UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V
AND
THE STATE OF OHIO

IN THE MATTER OF:	)	
	)	
THE UNITED STATES DEPARTMENT OF ENERGY'S	)	FEDERAL FACILITY AGREEMENT UNDER CERCLA SECTION 120
MOUND (OHIO) PLANT MIAMISBURG, OHIO	)	
	)	
OH6 890 008 984	)	Administrative Docket Number:

The United States Environmental Protection Agency ("U.S. EPA"), pursuant to Sections 120 and 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. Sections 9620 and 9605, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499 (hereinafter jointly referred to as CERCLA/SARA or CERCLA), placed the Mound Site in Miamisburg, Ohio (the "Site" as defined in Part IV of this Agreement) on the National Priorities List, which is set forth at 40 CFR Part 300, Appendix B, by publication in the Federal Register on November 21, 1989, 54 Fed. Reg. 48184 (November 21, 1989).

Based on the information available to the Parties on the effective date of this FEDERAL FACILITY AGREEMENT (Agreement), and without trial or adjudication of any issues of fact or law, the Parties agree as follows:

I. JURISDICTION

Each Party is entering into this Agreement pursuant to the following authorities:

A. The U.S. Environmental Protection Agency (U.S. EPA), Region V, enters into those portions of this Agreement that relate to the remedial investigation/feasibility study (RI/FS) pursuant to Section 120(e)(1) of CERCLA, 42 U.S.C. Section 9620(e)(1); Sections 6001, 3008(h) and 3004(u) and (v) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) (hereinafter jointly referred to as RCRA/HSWA or RCRA); and Executive Order 12580;

B. U.S. EPA, Region V, enters into those portions of this Agreement that relate to interim remedial actions and final remedial actions pursuant to Section 120(e)(2) of CERCLA/SARA, Sections 6001, 3008(h) and 3004(u) and (v) of RCRA, and Executive Order 12580;

C. The U.S. Department of Energy (DOE) enters into portions of this Agreement that relate to the RI/FS pursuant to Section 120(e)(1) of CERCLA, Sections 6001, 3008(h) and 3004(u) and (v) of RCRA, Executive Order 12580, the National Environmental Policy Act, 42 U.S.C. Section 4321, and the Atomic Energy Act of 1954 (AEA), as amended, 42 U.S.C. Section 2011 et seq. ;

D. U.S. DOE enters into those portions of this Agreement that relate to interim remedial actions and final remedial actions pursuant to Section 120(e)(2) of CERCLA/SARA, Sections 6001, 3004(u) and 3008(h) of RCRA, Executive Order 12580 and the AEA.

E. The Ohio Environmental Protection Agency (Ohio EPA or OEPA) enters into this Agreement pursuant to Sections 120(f) and 121(f) of CERCLA, RCRA, and Ohio Revised Code sections 3734.13, 3734.20, and 6111.03.

II. PARTIES

The Parties to this Agreement are the U.S. EPA, OEPA, and U.S. DOE. The terms of this Agreement shall apply to and be binding upon the U.S. EPA and OEPA and their agents, contractors, employees and response action contractors for the Site and U.S. DOE, its agents, employees, response action contractors for the Site and all subsequent owners, operators and lessees of the Mound Plant. U.S. DOE shall notify U.S. EPA and OEPA of the identity and assigned tasks of each of its contractors performing work under this Agreement upon their selection. This Agreement shall be enforceable against all of the foregoing via the Parties to this Agreement. This Part shall not be construed as an agreement to indemnify any person. U.S. DOE shall notify its agents, employees, response action contractors for the Site, and all subsequent owners, operators and lessees of the Mound Plant of the existence of this Part. U.S. DOE shall direct its management contractors to comply with this Agreement. Each undersigned representative of a Party certifies that he or

she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement.

III. FINDINGS OF FACT

A. The Mound Plant is a facility owned by the government of the United States under the jurisdiction of the United States Department of Energy and operated by EG&G Mound Applied Technologies, Inc.

B. The Mound Plant has been operating since 1948 on an area currently consisting of 306 acres within the city limits of Miamisburg and approximately ten miles south-southwest of Dayton, Ohio.

C. The Mound Plant is involved in a number of weapon and nonweapon programs in fulfilling its missions for U.S. defense. These programs include the research, development and production of weapons, development of isotope separation methods, research and development of nuclear safeguards, development and production of heat sources, and tritium recovery.

D. The Mound Plant is located approximately 2000 feet east of the Great Miami River in Miamisburg, Ohio. Part of the facility is located on top of thin phase glacial till overlying Ordovician Age bedrock. The western area of the Site overlies a portion of the Great Miami Buried Valley aquifer system, a sole source aquifer, from which the City of Miamisburg obtains its drinking water supply using municipal wells which are located across the Great Miami

River, but within one-half mile of the Mound Plant. The Mound Plant is surrounded by residential or recreational and agricultural areas.

E. During the operation of the Mound Plant, hazardous wastes have been deposited and/or stored at the Plant.

F. The Mound Plant has a number of waste areas which are known or potential sources of releases of hazardous waste or hazardous constituents, including landfills, surface impoundments, container storage areas, incinerators, air pollution control units, open burn areas, underground storage tanks, wastewater treatment and storage facilities, sumps, drum storage areas, spills, seeps, leach fields, and other miscellaneous units.

G. U.S. EPA placed the Mound Site on the National Priorities List on November 21, 1989.

IV. DEFINITIONS

Except as noted below or otherwise explicitly stated, the definitions provided in CERCLA, SARA and the NCP shall control the meaning of the terms used in this Agreement. In addition, the following definitions shall apply:

A. "Agreement" shall refer to this document and shall include all attachments to this document. All such attachments shall be appended to and made an integral and enforceable part of this document.

B. "ARAR(s)" shall mean applicable or relevant and appropriate requirements as those terms are defined in 40 CFR 300.6.

C. "Attachment(s)" shall mean documents attached to this Agreement. Attachment I shall mean the "Statement of Work for A Remedial Investigation/Feasibility Study (RI/FS) at DOE Mound Plant". Attachment II shall mean "Deliverables - DOE Mound Plant".

D. "Authorized representative" may include a Party's contractors acting in any capacity, including an advisory capacity.

E. "CERCLA" or "CERCLA/SARA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499.

F. "Days" shall mean calendar days, unless business days are specified. Any Submittal or written statement of dispute that under the terms of this Agreement would be due on a Saturday, Sunday or Federal holiday shall be due on the following business day.

G. "Documents" shall mean any record, photograph, video tape, computer disk or tape, or recorded or retrievable information of any kind, relating to treatment, storage, and disposal, and concerning the investigation and cleanup, of hazardous substances, contaminants or pollutants at or migrating from the facility. The term "document" shall be construed broadly to promote

the effective sharing between U.S. DOE, U.S. EPA, and Ohio EPA of information and views concerning the work to be done at the site.

H. "Feasibility Study" or "FS" shall mean that study which fully evaluates and develops remedial action alternatives to prevent or mitigate the migration or the release of hazardous substances, pollutants or contaminants at and from the Site.

I. "Hazardous substance", "contaminant", and "pollutant" shall for this Agreement have identical meanings and mean: (a) any substance designated pursuant to Section 311(b)(2)(A) of the Federal Water Pollution Control Act; (b) any element, compound, mixture, solution, or substance designated pursuant to Section 102 of CERCLA; (c) any hazardous waste having the characteristics identified under or listed pursuant to Section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress) and any hazardous constituents listed at 40 CFR 264 Appendix IX; (d) any toxic pollutant listed under Section 307(a) of the Federal Water Pollution Control Act; (e) any hazardous air pollutant listed under Section 112 of the Clean Air Act; and (f) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to Section 7 of the Toxic Substances Control Act. These terms also include, but are not limited to, any element, substance, compound, or mixture, or combination thereof whether in solid, liquid, semi-solid or contained gaseous form, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism,

either directly from the environment or indirectly by indigestion through food chains, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunction in reproduction) or physical deformations, in such organisms or their offspring; or which pose a substantial present or potential hazard to human health or safety or the environment. These terms may also include oil and gas.

The terms "contamination" and "pollution" shall for this Agreement have identical meanings and mean the release or threatened release of any hazardous substance, pollutant, or contaminant.

J. "Interim Remedial Actions" or "IRA" shall mean all discrete response actions implemented prior to a final remedial action which are consistent with the final remedial action and which are taken to prevent or minimize the release of hazardous substances, pollutants or contaminants so that they do not migrate or endanger public health, welfare or the environment. All interim remedial actions shall be undertaken in accordance with 40 CFR Part 300.68 and with the requirements of CERCLA/SARA.

K. "Mound Plant" or "Plant" shall mean the area including all building(s), structure(s), installation(s), equipment, pipe(s), or pipeline(s), (including any pipe(s) into a sewer or publicly owned treatment works), well(s), pit(s), pond(s), lagoon(s), impoundment(s), ditch(es), landfill(s), storage container(s), motor vehicle(s), rolling stock, or aircraft, or collection of such item(s), including all property boundaries

described in the legal description to be submitted in accordance with the Statement of Work attached to this Agreement.

L. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, and any amendment thereof.

M. "Ohio EPA" or "OEPA" shall mean Ohio Environmental Protection Agency and its employees and authorized representatives.

N. "Operable Unit" means a logical grouping of parts of the Site that are similar such as physical features, contaminant sources or types, schedules, or likely response actions.

