with the terms of this Consent Order and the rules and statutes of the Department.

27. The Department hereby expressly reserves the right to initiate appropriate legal
action to prevent or prohibit any violations of applicable statutes or the rules promulgated there-
under that are not specifically addressed by the terms of this Consent Order, including but not
limited to undisclosed releases, contamination or polluting conditions.

28. No modifications of the terms of this Consent Order shall be effective until
reduced to writing and executed by both Respondent and the Department.

29. All submittals and payments required by this Consent Order to be submitted to the
Department shall be sent to the Florida Department of Environmental Protection, 13051 North
Telecom Parkway, Temple Terrace, Florida 33637.

30. This Consent Order is a settlement of the Department’s civil and administrative
authority arising under Florida law to resolve the matters addressed herein. This Consent Order
is not a settlement of any criminal liabilities, which may arise under Florida law, nor is it a
settlement of any violation which may be prosecuted criminally or civilly under federal law.

31. Respondent shall use all reasonable efforts to obtain any necessary access for
work to be performed in the implementation of this Consent Order. If necessary access cannot
be obtained, or if obtained, is revoked by owners or entities controlling access to the properties to
which access is necessary, Respondent shall notify the Department within (5) business days of such refusal or revocation. The Department may at any time seek to obtain access as is necessary to implement the terms of this Consent Order. Respondent shall reimburse the Department for any damages, costs, or expenses, including expert and attorneys fees, that the Department is ordered to pay, or that the Department incurs in connection with its efforts to obtain access as is necessary to implement the terms of this Consent Order. Respondent shall pay these sums to the Department or arrange a payment schedule with the Department within 30 days of written demand by the Department.

32. This Consent Order is a final order of the Department pursuant to Section 120.52(7), Florida Statutes, and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, Florida Statutes. Upon the timely filing of a petition this Consent Order will not be effective until further order of the Department.
FOR THE RESPONDENT:

Ken Meashey
Vice President

DONE AND ORDERED this 9th day of October, 2008,

In Hillsborough County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Deborah A. Getzoff
District Director
Southwest District

Filed, on this date, pursuant to Section 120.52, F.S., with the designated Department Clerk, receipt of which is hereby acknowledged.

Cynthia Williams
Clerk

Oct. 13, 2008
Date

Copies furnished to:
Lea Crandall, Agency Clerk, Mail Station 35
Brian Dougherty, DEP BWC
Ms. Laura Ward. President, FOCUS
Ms. Wanda Washington. Vice President FOCUS
Paul Calligan, Lockheed Martin Corp.
Randy Merchant, DOH, Tallahassee
Karen Collins-Fleming, Manatee County Environmental Mgt.
Dr. Gladys Branic, DOH. Manatee County
Mark Stuckey, DEP BWC. Tallahassee
Derek Matory, EPA, Atlanta
Larry Morgan, DEP OGC
Jeanne Zokovitch, Director, ACES Program, WildLaw
Rich Schwartz, Crowell