PART THREE

REMEDIAL AND CORRECTIVE ACTIONS

ARTICLE XIII. FINDINGS AND DETERMINATIONS

44. The following paragraphs of this Article constitute a summary of the facts upon which EPA and Ecology are proceeding for purposes of Part Three of this Agreement. None of the facts related herein shall be considered admissions by any Party. This Article contains findings by EPA and Ecology, and shall not be used by any person related or unrelated to this Agreement for purposes other than determining the basis of this Agreement.

A. In and/or before 1943, the United States acquired approximately 560 square miles of land, now known as the Hanford Site. The DOE and its predecessors have operated Hanford continuously since 1943, mainly for the production of special nuclear materials for the national defense.

B. Since the establishment of the Hanford Site in 1943, materials subsequently defined as hazardous substances, pollutants and contaminants by CERCLA, materials defined as hazardous waste and constituents by RCRA and/or Ch. 70.105 RCW, have been produced, and disposed of, or released, at various locations at the Hanford Site, including TSD Units.

C. Certain hazardous substances, contaminants, pollutants, hazardous wastes and constituents remain on and under the Hanford Site, and have been detected in groundwater and surface water at the Hanford Site.

D. Groundwater, surface water and air pathways provide routes for the migration of Hazardous Substances, pollutants, contaminants, and Hazardous Wastes and constituents from the Hanford Site into the environment.

E. An estimated five billion cubic yards of solid and dilute liquid wastes, which include hazardous substances, mixed waste, and hazardous waste and constituents have been disposed of at the Hanford Site. Significant above-background concentrations of hazardous substances, including chromium, strontium-90, tritium, iodine-129, uranium, cyanide, carbon tetrachloride, nitrates, and technetium-99 have been detected in the groundwater (unconfined aquifer) at the Hanford Site. These materials have toxic, carcinogenic, mutagenic, or teratogenic effects on humans and other life forms.

F. The Hanford Site is adjacent to the Columbia River. Approximately 70,000 people use groundwater and surface water obtained within three miles of the Hanford Site for drinking. This same water is used to irrigate approximately 1,000 acres.

G. The migration of such materials presents a threat to the public health, welfare and the environment.

H. On or about September 14, 1987, DOE voluntarily undertook and provided to EPA information and data on the Hanford Site, which supported nomination of four aggregate areas on the Hanford Site for inclusion on the NPL, pursuant to CERCLA. EPA, by letter dated April 22, 1988, deemed this information and data to be the functional equivalent of a Site Preliminary Assessment and Site Investigation (PA/SI). EPA subsequently placed the Hanford Site on the Federal Agency Hazardous Waste Compliance Docket, 52 Fed. Reg. 4280 (February 12, 1988). On June 24, 1988, EPA proposed inclusion of four subareas of the Hanford Site on the NPL.

45. Based on the Findings of Fact set forth in Paragraph 44, and the information available, and without admission by DOE, EPA and Ecology have determined the following:

A. DOE is a person as defined in Section 101(a) of CERCLA, 42 U.S.C. Sec. 9601(a).

B. The DOE Hanford Site located in Washington State constitutes a facility within the meaning of 42 U.S.C. Sec. 9601(9).

C. Hazardous Substances, and pollutants or contaminants within the meaning of 42 U.S.C. Secs. 9601(14) and (33) and 9604(a)(2) have been disposed of or released at the Hanford Site.

D. There have been releases and there continue to be releases and threatened releases of Hazardous Substances, and pollutants or contaminants into the environment within the meaning of 42 U.S.C. Secs. 9601(22), 9604, 9606 and 9607 at and from the Hanford Site.

E. With respect to those releases and threatened releases, DOE is a responsible person within the meaning of 42 U.S.C. Sec. 9607.

F. The Hanford Site includes certain hazardous waste treatment, storage, and disposal Units authorized to operate under Section 3005(e) of RCRA, 42 U.S.C. Sec. 6925(e), and Ch. 70.105 RCW and 173-303 WAC, which are subject to the permit requirements of RCRA.