O. "Regulated Unit" shall mean a unit operating under conditions imposed by a regulation or permit by any Federal or State regulatory body.

P. "Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing, into the environment including abandonment or discharging of receptacles.

Q. "Remedial Investigation" or "RI" shall mean that investigation conducted to fully determine the nature and extent of the release or threat of release of hazardous substances, pollutants or contaminants and to gather necessary data to support the feasibility study and endangerment assessment.

R. "RCRA" shall mean the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984, Pub. L. 98-616.

S. "Site" shall mean any area where hazardous substances, pollutants or contaminants have come to be located, due to the activities at the Mound Plant (hereafter referred to as the Site). The U.S. EPA, after consulting with OEPA and U.S. DOE, may change the Site designation on the basis of additional investigations to more accurately reflect the areas contaminated by hazardous substances, pollutants or contaminants, related in whole or in part to the Mound Plant. The work to be performed in this Agreement shall conform to the definition of the Site as established by the U.S. EPA.

T. "Solid Waste Management Unit" shall mean any waste management unit from which hazardous constituents may migrate, irrespective of whether or not units were intended for such use. Examples of a SWMU include, but are not limited to: landfills, surface impoundments, waste piles, land treatment units, certain areas associated with production processes at facilities which have become contaminated as a result of routine and systematic releases of wastes, or hazardous constituents from wastes. A product may become a waste if it is abandoned or discarded.

U. "Submittal" shall mean every document, report, schedule, deliverable, work plan or other item to be submitted to U.S. EPA and Ohio EPA pursuant to this Agreement.

V. "Technical Memorandum" shall mean a report or memorandum intended to be a secondary document, subject to comment, that is neither approved nor disapproved by U.S. EPA. Technical memoranda are generally for dissemination of data or are analysis and interpretation to be incorporated into future primary documents.

W. "Timetables and deadlines" shall mean schedules as well as that work and those actions which are to be completed and performed in conjunction with such schedules (including performance of actions established pursuant to the dispute resolution procedures set forth in Part XXII of this Agreement).

X. "U.S. DOE" or "DOE" shall mean the U.S. Department of Energy, its employees, contractors, agents, successors, assigns and authorized representatives.

Y. "U.S. EPA" shall mean the United States Environmental Protection Agency, its employees and authorized representatives.

Z. "Guidance" shall mean documents providing recommended procedures having general applicability issued by either U.S. EPA or OEPA.

V. PURPOSE

A. The general purposes of this Agreement are to:

1. Ensure that the environmental impacts associated with past and present activities at the Site are thoroughly investigated and appropriate remedial action taken as necessary to protect the public health, welfare and the environment;

2. Establish a procedural framework and schedule for developing, implementing, maintaining and monitoring appropriate response actions at the Site in accordance with CERCLA/SARA, the NCP, Superfund guidance and policy, RCRA, RCRA guidance and policy; and,

3. Facilitate cooperation, exchange of information and participation of the Parties in such actions.

B. Specifically, the purposes of this Agreement are to:

1. Identify Interim Remedial Action (IRA) alternatives which are appropriate at the Site prior to the implementation of final remedial action(s) for the Site. IRA alternatives shall be identified and proposed to the Parties as early as possible prior to formal proposal of IRAs to U.S. EPA and OEPA pursuant to CERCLA/SARA. This process is designed to promote cooperation among the Parties in identifying IRA alternatives prior to selection of final IRAs;

2. Establish requirements for the performance of RI(s) to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release and threatened release of hazardous substances, pollutants or contaminants at the Site and to establish requirements for the performance of FS(s) for the Site to identify, evaluate, and select alternatives for the appropriate remedial action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants or contaminants at the Site in accordance with CERCLA/SARA;

3. Identify the nature, objective and schedule of response actions to be taken at the Site. Response actions at the Site shall attain that degree of cleanup of hazardous substances, pollutants or contaminants mandated by CERCLA/SARA;

4. Implement the selected interim and final remedial action(s) in accordance with CERCLA/SARA; and

5. Assure compliance with Federal and State hazardous waste laws and regulations for matters covered by this Agreement.

VI. SCOPE OF AGREEMENT

Under this Agreement the DOE agrees it shall:

A. Conduct Interim Remedial Actions (IRAs) as appropriate with concurrence and approval of U.S. EPA after consultation with OEPA. IRAs may

include Remedial Investigation and Feasibility Study work as well as design and implementation of U.S. EPA approved Remedies after consultation with OEPA;

B. Conduct Remedial Investigation(s) (RI)(s) for the Site as described in the Attachments to this Agreement;

C. Conduct Feasibility Study(s) (FS)(s) of the Site as appropriate, based on approved RI(s) and Risk Assessments;

D. Develop remedial action alternative(s) for the Site and proposed plans in accordance with Part X;

E. Submit proposed draft Record(s) of Decision (ROD)(s) to U.S. EPA and OEPA in accordance with the time schedule set forth in Part X of this Agreement;

F. Following finalization of every ROD as set forth in Part X of this Agreement, develop and submit a remedial design/remedial action (RD/RA) work plan for design and implementation of the selected remedial action(s) in accordance with Part XI of this Agreement;

G. Following review and approval by U.S. EPA in consultation with OEPA of a RD/RA work plan, implement the remedial action(s) in accordance with Part XI of this Agreement; and

H. Provisions in this Agreement calling for OEPA review or consultation shall apply to actions taken or documents submitted after the date of OEPA's signature as a party to this Agreement.

In the event of any inconsistency between Parts I-XXXVIII of this Agreement and the Attachments to this Agreement, Parts I-XXXVIII of this Agreement shall govern unless and until duly modified pursuant to this Agreement.

U.S. EPA and OEPA agree to provide the DOE with guidance and timely response to requests for guidance to assist the DOE in the performance of the requirements under this Agreement.

VII. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

A. The Parties intend to integrate U.S. DOE's CERCLA response obligations and RCRA corrective action obligations which relate to the release(s) of hazardous substances, pollutants or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will be deemed to achieve compliance with CERCLA, 42 U.S.C. Section 9601 et seq.; to satisfy the corrective action requirements of Sections 3004(u) and (v) of RCRA, 42 U.S.C. Section 6924(u) and (v), for a RCRA permit, and Section 3008(h), 42 U.S.C. Section 6928(h), for interim status facilities; and to meet or exceed all applicable or relevant and appropriate Federal and State laws and regulations, to the extent required by Section 121 of CERCLA, 42 U.S.C. Section 9621.

B. Based upon the foregoing, the Parties intend that any remedial action selected, implemented and completed under this Agreement shall be deemed by the Parties to be protective of human health and the environment such that remediation of releases covered by this Agreement shall obviate the need for further corrective action under RCRA. The Parties agree that with respect to releases of hazardous waste covered by this Agreement, RCRA shall be considered an applicable or relevant and appropriate requirement (ARAR) pursuant to Section 121 of CERCLA.

C. If a permit is issued by U.S. EPA to U.S. DOE for on-going hazardous waste management activities at the Site, U.S. EPA shall reference and incorporate any appropriate provisions, including appropriate schedules (and the provision for extension of such schedules), of this Agreement into such permit. The Parties intend that the judicial review of any U.S. EPA permit conditions which reference this Agreement shall, to the extent authorized by law, only be reviewed under the provisions of CERCLA.

D. Nothing in this Agreement shall alter U.S. DOE's authority with respect to removal actions conducted pursuant to Section 104 of CERCLA, 42 U.S.C. Section 9604. Nothing in this Agreement shall alter any of OEPA's rights under CERCLA or State law with respect to such removal actions.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Agreement shall be

undertaken in accordance with the requirements of all applicable Federal and State laws and regulations to the extent required by CERCLA.

IX. PERMITS

A. U.S. EPA, OEPA and U.S. DOE recognize, under Section 121(d) and 121(e)(1) of CERCLA, 42 U.S.C. Sections 9621(d) and 9621(e)(1), and the NCP, that portions of the response actions under this Agreement conducted entirely on the Site are exempted from the procedural requirement to obtain Federal, State, or local permits. U.S. DOE must satisfy all Federal and State standards, requirements, criteria, or limitations that would have been included in any such permit to the extent required by CERCLA and the NCP.

B. When U.S. DOE proposes a response action to be conducted entirely on the Site, which in the absence of Section 121(e)(1) of CERCLA and the NCP would require a Federal or State permit, U.S. DOE shall include in its submittal to U.S. EPA and OEPA:

1. Identification of each permit that would otherwise be required;

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

3. Explanation of how the response action will meet the standards, requirements, criteria, or limitations identified in subparagraph 2 above.

C. Sections A and B above are not intended to relieve U.S. DOE from the requirement(s) of obtaining a permit whenever it proposes a response action involving the shipment, movement, or any other off-site activity with respect to hazardous substances, pollutants or contaminants from the Facility.

D. U.S. DOE shall notify U.S. EPA and OEPA in writing of all permits required for off-site activities as soon as practicable after U.S. DOE becomes aware of the requirement. Upon request by U.S. EPA or OEPA, U.S. DOE shall provide U.S. EPA and OEPA copies of all such permit applications and any other documents related to the permit process.

