



THE OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301-8000

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PRODUCTION AND
LOGISTICS

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MEMORANDUM FOR DEPUTY FOR ENVIRONMENT, SAFETY AND OCCUPATIONAL
HEALTH, OASA (I&L)
DEPUTY DIRECTOR FOR ENVIRONMENT, OASN (S&L)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(ENVIRONMENT, SAFETY AND OCCUPATIONAL HEALTH),
SAF/RQ
DIRECTOR, DEFENSE LOGISTICS AGENCY (DLA-W)

SUBJECT: CERCLA Federal Facility Agreements at
National Priority List Sites (Supplementary
Provisions)

In my memorandum of June 17, 1998, I promised to supplement the model language agreed to by DoD and EPA with suggested language that could be considered in the context of site-specific negotiations. Recognizing that field activities are in the best position to negotiate the details of our interaction at particular sites, I wanted you to have the benefit of the enclosed additional provisions. To give you a feel for how they might structurally complement the model provisions, I have combined the two into a single format--with the model provisions set forth in italics. Keeping in mind that the model provisions are not subject to unilateral DoD revision, please distribute this memorandum and its enclosure to your field activities that are addressing NPL sites.

I expect there to be differences in the way some of you approach the matters covered in the suggested additional provisions, and that's fine. The important thing is that we work together to negotiate workable agreements that advance the cleanup process and make optimum use of the resources that are committed to the task, and that these agreements be negotiated quickly so that our attentions can be directed to the cleanups. As you gain experience in applying this language to specific negotiations, and especially as you improve upon the supplementary provisions, please crossfeed that kind of information to this office and the other services. I envision a process in which some of the supplementary provisions may be considered as candidate model provisions as we continue our active dialogue with EPA.

88 8463

Please advise my office when these supplement provisions have been distributed to the field. This should be done not later than 1 September.

A handwritten signature in black ink, appearing to read "William H. Parker, III". The signature is written in a cursive style with a large, prominent "P" at the end.

William H. Parker, III, P.E.
Deputy Assistant Secretary of Defense
(Environment)

Enclosure

29 July 1988

SUGGESTED ADDITIONAL INTERAGENCY AGREEMENT CLAUSES*

(MODEL PROVISIONS IN ITALICS)

* These suggested additional clauses have been combined with the model provisions that were agreed upon between DOD and EPA in order to show the format in which an overall agreement might be constructed. Although it appears to be a complete agreement, other provisions may be appropriate including those addressing site-specific conditions or State concerns.

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* Model provision as agreed between DOD and EPA

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* Model provision as agreed between DOD and EPA.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION []
AND THE
[STATE/Commonwealth OF _____]*
AND THE
UNITED STATES [DOD Component]

_____)	
IN THE MATTER OF:)	
))	
The U.S. Department)	Administrative
of the [DOD Component])	Docket Number:
))	
[Name of Installation])	
))	
_____)	

FEDERAL FACILITY AGREEMENT UNDER CERCLA SECTION 120

*DOD and EPA agree that it is extremely important that states participate in Federal facility cleanups by joining as a Party to these agreements. DOD and EPA have not attempted to negotiate on behalf of the states in developing these model provisions. DOD and EPA recognize that state concerns and issues must be addressed at site-specific negotiations and factored into this Agreement as appropriate.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION []
AND THE
[STATE/COMMONWEALTH OF _____]
AND THE
UNITED STATES [DOD Component]

_____)	
IN THE MATTER OF:)	Federal Facility
)	Agreement Under
The U.S. Department)	CERCLA Section 120
of the [DOD Component])	
)	Administrative
[Name of Installation])	Docket Number:
)	
_____)	

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. PURPOSE

1.1 The general purposes of this Agreement are to:

(a) 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;

(b) Establish a procedural framework and schedule for developing, implementing and monitoring appropriate response actions at the Site in accordance with CERCLA, the NCP, Superfund guidance and policy, RCRA, RCRA guidance and policy; and,

(c) Facilitate cooperation, exchange of information and participation of the Parties in such actions.

1.2 Specifically, the purposes of this Agreement are to:

(a) 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 EPA pursuant to CERCLA. This process is designed to promote

cooperation among the Parties in identifying IRA alternatives prior to selection of final IRAs.

(b) Establish requirements for the performance of a RI 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 a FS 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, contaminants at the Site in accordance with CERCLA.

(c) 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.

(d) Implement the selected interim and final remedial action(s) in accordance with CERCLA and meet the requirements CERCLA § 120(e)(2), 42 U.S.C. § 9620(e)(2), for an interagency agreement between EPA and the [DOD Component].