G. Certain wastes and constituents at the Hanford Site are Hazardous Wastes or hazardous constituents thereof as defined by Section 1004(5) of RCRA, 42 U.S.C. Sec. 6903(5) and 40 CFR Part 261. There are also Hazardous Wastes or hazardous constituents at the Hanford Site within the meaning of Ch. 70.105 RCW and 173-303 WAC.

H. There is or has been a release of Hazardous Wastes and/or hazardous constituents into the environment from the Hanford Site.

I. The Hanford Site constitutes a facility within the meaning of Sections 3004 and 3005 of RCRA, 42 U.S.C. Secs. 6924 and 6925, and RCW 70.105.

J. The DOE is the owner of the Hanford Site.

K. The submittals, actions, schedules, and other elements of work required or imposed by this Agreement are reasonable and necessary to protect the public health and welfare and the environment.

ARTICLE XIV. WORK

46. DOE agrees to perform the work described in this Article XIV in accordance with the Action Plan. EPA and Ecology agree to provide DOE with guidance and timely response to requests for guidance to assist DOE in its performance of work under Part Three of this Agreement. Ecology will administer RCRA Subtitle C corrective action provisions in accordance with this Agreement and issue all future modifications to the corrective action portion of the TSD permit. The selection of remedial or corrective action shall be governed by Part Three of this Agreement. Disputes between DOE and Ecology arising under this Part which involve RCRA corrective action shall be resolved in accordance with Article VIII (Resolution of Disputes).

47. Interim Response Actions. DOE agrees that it shall develop and implement Interim Response Actions (IRAs) at operable units being managed under CERCLA corrective action authority, as required by the lead regulatory agency, and as set forth in Chapter 7.0 of the Action Plan. The IRAs shall be consistent with the purposes set forth in Article III (Purpose) of this Agreement. In the event of dispute by DOE, the final selection of the interim response action(s) shall be made by the lead regulatory agency, and shall not be subject to dispute by the Parties. IRAs shall, to the greatest extent practicable, attain ARARs and be consistent with and contribute to the efficient performance of final response actions. A dispute arising under this Article on any matter other than final selection of an IRA shall be resolved pursuant to Article VIII where Ecology is the lead regulatory agency and

Article XVI where EPA is the lead regulatory agency, except as provided elsewhere in this Agreement.

48. Interim Measures. DOE agrees that it shall develop and implement Interim Measures (IMs) at operable units being managed under RCRA corrective action authority, as required by Ecology, and as set forth in Chapter 7.0 of the Action Plan. The IMs shall be consistent with the purposes set forth in Article III (Purpose) of this Agreement. IMs shall to the greatest extent practicable be consistent with and contribute to efficient performance of corrective actions. A dispute arising under this paragraph shall be resolved pursuant to Article VIII.

49. RCRA Facility Assessments. DOE agrees it shall develop, implement and report upon RCRA Facility Assessments (RFAs) which comply with applicable requirements of RCRA, the RCRA regulations, and pertinent written guidance and established written EPA and Ecology policy, and which are in accordance with the requirements and time schedules set forth in the Action Plan. Such assessment may be done for an entire Operable Unit, or individual Waste Management Units within an Operable Unit.

50. Remedial Investigations. DOE agrees it shall develop, implement and report upon remedial investigations (RIs) which comply with applicable requirements of CERCLA, the NCP, and pertinent written guidance and established written EPA policy, and which is in accordance with the requirements and time schedules set forth in the Action Plan.

51. RCRA Facility Investigations. DOE agrees it shall develop, implement and report upon RCRA facility investigations (RFIs) which comply with applicable requirements of RCRA, the RCRA regulations, and pertinent written guidance and established written EPA and Ecology policy, and which is

in accordance with the requirements and time schedules set forth in the Action Plan.

52. Feasibility Studies. DOE agrees it shall design, propose, undertake and report upon feasibility studies (FSs) which comply with applicable requirements of CERCLA, the NCP, and relevant guidance and established EPA policy, and which is in accordance with the requirements and time schedules set forth in the Action Plan.