X. REMEDIAL INVESTIGATION AND FEASIBILITY STUDIES

A. U.S DOE agrees to develop and implement Remedial Investigation(s) and Feasibility Studies in accordance with the Statement of Work, appended to this Agreement as Attachment I. The Parties recognize that response actions at the Site may proceed in terms of Operable Units, if approved by U.S. EPA in consultation with OEPA.

B. Following finalization of every RI/FS Report (i.e., RI/FS Reports for the Site as a whole and for any Operable Unit) U.S. DOE shall, after consultation with U.S. EPA and OEPA pursuant to Part XII, publish its proposed plan for public review and comment. Within thirty (30) days following the close of the public comment period, U.S. DOE shall submit to U.S. EPA and OEPA a draft responsiveness summary and a proposed draft ROD that considers comments received during the public comment period. Within thirty (30) days

of receipt of the draft responsiveness summary and proposed draft ROD, U.S. EPA, in consultation with the State, shall review and approve or request U.S. DOE to modify the draft responsiveness summary and proposed draft ROD in accordance with U.S. EPA's and OEPA's comments. Within thirty (30) days of receipt of U.S. EPA's and OEPA's comments, U.S. DOE shall respond to U.S. EPA's and OEPA's comments and submit a draft responsiveness summary and draft ROD to U.S. EPA for its approval or modification and to OEPA for its review. In the event that U.S. EPA approves the initial draft responsiveness summary and proposed draft ROD or the revised draft responsiveness summary and draft ROD, U.S. DOE shall sign the final documents and transmit the ROD to U.S. EPA for signature within thirty (30) days of being notified of U.S. EPA's approval. In the event that U.S. EPA does not approve the revised draft responsiveness summary and draft ROD, U.S. EPA, in consultation with the State, shall modify these documents and sign the ROD. The ROD is final and effective upon signature by the Regional Administrator and not subject to dispute by U.S. DOE.

C. All documents approved pursuant to this section, are incorporated and made an enforceable part of this Agreement.

XI. REMEDIAL DESIGN/REMEDIAL ACTION

A. Within sixty (60) days of finalization of the ROD for the Site as a whole or any Operable Unit, U.S. DOE shall submit to U.S. EPA and OEPA for approval in accordance with Part XII the work plan to accomplish the remedial design and the remedial action for that Operable Unit (the RD/RA Work Plan).

The RD/RA Work Plan(s) shall include but not be limited to appropriate timetables and schedules for implementation of the RD/RA tasks and submittal of RD/RA reports. The RD/RA work plan(s) shall be developed in conformance with the ROD, CERCLA, the NCP, U.S. EPA guidance and policy applicable at the time of the final ROD date, including the Statement of Work (SOW), and any additional guidance documents provided by U.S. EPA and OEPA.

B. U.S. DOE shall commence the implementation of the RD/RA Work Plan for each Operable Unit within thirty (30) days of the finalization of each work plan. All work shall be conducted in accordance with the NCP, U.S. EPA and OEPA guidance, and the requirements of the Agreement, including the standards, specifications, and schedules contained in the RD/RA Work Plan. DOE shall conduct work in accordance with OEPA guidance only after receiving U.S. EPA concurrence.

C. All documents approved pursuant to this section shall be incorporated into and made an enforceable part of this Agreement.

XII. CONSULTATION WITH U.S. EPA AND OEPA

Review and Comment Process for Draft and Final Documents

A. Applicability: The provisions of this Part establish the procedures that shall be used by U.S. DOE, U.S. EPA and OEPA to provide the Parties with appropriate notice, review, comment, and response to comments regarding RI/FS and RD/RA documents, specified herein as either primary or secondary documents. In accordance with Section 120 of CERCLA, U.S. DOE shall normally

be responsible for issuing primary and secondary documents to U.S. EPA and OEPA. As of the effective date of this Agreement, all draft and final reports for any deliverable document identified herein shall be prepared, distributed and subject to dispute in accordance with Paragraphs B through J below.

The designation of a document as "draft" or "final" is solely for purposes of consultation with U.S. EPA and OEPA in accordance with this Part. Such designation does not affect the obligation of the Parties to issue documents, which may be referred to herein as "final", to the public for review and comment as appropriate and as required by law.

B. General Process for RI/FS and RD/RA documents:

1. Primary documents include those reports that are major, discrete portions of RI/FS or RD/RA activities. Primary documents are initially issued by U.S. DOE in draft subject to review and comment by U.S. EPA and OEPA. Following receipt of comments on a particular draft primary document, U.S. DOE shall respond to the comments received and issue a draft final primary document subject to dispute resolution. The draft final primary document shall become the final primary document ten (10) working days after the period established for review of a draft final document if changes are not requested by U.S. EPA or OEPA. If changes are requested the draft final primary document shall become the final primary document, when the changes are incorporated to the satisfaction of U.S. EPA in consultation with OEPA, if dispute resolution is not invoked or as modified by decision of the dispute resolution process.

2. Secondary documents include those documents that are discrete portions of the primary documents and are typically input or feeder documents. Secondary documents are issued by U.S. DOE in draft subject to review and comment by U.S. EPA and OEPA. Although U.S. DOE shall respond to comments received, the draft secondary documents may be finalized in the context of the corresponding primary documents. A secondary document may be disputed at the time the corresponding draft final primary document is issued.

C. Primary Documents:

1. U.S. DOE shall complete and transmit draft documents for the following primary documents to U.S. EPA and OEPA for review and approval in accordance with the provisions of this Part:

a. Limited Additional Studies - Work Plans;

b. RI/FS Work Plan(s);

c. Remedial Investigation Report(s);

d. Treatability Investigation, Bench or Pilot Scale - Work Plan(s);

e. Feasibility Study Report(s);

f. Proposed Plan(s);

g. Yearly Schedules; and

h. RD/RA Work Plan(s).

2. Only the draft final version of the primary documents identified above shall be subject to dispute resolution. U.S. DOE shall complete and transmit draft primary documents in accordance with the timetable and deadlines established in the work plans required under the Statement of Work attached to this Agreement.

D. Secondary Documents:

1. U.S. DOE shall complete and transmit draft documents for the following secondary documents to U.S. EPA and OEPA for review and comment in accordance with the provisions of this Part:

a. Limited Additional Studies - Report(s);

b. Preinvestigation Evaluation of Remedial Action Technologies;

c. Technical Memoranda Related to the Baseline Risk Assessment;

d. Technical Memoranda related to the Remedial Investigation;

e. Technical Memoranda related to the Feasibility Study; and

f. Monthly Progress Reports.

2. Although U.S. EPA and OEPA may comment on the draft documents for the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by Paragraph B hereof. Dates shall be established for the completion and transmission of draft secondary reports and shall be included in the work plans required under the Statement of Work attached to this Agreement.

E. Meeting of the Project Managers on Development of Reports:

The Project Managers shall meet approximately every thirty (30) days, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the Site on the primary and secondary documents. Prior to preparing any draft document specified in Paragraphs C and D above, the Project Managers shall meet to discuss the document results in an effort

to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft document.

F. Identification and Determination of Potential ARARs:

1. For those primary documents or secondary documents that consist of or include ARAR determinations, prior to the issuance of a draft document, the Project Managers shall meet to identify and propose, to the best of their ability, all potential ARARs pertinent to the report being addressed. Draft ARAR determinations shall be prepared by U.S. DOE in accordance with Section 121(d)(2) of CERCLA, the NCP and pertinent guidance issued by U.S. EPA and OEPA, which is not inconsistent with CERCLA and the NCP.

2. In identifying potential ARARs, the Parties recognize that actual ARARs can be identified only on a site-specific basis and that ARARs depend on the specific hazardous substances, pollutants and contaminants at a site, the particular actions proposed as a remedy, and the characteristics of a site. The Parties recognize that ARAR identification is necessarily an iterative process and that potential ARARs must be re-examined throughout the RI/FS process until a Record of Decision ("ROD") is issued.

G. Review and Comment on Draft Documents:

1. U.S. DOE shall complete and transmit each draft primary document to U.S. EPA and OEPA on or before the corresponding deadline established for the issuance of the document. U.S. DOE shall complete and transmit the draft secondary document in accordance with the target dates

established for the issuance of such documents in the work plan required under the Statement of Work attached to this Agreement.

2. Unless the Parties mutually agree to another time period, all draft documents shall be subject to a thirty (30) day period for review and comment. Review of any document by the U.S. EPA and OEPA may concern all aspects of the document (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP and any pertinent guidance or policy promulgated by the U.S. EPA and OEPA. Comments by the U.S. EPA and OEPA shall be provided with adequate specificity so that U.S. DOE may respond to the comments and, if appropriate, make changes to the draft report. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of U.S. DOE, the U.S. EPA and OEPA shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy reports, U.S. EPA or OEPA may extend the thirty (30) day comment period for an additional twenty (20) days by written notice to U.S. DOE prior to the end of the thirty (30) day period. On or before the close of the comment period, U.S. EPA and OEPA shall transmit by next day mail their written comments to U.S. DOE.

3. Representatives of U.S. DOE shall make themselves readily available to U.S. EPA and OEPA during the comment period for purposes of informally responding to questions and comments on draft reports. Oral comments made during such discussions need not be the subject of a written

response by U.S. DOE on the close of the comment period, unless otherwise agreed to by the Project Managers.

4. In commenting on a draft document which contains a proposed ARAR determination, U.S. EPA and OEPA shall include a reasoned statement of whether it objects to any portion of the proposed ARAR determination. To the extent that U.S. EPA or OEPA does object, it shall explain the basis for its objection in detail and shall identify any ARARs which it believes were not properly addressed in the proposed ARAR determination.