(e) Assure compliance, through this Agreement, with RCRA and other federal and state hazardous waste laws and regulations for matters covered herein.

(f) Coordinate response actions at the Site with the mission and support activities at [installation].

(g) Expedite the cleanup process [including, at site-specific negotiations, shortening the time frames specified in these model provisions] to the extent consistent with protection of human health and the environment.

II. DEFINITIONS

2.1 The terms used in this Agreement shall have the same definition as the terms defined in CERCLA § 101, 42 U.S.C. § 9601. Additionally, the following terms used in this Agreement are defined as follows:

[E.g., site, timetable, deadline, schedule, project manager, Technical Review Committee, Dispute Resolution committee, Senior Executive Committee, etc.]

III. JURISDICTION

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

(a) The U.S. Environmental Protection Agency (EPA), Region ____, enters into those portions of this Agreement that relate to the remedial investigation/feasibility study (RI/FS) pursuant to Section 120(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499 (hereinafter jointly referred to as CERCLA), 42 U.S.C. § 9620(e)(1), and [Sections 6001, 3008(h) and 3004(u) and (v) of] the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. [§§ 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) and Executive Order 12580;

(b) EPA, Region ____, enters into those portions of this Agreement that relate to interim remedial actions and final remedial actions pursuant to CERCLA § 120(e)(2), 42 U.S.C. § 9620(e)(2), [RCRA §§ 6001, 3008(h) and 3004(u) & (v), 42 U.S.C. §§ 6961, 6928(h), 6924(u) & (v)] and Executive Order 12580;

(c) The [DOD Component] enters into those portions of this Agreement that relate to the RI/FS pursuant to CERCLA §120(e)(1), 42 U.S.C. § 120(e)(1), [RCRA §§ 6001, 3008(h) and 3004(u) & (v), 42 U.S.C. §§ 6961, 6928(h), 6924(u) & (v)], Executive Order 12580, the National Environmental Policy Act, 42 U.S.C. § 4321, and the Defense Environmental Restoration program (DERP), 10 U.S.C. § 2701 et seq.; and

(d) The [DOD Component] enters into those portions of this Agreement that relate to interim remedial actions and final remedial actions pursuant to CERCLA § 120(e)(2), 42 U.S.C. § 120 (e) (2), [RCRA §§ 6001, 3004(u) & 3008(h), 42 U.S.C. §§ 6961, 6928(h), 6924 (u) & (v)], Executive Order 12580 and the DERP.

IV. CONSULTATION WITH EPA

Review and Comment Process for Draft and Final Documents

4.1 **Applicability:** The provisions of this Section establish the procedures that shall be used by the [DOD Component] and EPA 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 CERCLA § 120, 42 U.S.C. § 9620, and 10 U.S.C. § 2705, the [DOD Component] will normally be responsible for issuing primary and secondary documents to EPA. 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 4.2 through 4.10 below. The designation of a document as "draft" or "final" is solely for purposes of consultation with EPA in accordance with this Section. 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.

4.2 General Process for RI/FS and RD/RA documents:

(a) Primary documents include those reports that are major, discrete portions of RI/FS or RD/RA activities. Primary documents are initially issued by the [DOD Component] in draft subject to review and comment by EPA. Following receipt of comments on a particular draft primary document, the [DOD Component] will respond to the comments received and issue a draft final primary document subject to dispute resolution. The draft final primary document will become the final primary document either 30 days after the period established for review of a draft final document if dispute resolution is not invoked or as modified by decision of the dispute resolution process.

(b) Secondary documents include those reports that are discrete portions of the primary documents and are typically input or feeder documents. Secondary documents are issued by the [DOD Component] in draft subject to review and comment by U.S. EPA. Although the [DOD Component] will 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.

4.3 Primary Reports:

(a) The [DOD Component] shall complete and transmit draft reports for the following primary documents to EPA for review and comment in accordance with the provisions of this Part:

[Note: The list set forth below represents potential primary documents and the type of information that typically would be generated during a CERCLA cleanup at an NPL site. This list, and the list below of secondary documents, includes discrete portions of the RI/FS or RD/RA and are subject to change in accordance with the NCP, [DOD Component] and EPA guidance, and site specific requirements. In practice, the documents will also vary with scope and nature of the project, and may

either be combined or broken out into separate volumes.]