53. Corrective Measures Studies. DOE agrees it shall design, propose, undertake and report upon corrective measure studies (CMSs) which comply with applicable requirements of RCRA, the RCRA regulations, and relevant written guidance and established written EPA and Ecology policy, and which is in accordance with the requirements and time schedules set forth in the Action Plan.

54. Remedial and Corrective Actions. DOE shall develop and submit its proposed remedial action (or corrective action) alternative following completion and approval of an RI and FS (or RCRA RFI and CMS), in accordance with the requirements and schedules set forth in the Action Plan. If Ecology is the lead regulatory agency, it will recommend the CERCLA remedial action(s) it deems appropriate to EPA. The EPA Administrator, in consultation with the DOE and Ecology, shall make final selection of the CERCLA remedial action(s), which shall not be subject to dispute. In accordance with the Action Plan, Ecology in consultation with DOE shall select the RCRA corrective action(s). The final selection of RCRA corrective action(s) by Ecology shall be final and not subject to dispute. Notwithstanding this Article, or any other Article of this Agreement, the State may seek judicial review of an interim or final remedial action in accordance with Sections 113 and 121 of CERCLA, 42 U.S.C. Secs. 9613 and 9621.

55. Implementation of Remedial and Corrective Actions. Following final selection, DOE shall design, propose and submit to the lead regulatory agency, a detailed plan for implementation of each selected remedial action(s) and RCRA corrective action(s), which shall include operations and maintenance plans, appropriate timetables and schedules. Following review and approval by the lead regulatory agency, DOE shall implement the remedial action(s) and RCRA corrective action(s) in accordance with the requirements and time schedules set forth in the Action Plan to this Agreement. A dispute arising under this Article on any matter other than EPA's final selection of a remedial action shall be resolved pursuant to Article VIII where Ecology is the lead regulatory agency and Article XVI where EPA is the lead regulatory agency.

56. All work described above, whether labeled "remedial action" or "corrective action," and whether performed pursuant to CERCLA and an RI/FS or the RCRA/HSWA equivalent shall be governed by this Part Three. CERCLA remedial action and, as appropriate, HSWA corrective action shall meet ARARs in accordance with CERCLA Section 121.

57. Notwithstanding any part of this Agreement, Ecology may obtain judicial review of any final decision of EPA on selection of a final remedial action at any Operable Unit pursuant to Section 113 of CERCLA. Ecology also reserves the right to obtain judicial review of any ARAR determination pursuant to Section 121 of CERCLA.

ARTICLE XV. REVIEW OF DOCUMENTS

58. The provisions of Section 9.0 of the Action Plan establish the procedures that shall be used by DOE, EPA, and Ecology to provide the Parties with appropriate notice, review, comment and response to comments regarding

RI/FS, Remedial Design and Remedial Action (RD/RA) documents (or RCRA Corrective Action equivalent) specified as either Primary or Secondary Documents in the Action Plan. All primary documents shall be subject to Dispute Resolution in accordance with Article VIII where Ecology is the lead regulatory agency and Article XVI where EPA is the lead regulatory agency. Secondary documents are not subject to Dispute Resolution. In accordance with Section 120 of CERCLA, DOE will be responsible for issuing primary and secondary documents to the lead regulatory agency. The lead regulatory agency shall be responsible for consolidating comments and providing responses to DOE on all required submittals for the Operable Units for which it is the designated lead regulatory agency. No guidance, suggestions, or comments by Ecology or EPA will be construed as relieving DOE of its obligation to obtain formal approval required by Part Three of this Agreement.

ARTICLE XVI. <u>RESOLUTION OF DISPUTES</u>

59. If a dispute arises under Part Three of this Agreement with respect to a matter for which EPA is the lead regulatory agency, or as specifically set forth elsewhere in this Agreement, the procedures of this Article shall apply. These procedures shall not apply, however, where otherwise specifically excluded. EPA and DOE shall make reasonable efforts to informally resolve disputes. Except as provided in Paragraph 46, if resolution cannot be achieved informally, the procedures of this Article shall be implemented to resolve a dispute. These Dispute Resolution provisions shall not apply to RCRA permit actions which are otherwise subject to administrative or judicial appeal. These Dispute Resolution provisions shall not apply to enforcement actions which are otherwise subject to administrative

or judicial appeal, except that these Dispute Resolution provisions shall apply in the event of the assessment of stipulated penalties.