5. Following the close of the comment period for a draft document, U.S. DOE shall give full consideration to all written comments on the draft document submitted during the comment period. Within forty-five (45) days of the close of the comment period on a draft secondary document, U.S. DOE shall transmit to U.S. EPA and OEPA its written response to comments received within the comment period. Within forty-five (45) days of the close of the comment period on a draft primary document, U.S. DOE shall transmit to U.S. EPA and OEPA a draft final primary document which shall include U.S. DOE's response to all written comments received within the comment period. While the resulting draft final document shall be the responsibility of U.S. DOE, it shall be the product of consensus to the maximum extent possible.

6. U.S. DOE may extend the forty-five (45) day period for either responding to comments on a draft document or for issuing the draft final primary document for an additional twenty (20) days by providing notice to

U.S. EPA and OEPA. In appropriate circumstances, this time period may be further extended in accordance with Part XXV hereof.

H. Availability of Dispute Resolution for Draft Final Primary Documents:

1. Dispute resolution shall be available to the Parties for draft final primary documents as set forth in Part XXII.

2. When dispute resolution is invoked on a draft primary document, work may be stopped in accordance with the procedures set forth in Part XXII regarding dispute resolution.

I. Finalization of Documents:

The draft final primary document shall serve as the final primary document if no party invokes dispute resolution regarding the document or, if invoked, at completion of the dispute resolution process should U.S. DOE's position be sustained. If U.S. DOE's determination is not sustained in the dispute resolution process, U.S. DOE shall prepare, within not more than thirty-five (35) days, a revision of the draft final document which conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Part XXV hereof.

J. Subsequent Modifications of Final Documents:

Following finalization of any primary document pursuant to Paragraph I above, U.S. EPA, OEPA or U.S. DOE may seek to modify the document, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in Paragraphs 1 and 2 below.

1. U.S. EPA, OEPA or U.S. DOE may seek to modify a document after finalization if it determines, based on new information (i.e., information that became available, or conditions that became known, after the report was finalized) that the requested modification is necessary. U.S. EPA, OEPA or the DOE may seek such a modification by submitting a concise written request to the Project Managers of the other Parties. The request shall specify the nature of the requested modification and how the request is based on new information.

2. In the event that a consensus is not reached by the Project Managers on the need for a modification, either U.S. EPA, OEPA or the DOE may invoke dispute resolution to determine if such modification shall be conducted. Modification of a document shall be required only upon a showing that: (1) the requested modification is based on significant new information, and (2) the requested modification could be of significant assistance in evaluating impacts on the public health or the environment, in evaluating the selection of remedial alternatives, or in protecting human health and the environment.

3. Nothing in this Subpart shall alter U.S. EPA's or OEPA's ability to request the performance of additional work pursuant to Part XIII of

this Agreement (Additional Work) which does not constitute modification of a final document.

XIII. ADDITIONAL WORK OR MODIFICATION TO WORK

A. In the event that the U.S. EPA in consultation with OEPA determines additional work, or modification to work, including remedial investigatory work and/or engineering evaluation, is necessary to accomplish the objectives of this Agreement, notification of such additional work or modification to work shall be provided to U.S. DOE. U.S. DOE agrees, subject to the dispute resolution procedures set forth in Part XXII, to implement any such work.

B. Any additional work or modification to work determined to be necessary by U.S. DOE shall be proposed by U.S. DOE and shall be subject to approval by U.S. EPA in consultation with OEPA prior to initiating any work or modification to work.

C. Any additional work or modification to work approved pursuant to Subpart A or B shall be completed in accordance with the standards, specifications, and schedule determined or approved by U.S. EPA in consultation with OEPA. If any additional work or modification to work will adversely affect work scheduled or will require significant revisions to an approved Work Plan, the U.S. EPA and OEPA Project Managers shall be notified immediately of the situation followed by a written explanation within five (5) business days of the initial notification.

XIV. PROJECT MANAGERS

A. The U.S. EPA, OEPA and U.S. DOE shall each designate a Project Manager and Alternate (hereinafter jointly referred to as Project Manager) for the purpose of overseeing the implementation of this Agreement. Within ten (10) days of the effective date of this Agreement, each Party shall notify the other Party of the name, telephone number and address of its Project Manager.

Any Party may change its designated Project Manager by notifying the other Party, in writing, within thirty (30) days of the change.

B. To the maximum extent possible, communications between the Parties concerning the terms and conditions of this Agreement shall be directed through the Project Managers as set forth in Part XIV of this Agreement. Each Project Manager shall be responsible for assuring that all communications from the other Project Manager are appropriately disseminated and processed by the entities which the Project Managers represent.

C. The U.S. EPA Project Manager shall have the authority vested in an RPM/OSC by the NCP, 40 CFR Part 300. The OEPA Project Manager shall have the authority vested by Ohio Revised Code Chapters 3734 and 6111. The U.S. EPA and OEPA Project Managers shall have the authority to:

1. Take samples, request split samples of DOE samples and ensure that work is performed properly and pursuant to U.S. EPA and OEPA protocols as well as pursuant to the Attachments and plans incorporated into this Agreement. Such protocols shall be made available to the Parties upon

request. U.S. DOE shall conduct work in accordance with OEPA protocols only after receiving U.S. EPA concurrence;

2. Observe all activities performed pursuant to this Agreement, take photographs and make such other reports on the progress of the work as the Project Manager deems appropriate;

3. Review records, files and documents relevant to this Agreement; and

4. Recommend and request modifications to the work to be performed pursuant to this Agreement, or in techniques, procedures or design utilized in carrying out this Agreement, which are necessary to complete the project.

D. The DOE Project Manager may also recommend and request minor field modifications to the work to be performed pursuant to this Agreement, or in techniques, procedures or design utilized in carrying out this Agreement, which are necessary to complete the project.

E. Any modifications proposed under this Part by any Party must be approved orally by all Project Managers to be effective. If agreement cannot be reached on the proposed additional work or modification to work, dispute resolution as set forth in Part XXII may be used in addition to this Part.

Within five (5) business days following a modification made pursuant to this Part, the Project Manager who requested the modification shall prepare a memorandum detailing the modification and the reasons therefore and shall provide or mail a copy of the memorandum to the other Project Managers.

F. The Project Manager for U.S. DOE shall be physically present on the Site or reasonably available to supervise work performed at the Site during implementation of the work performed pursuant to this Agreement and shall make himself or herself available to U.S. EPA and OEPA for the pendency of this Agreement. The absence of the U.S. EPA or OEPA Project Manager from the Site shall not be cause for work stoppage.

XV. CREATION OF DANGER

In the event the U.S. EPA or OEPA determines that activities conducted pursuant to this Agreement, or any other circumstances or activities, are creating a danger to the health or welfare of the people on the Site or in the surrounding area or to the environment, U.S. EPA or OEPA may order U.S. DOE to stop further implementation of this Agreement for such period of time as needed to abate the danger.

XVI. REPORTING REQUIREMENTS

A. Monthly Progress Reports - DOE shall prepare and provide to U.S. EPA and OEPA written monthly progress reports which: (1) describe the actions which have been taken toward achieving compliance with this Agreement during

the previous month; (2) include all plans and procedures completed during the previous month; (3) describe all actions, data and plans which are scheduled for the next month(s) and provide other information relating to the progress of construction as is customary in the industry; (4) include information regarding progress toward completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of any Statement of Work or Work Plan, and a description of efforts made to mitigate those delays or anticipated delays. These progress reports are due to U.S. EPA and OEPA by the tenth day following the month being reported.

B. Other Reporting Requirements - DOE is required to submit the other documents, reports, plans and data required by the Statements of Work and Work Plans within the timeframes contained in the schedules approved by U.S. EPA in consultation with OEPA.

C. If the date for submission of any item or notification required by this Agreement falls upon a weekend or State or Federal holiday, the time period for submission of that item or notification is extended to the next working day following the weekend or holiday.

D. Upon the occurrence of any event during performance of the work which, pursuant to Section 103 of CERCLA, requires reporting to the National Response Center, DOE shall promptly orally notify the U.S. EPA Project Manager ("RPM") and/or On-Scene Coordinator ("OSC") and the Ohio EPA Office of Emergency Response. This notification is in addition to the reporting required by Section 103 of CERCLA. Within twenty (20) days of the onset of

such an event, DOE shall furnish to U.S. EPA and OEPA a written report setting forth the events which occurred and the measures taken, and those measures which will be taken, in response thereto. Within thirty (30) days of the conclusion of such an event, DOE shall submit a report setting forth all actions taken to respond thereto.

XVII. FIVE YEAR REVIEW

A. U.S. DOE agrees that U.S. EPA will review any remedial action pursuant to this Agreement, in accordance with Section 121(c) of CERCLA/SARA and that OEPA will periodically review the remedial action pursuant to Ohio Revised Code sections 3734.10, 3734.13, 3734.20, 6111.03, and 6111.05. If upon such review it is the judgment of U.S. EPA, in consultation with OEPA, that additional action or modification of the remedial action is appropriate in accordance with Section 104 or 106 of CERCLA/SARA, U.S. EPA shall require U.S. DOE to implement such additional or modified action in accordance with a schedule approved by U.S. EPA in consultation with OEPA.

B. Any dispute by U.S. DOE of the determination by U.S. EPA or OEPA under this Part shall be resolved under Part XXII (Dispute Resolution) of this Agreement.

XVIII. SAMPLING AND DATA/DOCUMENT AVAILABILITY

A. The Parties shall make available to each other quality assured results of sampling, tests or other data generated by any Party, or on their

behalf, with respect to the implementation of this Agreement within forty-five (45) days of their collection or performance. If quality assurance is not completed within forty-five (45) days, raw data or results shall be submitted within the forty-five (45) day period and quality assured data or results shall be submitted as soon as they become available.

B. At the request of the U.S. EPA or OEPA Project Manager, U.S. DOE shall allow split or duplicate samples to be taken by the U.S. EPA or OEPA during sample collection conducted during the implementation of this Agreement. U.S. DOE's Project Manager shall use his or her best efforts to notify the U.S. EPA and OEPA Project Managers not less than fourteen (14) business days in advance of any sample collection.

XIX. QUALITY ASSURANCE

DOE shall use quality assurance, quality control, and chain of custody procedures in accordance with U.S. EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans," (QAM-005/80), U.S. EPA Region V QAPP Guidance and subsequent amendments to such guidelines. Prior to the commencement of any monitoring project under this Agreement, U.S. DOE shall submit a Quality Assurance Project Plan ("QAPP") to U.S. EPA and OEPA that is consistent with the Statements of Work, Work Plans and applicable guidelines. U.S. EPA, in consultation with OEPA, after review of DOE's QAPP(s), will notify DOE of any required modifications, conditional approval, disapproval, or approval of the QAPP(s). Upon notification of disapproval or any need for modifications, U.S. DOE shall make all required modifications in

the QAPP subject to dispute resolution provisions of Part XXII. U.S. DOE shall assure that U.S. EPA and OEPA personnel or authorized representatives are allowed access to any laboratory utilized by U.S. DOE in implementing this Agreement. In addition, U.S. DOE shall have a designated laboratory analyze samples submitted by U.S. EPA or OEPA for quality assurance monitoring.

XX. ACCESS

A. Without limitation on any authority conferred on U.S. EPA and OEPA by statute or regulation, U.S. EPA and OEPA and/or their Authorized Representatives shall have the authority to enter the Mound Site at all reasonable times for purposes consistent with this Agreement.

B. To the extent that access is required by U.S. DOE to areas of the Site presently owned by or leased to parties other than U.S. DOE, U.S. DOE agrees to exercise its authorities to obtain access pursuant to Section 104(e) of CERCLA from the owners or lessees upon the approval of any work plan or any other proposal that requires access to those properties to assure the timely performance of U.S. DOE's obligations under this Agreement. In the event voluntary access has not been obtained by U.S. DOE within thirty (30) days of the approval of any work plan or proposal that requires access to properties not owned or leased to U.S. DOE, U.S. DOE agrees within the next thirty (30) days to refer the matter to the U.S. Department of Justice for the appropriate judicial process in accordance with available U.S. EPA or U.S. DOE guidance. Any access agreement obtained by U.S. DOE shall provide for reasonable access by U.S. EPA and OEPA and/or their Authorized Representatives. U.S. DOE shall

use its best efforts to assure the access agreements shall also provide that the owners of any property where monitoring wells, pumping wells, treatment facilities, sample locations, or other response actions may be located shall notify U.S. DOE, U.S. EPA and OEPA by certified mail, return receipt requested, at least thirty (30) days prior to any conveyance of the property owners' intent to convey any interest in the property and of the provisions made for the continued operation of the above-mentioned response actions pursuant to this Agreement. In the event any existing access agreement fails to provide for access for any activity required by this Agreement, U.S. DOE agrees to obtain access in accordance with the foregoing provisions of this paragraph.

XXI. RETENTION AND AVAILABILITY OF INFORMATION

A. DOE shall make available to U.S. EPA and OEPA and shall retain, during the pendency of this Agreement and for a period to ten (10) years after its termination, at least one copy of all records and documents, other than intermediate drafts, in its possession, custody, or control which relate to the performance of this Agreement, including, but not limited to, documents reflecting the results of any sampling, test, or other data or information generated or acquired by DOE or on its behalf, with respect to the Site, and all documents pertaining to its own or any other person's liability for response action or costs under CERCLA. After the ten (10) year period of document retention, DOE shall notify U.S. EPA and OEPA at least ninety (90) calendar days prior to the destruction of any such documents, and upon request

by U.S. EPA or OEPA, DOE shall relinquish custody of the documents or copies of the documents to the requesting party.

B. Information, records, or other documents produced under the terms of this Agreement by U.S. EPA, OEPA and DOE shall be available to the public except: (1) those identified to U.S. EPA, OEPA or U.S. DOE as classified within the meaning of and in conformance with AEA, or (2) those that could otherwise be withheld pursuant to the Freedom of Information Act or the Privacy Act, unless expressly authorized for release by the originating agency. Documents or information so identified shall be handled in accordance with those regulations. No document marked draft may be made available to the public without prior consultation with and approval by the generating Party. If the document is final and no confidentiality claim accompanies information which is submitted to the Party requesting it, the information may be made available to the public without further notice to the originating Party.

XXII. RESOLUTION OF DISPUTES

Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Part shall apply.

All Parties to this Agreement shall make reasonable efforts to informally resolve disputes at the Project Manager or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this Part shall be implemented to resolve the dispute.

A. Within thirty (30) days after: (1) the period established for review of a draft final primary document pursuant to Part XII (Review and Comment on Draft Documents) of this Agreement; or (2) any action which leads to or generates a dispute, the disputing Party shall submit to the other Party a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute and the information the disputing Party is relying upon to support its position.

B. Prior to any Party's issuance of a written statement of dispute, the disputing Party shall engage the other Parties in informal dispute resolution among the Project Managers and/or their immediate supervisors. During this informal dispute resolution period the Parties shall meet or confer by telephone as many times as are necessary to discuss and attempt resolution of the dispute.

C. If agreement cannot be reached on any issue within the informal dispute resolution period, at any time prior to the expiration of the thirty (30) day period the disputing Party may forward the written statement of dispute to the Dispute Resolution Committee (DRC) thereby elevating the dispute to the DRC for resolution.

D. The DRC shall serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the

policy level (SES or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The U.S. EPA representative on the DRC is the Waste Management Division Director of U.S. EPA's Region V. Ohio EPA's designated member is the Chief of the Southwest District Office. U.S. DOE's designated member is the U.S. DOE Dayton Area Office Manager. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other Parties.

E. Following elevation of a dispute to the DRC, the DRC shall have twenty-one (21) days to unanimously resolve the dispute and issue a written decision. If the DRC is unable to unanimously resolve the dispute within this twenty-one (21) day period the written statement of dispute shall be forwarded 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 DRC. The U.S. EPA representative on the SEC is the Regional Administrator of U.S. EPA's Region V. Ohio EPA's representative on the SEC is the Deputy Director of Waste Programs. U.S. DOE's representative on the SEC is the U.S. DOE Albuquerque Operations Manager. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision. If unanimous resolution of the dispute is not reached within twenty-one (21) days, U.S. EPA's Regional Administrator shall issue a written position on the dispute. U.S. DOE or OEPA may, within twenty-one (21) days of the Regional Administrator's issuance of U.S. EPA's position, issue a written notice

elevating the dispute to the Administrator of U.S. EPA for resolution in accordance with all applicable laws and procedures. In the event that U.S. DOE or OEPA elects not to elevate the dispute to the Administrator within the designated twenty-one (21) day escalation period, U.S. DOE or OEPA shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.

G. Upon escalation of a dispute to the Administrator of U.S. EPA pursuant to Subpart F, the Administrator shall review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the U.S. EPA Administrator shall meet and confer with the Secretary of U.S. DOE and the Director of OEPA to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide U.S. DOE and OEPA with a written final decision setting forth resolution of the dispute.

H. The pendency of any dispute under this Part shall not affect U.S. DOE's responsibility for timely performance of the work required by this Agreement, except that the time period for completion of work 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 in accordance with the procedures specified herein. All elements of the work required by this Agreement which are not affected by the dispute shall continue and be completed in accordance with the applicable schedule.

I. When dispute resolution is in progress, work affected by the dispute shall immediately be discontinued if the Waste Management Division Director

for U.S. EPA's Region V requests, in writing, that work related to the dispute be stopped because, in U.S. EPA's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. OEPA may request the U.S. EPA's Division Director to order work stopped for the reason set out above. To the extent possible, the Party seeking a work stoppage shall consult with the other parties prior to initiating a work stoppage request. After stoppage of work, if U.S. DOE believes that the work stoppage is inappropriate or may have potential significant adverse impacts, U.S. DOE may meet or confer by telephone with the Division Director and the OEPA Chief of the Southwest District Office to discuss the work stoppage. Following this meeting or conference, and further consideration of the issues, the Division Director will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the Division Director may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of U.S. DOE.

J. Within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this Part, U.S. DOE shall incorporate the resolution and final determination into the appropriate plan, schedule or procedures.

K. Resolution of a dispute pursuant to this Part of the Agreement constitutes a final resolution of any dispute arising under this Agreement subject to the provisions of Part XXXV. below. U.S. DOE shall abide by all

terms and conditions of any final resolution of dispute obtained pursuant to this Part of this Agreement.