A. Within thirty (30) days after: (1) the period established for review of a primary document pursuant to Article XV (Review of Documents), or (2) any action which leads to or generates a dispute, the disputing Party shall submit to the IAMIT a written statement setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute, the information the disputing Party is relying upon to support its position, and a description of all steps taken to resolve the dispute.

B. Prior to issuance of a written statement of dispute, the disputing Party shall engage the other Party in informal Dispute Resolution among the project managers. During this informal Dispute Resolution period the EPA and DOE shall meet as many times as necessary to discuss and attempt resolution of the dispute.

C. If agreement cannot be reached on any issue within the informal Dispute Resolution period, the disputing Party shall forward the written statement of dispute to the IAMIT within the thirty (30) days specified in subparagraph A above, thereby elevating the dispute to the IAMIT for resolution.

D. The IAMIT will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. EPA and DOE shall each designate in writing one individual and an alternate to serve on the IAMIT. The individuals designated to serve on the IAMIT shall be employed at the Executive Managers level. The EPA representative on the IAMIT is the Program Manager, Hanford Project Office of EPA Region 10. DOE's representative on the IAMIT will be the Assigned Executive Manager.

Written notice of any delegation of authority from a Party's designated representative on the IAMIT shall be provided to the other Party pursuant to the procedures of Article XXXIII (Notification).

E. Following elevation of a dispute to the IAMIT, the IAMIT shall have twenty-one (21) days to unanimously resolve the dispute and issue a written decision. If the IAMIT is unable to unanimously resolve the dispute within this twenty-one 21-day period, the written statement of dispute shall be forwarded by the disputing Party within seven (7) days to the Senior Executive Committee (SEC) for resolution.

F. The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the IAMIT. EPA's representative on the SEC is the Director, Office of Environmental Clean Up of EPA Region 10. DOE's representative on the SEC is the DOE Richland Operations Office Deputy Manager. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute. The SEC shall have twenty-one (21) days to unanimously resolve the dispute.

G. If unanimous resolution of the dispute is not reached within twenty-one (21) days, EPA's Regional Administrator shall issue a final written decision resolving the dispute within fourteen (14) days. This authority can not be delegated. The time for issuing a final decision may be extended by EPA upon notice to the other Parties.

H. Within fourteen (14) days of the Regional Administrator's issuance of the final written decision on the dispute, DOE may request that the Administrator of EPA resolve the dispute if the Secretary of Energy determines that the decision of the Regional Administrator has significant national policy implications. The request must be in writing, and must identify the basis for the determination by the Secretary that the decision

has significant national policy implications. If no such request is made within the fourteen (14) day period, DOE shall be deemed to have agreed with the Regional Administrator's written decision. If such a request is made, the Administrator will review and resolve the dispute in accordance with applicable law and regulations within twenty-one (21) days. Upon request and prior to resolving the dispute, the Administrator may meet and confer with the DOE to discuss the issues under dispute. The Administrator shall provide five (5) days advance notice of such meeting. Upon resolution, the Administrator shall provide a written final decision setting forth resolution of the dispute. The duties of the EPA Administrator and Secretary of Energy set forth in this Article XVI shall not be delegated.

I. The pendency of any dispute under this Part shall not affect DOE's responsibility for timely performance of the work required by this Agreement, except that, when DOE has delivered a change request to EPA one hundred seven (107) days or more in advance of when a milestone or other enforcement schedule or deadline under this Agreement is due and EPA's action on the change request has been disputed under this Article, the time period for completion of work directly affected by such dispute shall be extended for a period of time usually not to exceed the actual time taken to resolve any good faith dispute beyond ninety-three (93) days. In accordance with the procedures specified in Section 12 of the Action Plan, the Parties may agree to extend or postpone any milestone or other enforceable schedule or deadline under this Agreement during the pendency of any dispute. All elements of the work required by this Agreement which are not directly affected by the dispute shall continue and be completed in accordance with this Agreement.