L. In any dispute subject to dispute resolution, the Parties may by written agreement modify the procedures of Paragraphs XXII.A through XXII.K above, including but not limited to an extension or shortening of the times therein or the waiver of any provision set forth therein.

XXIII. ENFORCEABILITY

A. The Parties agree that:

1. Upon the effective date of this Agreement, any standard, regulation, condition, requirement or order which has become effective under CERCLA and is incorporated into this Agreement is enforceable by any person pursuant to Section 310 of CERCLA, and any violation of such standard, regulation, condition, requirement or order shall be subject to civil penalties under Sections 310(c) and 109 of CERCLA; and

2. All timetables or deadlines associated with the development, implementation and completion of the RI/FS and subsequent remedial design and remedial action shall be enforceable by any person pursuant to Section 310 of CERCLA, and any violation of such timetables or deadlines shall be subject to civil penalties under Sections 310(c) and 109 of CERCLA; and

3. 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 Section 310(c) of CERCLA, and any violation of such terms or conditions shall be subject to civil penalties under Sections 310(c) and 109 of CERCLA; and

4. Any final resolution of a dispute pursuant to Part XXII of this Agreement which establishes a term, condition, timetable, deadline or schedule shall be enforceable by any person pursuant to Section 310(c) of CERCLA, and any violation of such term, condition, timetable, deadline or schedule shall be subject to civil penalties under Sections 310(c) and 109 of CERCLA.

B. 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 CERCLA, including Section 113(h) of CERCLA.

C. The Parties agree that all Parties shall have the right to enforce the terms of this Agreement.

XXIV. STIPULATED PENALTIES

A. In the event that U.S. DOE fails to submit a primary document to U.S. EPA pursuant to the appropriate timetable or deadline in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement which relates to an interim or final remedial action, U.S. EPA may assess a stipulated penalty against U.S. DOE. A

stipulated penalty may be assessed in an amount not to exceed $5,000 for the first week (or part thereof), and $10,000 for each additional week (or part thereof) for which a failure set forth in this Paragraph occurs.

B. Upon determining that U.S. DOE has failed in a manner set forth in Paragraph A, U.S. EPA shall so notify U.S. DOE in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, U.S. DOE shall have fifteen (15) days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. U.S. DOE shall not be liable for the stipulated penalty assessed by U.S. 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 related to the assessment of the stipulated penalty.

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

1. The facility responsible for the failure;
2. A statement of the facts and circumstances giving rise to the failure;
3. 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;

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

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

D. Stipulated penalties assessed pursuant to this Part shall be payable to the Hazardous Substances Response Trust Fund from funds authorized and appropriated for that specific purpose.

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

F. This Part shall not affect U.S. DOE's ability to obtain an extension of a timetable, deadline or schedule pursuant to Part XXV of this Agreement.

G. Nothing in this Agreement shall be construed to render any officer or employee of U.S. DOE personally liable for the payment of any stipulated penalty assessed pursuant to this Part.

XXV. EXTENSIONS

A. Either a timetable and deadline or a schedule shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension. Any request for extension by U.S. DOE shall be submitted in writing to U.S. EPA and OEPA and shall specify:

1. The timetable and deadline or the schedule that is sought to be extended;

2. The length of the extension sought;

3. The good cause(s) for the extension; and

4. Any related timetable and deadline or schedule that would be affected if the extension were granted.

B. Good cause exists for an extension when sought in regard to:

1. An event of force majeure;

2. A delay caused by another party's failure to meet any requirement of this Agreement;

3. A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;

4. A delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and deadline or schedule;

5. A delay caused by a stoppage of work under Part XV of this Agreement; and

6. Any other event or series of events mutually agreed to by the Parties as constituting good cause.

C. Absent agreement of the Parties with respect to the existence of good cause, U.S. DOE may seek and obtain a determination through the dispute resolution process that good cause exists.

D. Within seven (7) days of receipt of a request for an extension of a timetable and deadline or a schedule, U.S. EPA and OEPA shall advise U.S. DOE in writing of their positions on the request. Any failure by U.S. EPA or OEPA to respond within the seven (7) day period shall be deemed to constitute concurrence with the request for extension. If U.S. EPA or OEPA does not concur with the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

E. If there is consensus among the Parties that the requested extension is warranted, U.S. DOE shall extend the affected timetable and deadline or schedule accordingly. If there is no consensus among the Parties as to whether all or part of the requested extension is warranted, the timetable and deadline or schedule shall not be extended except in accordance with determination resulting from the dispute resolution process.

F. Within seven (7) days of receipt of a statement of nonconcurrence with the requested extension, U.S. DOE may invoke dispute resolution.

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. If dispute resolution is invoked and the requested extension is denied, stipulated penalties may be assessed and may accrue from the date of the original timetable, deadline or schedule. Following the grant of an extension, an assessment of stipulated penalties or an application for judicial enforcement may be sought only to

compel compliance with the timetable and deadline or schedule as most recently extended.

XXVI. FORCE MAJEURE

A. A Force Majeure shall mean any event arising from causes beyond the control of a Party that causes a delay in or prevents the performance of any obligation under this Agreement, including, but not limited to: acts of God; fire; war; insurrection; civil disturbance; explosion; unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance; adverse weather conditions that could not be reasonably anticipated; unusual delay in transportation; restraint by court order or order of public authority; inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority other than U.S. DOE; delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; and insufficient availability of appropriate funds, if U.S. DOE shall have made timely request for such funds as part of the budgetary process as set forth in Part XXVII (Funding) of this Agreement. A Force Majeure shall also include any strike or other labor dispute, whether or not within the control of the Parties affected thereby. Force Majeure shall not include increased costs or expenses of Response Actions, whether or not anticipated at the time such Response Actions were initiated.

B. If any event(s) occurs or has occurred that may delay the performance of any obligation under this Agreement, whether or not caused by a Force Majeure event, U.S. DOE shall notify by telephone the Project Manager or, in his or her absence, the Director of the Waste Management Division, U.S. EPA Region V and the OEPA Project Manager, within forty-eight (48) hours of when U.S. DOE first knew or should have known that the event(s) might cause a delay. Within twenty (20) days of the event(s) which U.S. DOE contends is responsible for the delay, U.S. DOE shall supply to U.S. EPA and OEPA in writing the reason(s) for and anticipated duration of such delay, the measures taken and to be taken by U.S. DOE to prevent or minimize the delay, and the timetable for the implementation of such measures. Failure to give written explanation in a timely manner shall constitute a waiver of any claim of Force Majeure.

XXVII. FUNDING

It is the expectation of the Parties to this Agreement that all obligations of U.S. DOE arising under this Agreement will be fully funded. U.S. DOE shall take all necessary steps and make efforts to obtain timely funding to meet its obligations under this Agreement. U.S. DOE agrees to advise U.S. EPA and OEPA of its efforts to obtain the funding necessary to implement this Agreement.

In accordance with Section 120(e)(5)(B) of CERCLA, 42 U.S.C. Section 9620(e)(5)(B), U.S. DOE shall include in its annual report to Congress the

specific cost estimates and budgetary proposals associated with the implementation of this Agreement.

Any requirement for the payment or obligation of funds, including stipulated penalties, by U.S. DOE established by the terms of this Agreement shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted. If appropriated funds are not available to fulfill U.S. DOE's obligations under this Agreement, U.S. EPA and OEPA reserve the right to initiate any other action which would be appropriate absent this Agreement.

The Parties recognize that U.S. EPA must possess adequate resources to meet its commitments established by this Agreement. So that activities to be performed pursuant to this Agreement may proceed, U.S. EPA agrees to reprogram existing FY90 resources to fulfill its FY90 commitments established by this Agreement. The Parties agree that during FY90, the Parties will explore any possible alternatives that may be available to ensure that adequate resources are available to U.S. EPA to fulfill its commitments established by this Agreement.

Notwithstanding any other provision of this Agreement, in the event that U.S. EPA determines that adequate resources are not available to meet any post-FY90 commitments established by this Agreement, U.S. EPA may terminate this Agreement by written notice to DOE.

U.S. EPA reserves any rights it may have to seek or obtain reimbursement of any funds expended by U.S. EPA at the Mound Site to the extent authorized by CERCLA; nothing herein shall prejudice U.S. EPA's ability to exercise any right to reimbursement provided for by CERCLA.

XXVIII. PROPERTY TRANSFER

A. Within thirty days after the effective date of Agreement, U.S. DOE shall record a copy of this Agreement with the Recorder's Office, Montgomery County, State of Ohio.

B. In the event U.S. DOE determines to enter into any contract for the sale or transfer of any of the Site, U.S. DOE shall comply with the requirements of CERCLA Section 120(h), 42 U.S.C. Section 960(h), in effectuating that sale or transfer, including all notice requirements. In addition, U.S. DOE shall include notice of this Agreement to any subsequent owner of the site, in whole or in part, and shall notify U.S. EPA and Ohio EPA of any such sale or transfer at least ninety (90) days prior to such transfer. No change in ownership of the Site or any portion thereof, or notice pursuant to Section 120(h)(3)(b) of CERCLA, 42 U.S.C. Section 960(h)(3)(b), shall relieve DOE of its obligation to perform pursuant to this Agreement. No change of ownership of the Site or any portion thereof shall be consummated by DOE without provision for continued maintenance of any containment system, treatment system, monitoring system, or other response action(s) installed or implemented pursuant to this Agreement.

XXIX. OTHER CLAIMS

Except as provided in Part XXXV, nothing in this Agreement shall constitute or be construed as a bar or release from any claim, cause of action, or demand in law or equity by or against any person, firm, partnership, or corporation not a signatory to this Agreement for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, contaminants or pollutants, found at, taken to, or taken from the Mound Plant. Neither U.S. EPA nor OEPA shall be held as a party to any contract entered into by U.S. DOE to implement the requirements of this Agreement. This Agreement shall not restrict U.S. EPA or OEPA from taking any legal or response action for any matter not specified as a part of this Agreement.

XXX. PUBLIC PARTICIPATION

A. The Parties agree that this Agreement and any subsequent proposed remedial action alternative(s) and subsequent plan(s) for remedial action at the Site arising out of this Agreement shall comply with the administrative record and public participation requirements of CERCLA/SARA, including Section 117 of SARA, the NCP, U.S. EPA guidances on public participation and administrative records.

B. U.S. DOE shall develop and implement a Community Relations Plan (CRP) which responds to the need for an interactive relationship with all interested community elements, both on and off the Site regarding activities

and elements of work undertaken by U.S. DOE. U.S. DOE agrees to develop and implement the CRP in a manner consistent with Section 117 of SARA, the NCP, U.S. EPA guidelines set forth in U.S. EPA's Community Relations Handbook, and any modifications thereto. The CRP is subject to the process for primary reports under Part XII.

C. The public participation requirements of this Agreement shall be implemented so as to meet the public participation requirements applicable to RCRA permits under 40 CFR Part 124 and Section 7004 of RCRA (42 U.S.C. Section 6974) as well as CERCLA/SARA.

D. Any Party issuing a formal press release to the media regarding any of the work required by this Agreement shall advise the other Parties of such a press release and the contents thereof, at least forty-eight (48) hours before the issuance of such press release and of any subsequent changes prior to the release. The Parties agree to consider each other's comments and attempt to address them prior to issuance. Nothing in this section shall be construed as an agreement to negotiate or in any way restrict the content of U.S. EPA or OEPA press releases.

E. U.S. DOE agrees that it shall establish and maintain an administrative record at or near the Mound Plant in accordance with Section 113(k) of CERCLA/SARA. The administrative record shall be established and maintained in accordance with current and future U.S. EPA policy and guidelines. A copy of each document placed in the administrative record will be provided to the U.S. EPA and OEPA. The administrative record developed by

U.S. DOE shall be updated and supplied to U.S. EPA and OEPA on at least a quarterly basis. An index of documents in the administrative record will accompany each update of the administrative record.

F. U.S. DOE agrees it shall follow the public participation requirements of CERCLA/SARA Section 113(k) and comply with any guidance and/or regulations promulgated by U.S. EPA with respect to such Section.

G. All plans and activities related to Community Relations and Public Participation undertaken by U.S. DOE shall be subject to the Consultation Process set forth in Part XII of this Agreement. In the case of a dispute, Part XXII of this Agreement may be invoked.

XXXI. AMENDMENT OF AGREEMENT

This Agreement may be amended by a written agreement between U.S. DOE, OEPA and U.S. EPA.

XXXII. PUBLIC COMMENT ON THIS AGREEMENT

A. Within fifteen (15) days of the date of the acceptance of this Agreement, U.S. EPA shall announce the availability of this Agreement to the public for review and comment. U.S. EPA shall accept comments from the public for a period of thirty (30) days after such announcement. At the end of the comment period, U.S. EPA shall review all such comments and shall either:

1. Determine that the Agreement should be made effective in its present form, in which case U.S. DOE shall be so notified in writing, and the Agreement shall become effective on the date said notice is issued; or

2. Determine that modification of the Agreement is necessary, in which case U.S. DOE shall be forwarded a revised Agreement which includes all required changes to the Agreement.

B. In the event of significant revision or public comment, notice procedures of Section 117 of SARA shall be followed and a responsiveness summary shall be published by the U.S. EPA.

C. In the event that modification of the Agreement is determined by U.S. EPA to be necessary pursuant to Subpart A, 2., above, within twenty (20) days of receipt of the revised Agreement U.S. DOE and OEPA reserve the right to withdraw from the Agreement.

If U.S. DOE or OEPA does not provide U.S. EPA with written notice of withdrawal from the Agreement within such twenty (20) day period, the Agreement, as modified, shall automatically become effective on the twenty-first (21) day, and U.S. EPA shall issue a notice to U.S. DOE and OEPA to that effect.

XXXIII. TERMINATION

The provisions of this Agreement shall be deemed satisfied and terminated upon receipt by U.S. DOE of written notice from U.S. EPA and OEPA that U.S. DOE has demonstrated, to the satisfaction of the U.S. EPA and OEPA, that all the terms of this Agreement have been completed.

XXXIV. EFFECTIVE DATE

This Agreement is effective upon issuance of a notice to U.S. DOE by U.S. EPA following implementation of Part XXXII (Public Comment on This Agreement).

XXXV. COVENANT NOT TO SUE/RESERVATION OF RIGHTS

A. In consideration of U.S. DOE's compliance with this Agreement and based on the information known to the Parties on the effective date of this Agreement, U.S. EPA and OEPA (except as provided in Part XXXV. B-G below, Part XXVII above, and Part XXXVII below) agree that compliance with this Agreement shall stand in lieu of any civil remedies, including administrative, legal and equitable, against U.S. DOE, its employees, contractors, agents or their employees available under current law to U.S. EPA and OEPA regarding the currently known releases or threatened releases of hazardous substances, pollutants or contaminants, and hazardous constituents at the Site which are the subject of the RI/FS(s) and which will be addressed by the remedial action(s) provided for under this Agreement. Nothing in this Agreement shall preclude U.S. EPA or OEPA from exercising any administrative, legal or

equitable remedies available to require additional response action by U.S. DOE in the event that: (1) conditions previously unknown or undetected by U.S. EPA or OEPA arise or are discovered at the Site; or (2) U.S. EPA or OEPA receives additional information not previously available concerning the premises which it employed in reaching this Agreement, and the implementation of the requirements of this Agreement is no longer protective of human health or the environment. Except in the case on an emergency, the decision by U.S. EPA or OEPA to require additional response action by U.S. DOE shall be subject to Part XIII (Additional Work or Modification To Work) of this Agreement.

B. Notwithstanding Part XXXV.A. above and any other provision of this Agreement, in the event that:

> OEPA is dissatisfied with any final decision of the Administrator of U.S. EPA made pursuant to Part XXII above; or
>
> if the U.S. EPA Administrator fails to issue a final decision under Part XXII within one-hundred and twenty (120) days after any Party submits a written statement of dispute under Part XXII.A;

then nothing in this Agreement shall preclude the State of Ohio from taking one or more of the following actions:

> exercising any rights to judicial review available under CERCLA or other law, including but not limited to any rights set forth in Sections 113, 121, and 310 of CERCLA;

withdrawing from the Agreement;

enforcing the Agreement; and

exercising any administrative or judicial remedies or taking any other action which would have been available in the absence of the Agreement.

C. After selection of a remedial action and notwithstanding Part XXXV.A. above and any other provision of this Agreement, nothing in this Agreement shall preclude the State of Ohio from pursuing any rights it may have under Federal or State law for the costs of natural resource damage assessments or natural resource damages.

D. In consideration for U.S. DOE's payment of past response costs as provided by Paragraph XXXVII.J., the State agrees not to seek civil penalties from U.S. DOE, its employees, contractors, agents and their employees for any violations of State and Federal hazardous waste laws that may have occurred prior to the signing of this Agreement by OEPA. The State reserves all rights with respect to violations occurring after OEPA's signature on this Agreement.

E. Notwithstanding Part VII above and any other provision of this Agreement, Ohio's participation in this Agreement shall not constitute an admission by OEPA that laws other than CERCLA, including but not limited to RCRA and state law, are enforceable at the site only as ARARs. Nor shall U.S. EPA's participation in this Agreement be construed as acceptance by the United

States of Ohio's position concerning the relative authority of federal and state law.

F. Notwithstanding any provision of this Agreement, U.S. DOE's participation in this Agreement shall not constitute an admission that any laws other than CERCLA are enforceable as against U.S. DOE, or its contractors, at the site.

G. In the event that the State of Ohio takes one or more of the actions described by Part XXXV.B. or C., the fact that OEPA has participated in this Agreement shall not be used as a defense by U.S. DOE or U.S. EPA to any such action.

XXXVI. ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT PLAN

DOE is preparing an Environmental Restoration and Waste Management Plan (5-Year Plan), that will identify, integrate and prioritize compliance and cleanup activities at all DOE nuclear facilities and sites, and provide a consistent basis for DOE to address environmental requirements and develop and support its budget requests. The 5-Year Plan will be updated annually to incorporate any changes that occur in the program, including changes due to the following factors: the availability of Congressional funding; the completion or modification of Federal Facility Agreements; application of a national prioritization system to environmental restoration and waste management activities conducted under the 5-Year Plan; conditions determined

as the result of assessment and characterization activities at DOE facilities and sites; and new or amended regulatory requirements.