J. In the event that EPA assesses stipulated penalties under Article XX (Stipulated Penalties) and DOE disputes the matter under this

Article XVI, stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of the Agreement. In the event that Energy does not prevail on the disputed issue, stipulated penalties may be assessed and shall be paid as provided in Article XX (Stipulated Penalties).

K. When Dispute Resolution is in progress, work affected by the dispute will immediately be discontinued if the EPA project manager requests in writing that such work be stopped because, in EPA's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse affect on human health and environment, or is likely to have a substantial adverse affect on the remedy selection or implementation process. To the extent possible, EPA shall give DOE prior notification that a work stoppage request is forthcoming. After stoppage of work, if DOE believes that the work stoppage is inappropriate, DOE may meet with the EPA to discuss the work stoppage. Within fourteen (14) days of this meeting, the EPA project manager will issue a final written decision with respect to the stoppage. Upon receipt of this final written decision of the EPA project manager, DOE may initiate Dispute Resolution at the IAMIT level.

L. Within twenty-one (21) days of resolution of any dispute, DOE shall incorporate the resolution and final determination into the appropriate plan, schedule or procedures and proceed to implement this Agreement according to the amended plan, schedule or procedures.

M. Resolution of a dispute pursuant to this Article constitutes final resolution of the dispute and all Parties shall abide by all terms and conditions of such final resolution.

N. Any deadline in the dispute resolution process may be extended with the consent of DOE and EPA.

O. In computing any period of time prescribed in this dispute resolution process, the day a document is received shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which case the period runs until the end of the next day that is neither a Saturday, Sunday nor a legal holiday.

ARTICLE XVII **SCHEDULE**

60. DOE shall commence Remedial Investigations (RIs) and Feasibility Studies (FSs) for one Operable Unit of each subarea of the Hanford Site included on the NPL within six (6) months after such listing on the NPL. Schedules for such RIs and FSs, are set forth in the Action Plan. The Parties agree that this phased schedule satisfies Section 120(e)(1) of CERCLA. RI/FS schedules for each Operable Unit will be published by the lead regulatory agency, as provided in Section 120(e)(1) of CERCLA.

61. DOE shall commence remedial action within fifteen (15) months after completion of the RI/FS (including EPA selection of the remedy) for the first priority Operable Unit, in accordance with Section 120(e)(2) of CERCLA and the schedule in the Action Plan. DOE shall complete the remedial action as expeditiously as possible, as required by CERCLA Section 120(e)(3). In accordance with the schedule(s) in the Action Plan, subsequent remedial action at other operable units shall follow and be completed as expeditiously as possible as subsequent RI/FSs are completed and approved. The Parties agree that this phased schedule satisfies Section 120(e)(2) and (3) of CERCLA.

62. Specific major and interim milestones and schedules, as agreed to by the Parties, are set forth in the Action Plan.

ARTICLE XVIII. PERMITS

63. The Parties recognize that under CERCLA Secs. 121(d) and 121(e)(1), and the NCP, portions of the response actions called for by this Agreement and conducted entirely on the Hanford Site are exempted from the procedural requirement to obtain federal, state, or local permits, but must satisfy all the applicable or relevant and appropriate federal and state standards, requirements, criteria or limitations which would have been included in any such permit.

64. When DOE proposes a response action to be conducted entirely on the Hanford Site, which in the absence of CERCLA Sec. 121(e)(1) and the NCP would require a federal or state permit, DOE shall include in the submittal:

A. Identification of each permit which would otherwise be required;

B. Identification of the standards, requirements, criteria, or limitations which would have had to have been met to obtain each such permit;

C. Explanation of how the response action proposed will meet the standards, requirements, criteria or limitations identified in Subparagraph B immediately above.