The activities and related milestones in the 5-Year Plan shall be consistent with provisions, including requirements and schedules, of this Agreement; it is the intent of DOE that the 5-Year Plan shall be drafted to ensure that the provisions of this Agreement are incorporated into the DOE planning and budget process. Nothing in the 5-Year Plan shall be construed to affect the provisions of this Agreement. The parties recognize that application of the 5-Year Plan's national prioritization system could result in a proposed implementation schedule for the environmental restoration and waste management activities that is different than the schedules developed pursuant to this Agreement. In that event, DOE may make a request, in writing, to U.S. EPA and OEPA for an amendment to this Agreement or the extension of deadlines established by this Agreement. Where necessary, DOE may also invoke the appropriate dispute resolution provisions of this Agreement. Pending resolution of any dispute, the schedules developed pursuant to this Agreement shall remain enforceable in accordance with the terms hereof. Any resulting amendments or modifications to this Agreement will be incorporated, as necessary, in the annual updates to the 5-Year Plan.

XXXVII. REIMBURSEMENT OF OEPA EXPENSES

A. U.S. DOE shall request funding and reimburse OEPA for the costs of response action directly related to implementation of this Agreement, including but not limited to the costs of payroll, fringe, indirect, review of activity data sheets, travel, sampling, laboratory analysis, data management,

safety and general equipment, supplies and general maintenance. This reimbursement shall be subject to the conditions and limitations set forth in this Section and Section XXVII above (Funding).

B. Reimbursable costs shall consist only of expenditures actually made by OEPA in providing the following assistance to Mound:

1. Technical review and substantive comment on reports or studies which U.S. DOE prepares in support of its response actions and submits to OEPA or any other technical review in support of this Agreement.
2. Identification and explanation of State requirements applicable to federal facilities in performing response actions, especially State applicable or relevant and appropriate requirements (ARARs).
3. Field visits to ensure investigations and cleanup activities are implemented in accordance with appropriate OEPA requirements, or in accordance with agreed upon conditions between OEPA and U.S. DOE that are established in the framework of this Agreement. This shall include review of draft data in order to analyze and guide fieldwork.
4. Support and assistance to U.S. DOE in the conduct of public participation activities in accordance with Federal and State requirements for public involvement.

5. Preparation for and participation in technical meetings.

6. Laboratory costs incurred as a result of split sampling performed in order to validate U.S. DOE's CERCLA investigations.

7. Review of U.S. DOE's cost estimates and scheduling documents associated with the CERCLA program, including site-specific Activity Data Sheets and Five Year Plans.

8. Other activities specified in this Agreement.

C. A separate grant shall be the specific mechanism for transfer of funds between U.S. DOE and OEPA for payment of the costs referred to herein.

D. On an annual basis, (1) OEPA shall submit, in a timely fashion and in writing, to U.S. DOE a grant application including a proposed Scope of Work and estimates of costs to be incurred relating to CERCLA response actions, as defined herein, to be performed under this Agreement by OEPA for the upcoming year, and (2) subsequent to negotiation between U.S. DOE and OEPA, U.S. DOE shall make a grant award. These actions shall be performed utilizing the procedures of 10 C.F.R. Part 600 Subparts A, D and E, with the following exceptions:

1. Notwithstanding 10 CFR Section 600.405, U.S. DOE shall not impose any additional requirements on this cost reimbursement except with the written consent of OEPA.

2. OEPA shall remit to U.S. DOE interest earned on advances as necessary and where required by the Cash Management Improvement Act and its implementing regulations, 31 CFR Part 205, which shall apply in lieu of 10 CFR Section 600.421(i).

3. U.S. DOE payments shall be made in advance in accordance with 10 CFR Section 421(c).

4. Pursuant to 10 CFR Section 600.443(a)(i), U.S. DOE may temporarily withhold a cash payment pending correction of any material noncompliance related to that cash payment. U.S. DOE may use the noncompliance and enforcement remedies of 10 CFR Part 600 Subparts A, D and E, including but not limited to those in Sections 600.29 and 600.43, to prevent the expenditure by OEPA of money on expenses not authorized by Paragraph XXXVII A. and B. above or to recover money spent by OEPA on such unauthorized expenses. U.S. DOE shall not suspend or terminate grant payments for expenses authorized by Paragraph XXXVII A. and B. above. U.S. DOE shall not use its noncompliance and enforcement remedies against OEPA for any punitive purposes unless necessary to

address fraud. Any withholding, suspension, or termination of payment of costs pursuant to 10 CFR Part 600 Subparts A, D, or E shall be subject to the informal dispute resolution and appeals procedures as described in Paragraph XXXVII E. and F. below.

E. In the event that U.S. DOE contends that any costs incurred were not directly related to the implementation of this Agreement, or were incurred in a manner inconsistent with CERCLA, the NCP, or the grant award, U.S. DOE may challenge the costs allowable under the grant to OEPA. Whenever practicable, U.S. DOE and OEPA shall attempt to resolve informally any dispute over the award or administration of financial assistance including any matter controlled by this Section XXXVII. U.S. DOE and OEPA representatives may initiate the informal process by requesting that the involved parties attempt to resolve any issue covered by Section XXXVII. Such informal resolution shall begin with the representative of the U.S. DOE contracting officer who signed the grant to the State agency implementing the cost recovery provisions of this Agreement and the contract representative of OEPA attempting to resolve the issue. If they are not successful, they may elevate the issue to the cognizant Contracting Officer for purposes of dispute resolution pursuant to 10 CFR Section 600.26(a), and the Fiscal Officer for the Division of Emergency and Remedial Response of OEPA for resolution. If these parties are unable to agree on resolution, each of the involved parties will issue a written decision setting forth their position on the issue. The written position of U.S. DOE shall be deemed to be the Contracting Officer's determination from which a formal appeal may be taken. This written position

will be issued within 21 days after the parties agree that they are unable to informally resolve the issue.

F. If unresolved after conclusion of informal dispute under Paragraph XXXVII E. above, OEPA's demand and U.S. DOE's challenge may be resolved through the appeals procedures set forth in 10 CFR Section 600.443(b) and 10 CFR Part 1024 as modified below:

1. The procedure of appeal shall be the method specified in 10 CFR Section 1024.3(d)(1), regardless of the amount in dispute.

2. Unless OEPA requests a hearing, OEPA shall not be required to make any appearances outside of Dayton or Columbus, Ohio in exercising appeal procedures under 10 CFR Part 1024.

3. Notwithstanding Rule 5(a)(4) of the Rules of Procedure of the U.S. DOE Financial Assistance Appeals Board, OEPA may seek to recover the contested costs through any other mechanism available to the State if the Board's decision has not been issued within ninety (90) days after all submissions are filed or after the time for filing has expired, whichever occurs earlier.

G. Subject to Paragraph XXXVII H. and I., U.S. DOE shall not be responsible under the terms of this Agreement for reimbursing OEPA for any

costs actually incurred in excess of the maximum U.S. DOE obligation as defined in the grant award. Any invoiced amounts exceeding the maximum U.S. DOE obligation shall roll over into the next grant period.

H. OEPA's performance of its obligations under this Agreement shall be excused if its response costs as defined herein are not paid as required by this Section XXXVII.

I. OEPA reserves any right it may have to recover costs for matters not reimbursable pursuant to this Agreement and the grant award, costs not reimbursed by U.S. DOE pursuant to Paragraph XXXVII after exhaustion of the appeals procedures described in Paragraph XXXVII E. and F., costs in excess of the maximum U.S. DOE obligation in the grant award, or costs not being paid because U.S. DOE and OEPA have been unable to successfully conclude negotiations on the terms or language of the grant award.

J. Within sixty (60) days of signing this Agreement, U.S. DOE shall reimburse the State for its response costs incurred as of September 18, 1992, in the amount of $524,943.28. OEPA costs incurred after this date shall be reimbursed pursuant to Paragraphs XXXVII. A-I above.

XXXVIII. CONFIDENTIAL INFORMATION

A. U.S. DOE may assert a confidentiality claim covering all or part of the information requested under this Agreement. A claim of confidentiality shall not alter U.S. DOE's obligation to provide or make available to other

Parties any information as required under this Agreement. Analytical data shall not be claimed as confidential by U.S. DOE. Information determined to be confidential by U.S. EPA, pursuant to 40 CFR Part 2, shall be afforded the protection specified therein and such information shall be treated by the OEPA as confidential to the extent allowed by Ohio law. If no claim of confidentiality accompanies the information when it is submitted to U.S. EPA or OEPA, the information may be made available to the public without further notice to U.S. DOE.

No document marked draft may be made available to the public without prior consultation with and approval by the generating party.

B. Notwithstanding any other provision of this Agreement, all requirements of the Atomic Energy Act and Executive Orders concerning the handling of unclassified controlled nuclear information, restricted data and national security information, including "need to know" requirements, shall be applicable to requests for access to information or facilities at the Mound Plant.

IT IS SO AGREED:

By: _____ 7/15/93
Bruce G. Twining, Manager — Date
Albuquerque Operations Office
U. S. Department of Energy

By: _____ 7/15/93
for David A. Ullrich — Date
Deputy Regional Administrator
U. S. Environmental Protection
Agency, Region 5

By: _____ 7/15/93
Donald R. Schregardus — Date
Director, Ohio Environmental
Protection Agency
Attorney General of Ohio

By: _____ July 15, 1993
Jack A. Van Kley — Date
Chief, Environmental
Enforcement Section
Attorney General of Ohio

TABLE OF CONTENTS