65. Upon the request of DOE, the lead regulatory agency will provide its position with respect to Subparagraphs 64 B and C above in a timely manner.

66. This Article is not intended to relieve DOE from any applicable requirements, including Section 121(d)(3) of CERCLA, for the shipment or movement of a hazardous waste or substance off the Hanford Site. DOE shall obtain all permits and comply with applicable federal, state or local laws for such shipments. DOE shall submit timely applications and requests for such permits and approvals. Disposal of hazardous substances off the Hanford Site

shall comply with DOE's Policy on Off-Site Transportation, Storage and Disposal of Nonradioactive Hazardous Waste dated June 24, 1986, or as subsequently amended, and the EPA Off-Site Response Action Policy dated May 6, 1985, 50 Federal Register 45933 (November 5, 1985), as amended by EPA's November 13, 1987 "Revised Procedures for Planning and Implementing Off-Site Response Actions," and as subsequently amended, to the extent required by CERCLA.

67. DOE shall notify the lead regulatory agency in writing of any permits required for off-Hanford activities related to this Agreement as soon as DOE-RL becomes aware of the requirement. Upon request, DOE shall provide the lead regulatory agency with copies of all such permit applications and other documents related to the permit process.

68. If a permit which is necessary for implementation of off-Hanford activities of this Agreement is not issued, or is issued or renewed in a manner which is materially inconsistent with the requirements of this Agreement, DOE shall notify the lead regulatory agency of its intention to propose modifications to this Agreement to comply with the permit (or lack thereof). Notification by DOE of its intention to propose modifications shall be submitted within seven (7) calendar days of receipt by DOE of notification that: (1) a permit will not be issued; (2) a permit has been issued or reissued; (3) a final determination with respect to any appeal related to the issuance of a permit has been entered. Within thirty (30) days from the date it submits its notice of intention to propose modifications, DOE shall submit to the lead regulatory agency its proposed modifications to this Agreement with an explanation of its reasons in support thereof.

69. The lead regulatory agency shall review DOE's proposed modifications to this Agreement pursuant to this Article. If DOE submits

proposed modifications prior to a final determination of any appeal taken on a permit needed to implement this Agreement, the lead regulatory agency may elect to delay review of the proposed modifications until after such final determination is entered. If the lead regulatory agency elects to delay review, DOE shall continue implementation of this Agreement as provided in the following paragraph.

70. During any appeal of any permit required to implement this Agreement or during review of any of DOE's proposed modifications as provided in the preceding paragraph, DOE shall continue to implement those portions of this Agreement which can be reasonably implemented pending final resolution of the permit issue(s).

ARTICLE XIX. RECOVERY OF EPA CERCLA RESPONSE COSTS

71. EPA and DOE agree to amend this section at a later date in accordance with any subsequent resolution of the currently contested issue of EPA cost reimbursement.

ARTICLE XX. STIPULATED PENALTIES

72. In the event that DOE fails to submit a CERCLA primary document pursuant to the appropriate timetable or deadline in accordance with Part Three of this Agreement, or fails to comply with a term or condition of Part Three of this Agreement which relates to an interim or final remedial action, including milestones associated with the development, implementation and completion of an RI or FS, EPA may assess a stipulated penalty against DOE. If Ecology determines that DOE has failed in a manner as set forth above for which it is the lead regulatory agency, Ecology may identify stipulated penalties to EPA and, unless it is a disputed matter under Paragraph 73, these

penalties shall be assessed in accordance with this Article. A stipulated penalty may be assessed in an amount up to $5,000 for the first week (or part thereof), and up to $10,000 for each additional week (or part thereof) for which a failure set forth in this paragraph occurs.

73. Upon determining that DOE has failed in a manner set forth in Paragraph 72 the lead regulatory agency shall notify DOE in writing. If the failure in question is not or has not already been subject to Dispute Resolution either under Part Two or Part Three at the time notice of the assessment of stipulated penalties is received, DOE shall have fifteen (15) days to invoke Dispute Resolution under Part Three on the question of whether the failure did in fact occur. In the event Ecology is the lead regulatory agency the Ecology project manager and the Ecology IAMIT and SEC members shall participate in the Part Three Dispute Resolution process. DOE shall not be liable for the stipulated penalty assessed by EPA if the failure is determined, through the Dispute Resolution process, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures on DOE's failure to comply.

74. The annual reports required by Section 120(e)(5) of CERCLA shall include, with respect to each final assessment of a stipulated penalty against DOE under this Agreement, each of the following:

A. The facility responsible for the failure;

B. A statement of the facts and circumstances giving rise to the failure;

C. A statement of any administrative or other corrective action taken at the relevant facility, or a statement of why such measures were determined to be inappropriate;

D. A statement of any additional action taken by or at the facility to prevent recurrence of the same type of failure; and

E. The total dollar amount of the stipulated penalty assessed for the particular failure.

75. Stipulated penalties assessed pursuant to this Article for violations of CERCLA requirements shall be payable to the Hazardous Substances Response Trust Fund from funds authorized and appropriated for that specific purpose.

76. RESERVED

77. In no event shall this Article give rise to a CERCLA stipulated penalty in excess of the amount set forth in CERCLA Section 109.

78. This Article shall not affect DOE's ability to obtain an extension of a timetable, deadline or schedule pursuant to Article XL and in accordance with Section 12.0 of the Action Plan.

79. Nothing in this Agreement shall be construed to render an employee or Authorized Representative of DOE personally liable for the payment of any stipulated penalty assessed pursuant to this Article.

80. Nothing in this Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any remedies or sanctions available by virtue of DOE's violation of this Agreement or, for matters not specifically addressed by this Agreement, of the statutes and regulations upon which it is based, including but not limited to penalties, pursuant to CERCLA and RCRA; provided, however, that the assessment of stipulated penalties shall preclude EPA from seeking any other penalty payments from DOE under RCRA or CERCLA for the same violations.

ARTICLE XXI. ENFORCEABILITY

81. The Parties agree that compliance with the terms of this Agreement, including all timetables and deadlines associated with this Agreement shall be construed as compliance with CERCLA Section 120(e)(3).

82. The Parties agree that:

A. Upon the effective date of this Agreement, any standard, regulation, condition, requirement or order which has become effective under CERCLA or is incorporated into Part Three of this Agreement (with the exception of any such obligations which are imposed solely pursuant to Subtitle C of RCRA and are not determined by EPA to be ARARs) is enforceable by any person pursuant to CERCLA Section 310, and any violation of such standard, regulation, condition, requirement or order will be subject to civil penalties under CERCLA Secs. 310(c) and 109;

B. All timetables or deadlines, associated with the development, implementation and completion of an RI or FS, shall be enforceable by any person pursuant to CERCLA Section 310 and any violation of such timetables or deadlines will be subject to civil penalties under CERCLA Secs. 310(c) and 109;

C. All terms and conditions of this Agreement which relate to interim or final remedial actions, including corresponding timetables, deadlines or schedules, and all work associated with the interim or final remedial actions, shall be enforceable by any person pursuant to CERCLA Section 310 and any violation of such terms or conditions will be subject to civil penalties under CERCLA Secs. 310(c) and 109; and

D. Any final resolution of a dispute pursuant to Article XVI (Resolution of Disputes) which establishes a term, condition, timetable, deadline or schedule shall be enforceable by any person pursuant to CERCLA

Section 310(c) and any violation of such term, condition, timetable, deadline or schedule will be subject to civil penalties under CERCLA Secs. 310(c) and 109.

83. Nothing in this Agreement shall be construed as authorizing any person to seek judicial review of any action or work where review is barred by any provision of RCRA or CERCLA, including CERCLA Section 113(h).

84. The Parties agree that all Parties shall have the right to enforce the terms of this Agreement in accordance with its provisions.

ARTICLE XXII. COMMON TERMS

85. The provisions of Parts Four and Five, Articles XXIII through LII below, apply to this Part Three and are incorporated herein by reference.