- (1) [Scope of Work]
- (2) [RI/FS Work Plan, including Sampling and Analysis Plan and QAPP]
- (3) [Risk Assessment]
- (4) [RI Report]
- (5) [Initial Screening of Alternatives]
- (6) [FS Report]
- (7) [Proposed Plan]
- (8) [Record of Decision]
- (9) [Remedial Design]
- (10) [Remedial Action Work Plan]

(b) Only the draft final reports for the primary documents identified above shall be subject to dispute resolution. The [DOD Component] shall complete and transmit draft primary documents in accordance with the timetable and deadlines established in Section XIII of this Agreement.

4.4 Secondary documents:

(a) The [DOD Component] shall complete and transmit draft reports for the following secondary documents to EPA for review and comment in accordance with the provisions of this Part:

- (1) [Initial Remedial Action / Data Quality Objectives]
- (2) [Site Characterization Summary]
- (3) [Detailed Analysis of Alternatives]
- (4) [Post-screening Investigation Work Plan]
- (5) [Treatability Studies]
- (6) [Sampling and Data Results]

(b) Although EPA may comment on the draft reports for the secondary documents listed above, such documents shall not be

subject to dispute resolution except as provided by paragraph 4.2 hereof. Target dates shall be established for the completion and transmission of draft secondary reports pursuant to Section ____ of this Agreement.

4.5 Meetings of the Project Managers on Development of Reports: The Project Managers shall meet approximately every [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 report specified in paragraphs 4.3 and 4.4 above, the Project Managers shall meet to discuss the report 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 report.

4.6 Identification and Determination of Potential ARARs:

(a) For those primary reports or secondary documents that consist of or include ARAR determinations, prior to the issuance of a draft report, the Project Managers shall meet to identify and propose, to the best of their ability, all potential pertinent to the report being addressed. Draft ARAR determinations shall be prepared by the [DOD Component] in accordance with CERCLA § 121(d)(2), 42 U.S.C. § 9621(d)(2), the NCP and pertinent guidance issued by EPA, which is not inconsistent with CERCLA and the NCP.

(b) 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 reexamined throughout the RI/FS process until a ROD is issued.

4.7 Review and Comment on Draft Reports:

(a) The [DOD Component] shall complete and transmit each draft primary report to EPA on or before the corresponding deadline established for the issuance of the report. The [DOD Component] shall complete and transmit the draft secondary document in accordance with the target dates established for the issuance of such reports established pursuant to Section ____ of this Agreement.

(b) Unless the Parties mutually agree to another time period, all draft reports shall be subject to a 30-day period for review and comment. Review of any document by the EPA may concern all aspects of the report (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 EPA. Comments by the EPA shall be provided with adequate specificity so that the DOD component] may respond to the comment 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 the [DOD Component], the EPA shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy reports, EPA may extend the 30-day comment period for an additional 20 days by written notice to the [DOD Component] prior to the end of the 30-day period. On or before the close of the comment period, EPA shall transmit by next day mail their written comments to the [DOD Component].

(c) Representatives of the [DOD Component] shall make themselves readily available to EPA 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 the [DOD component] on the close of the comment period.

(d) In commenting on a draft report which contains a proposed ARAR determination, EPA shall include a reasoned statement of whether they object to any portion of the proposed ARAR determination. To the extent that EPA does object, it shall explain the bases for its objection in detail and shall identify any ARARs which it believes were not properly addressed in the proposed ARAR determination.

(e) Following the close of the comment period for a draft report, the [DOD Component] shall give full consideration to all written comments on the draft report submitted during the comment period. Within 30 days of the close of the comment period on a draft secondary report, the [DOD Component] shall transmit to EPA its written response to comments received within the comment period. Within 30 days of the close of the comment period on a draft primary report, the [DOD Component] shall transmit to EPA a draft final primary report, which shall include the [DOD Component]'s response to all written comments, received within the comment period. While the resulting draft final report shall be the responsibility of the [DOD Component], it shall be the product of consensus to the maximum extent possible.

(f) The [DOD Component] may extend the 30-day period for either responding to comments on a draft report or for issuing the draft final primary report for an additional 20 days by providing notice to EPA. In appropriate circumstances, this time period may be further extended in accordance with Section XIV hereof.

4.8 Availability of Dispute Resolution for Draft Final

Primary Documents:

(a) Dispute resolution shall be available to the Parties for draft final primary reports as set forth in Section XII.

(b) When dispute resolution is invoked on a draft primary report, work may be stopped in accordance with the procedures set forth in Section XII regarding dispute resolution.

4.9 Finalization of Reports: The draft final primary report shall serve as the final primary report if no party invokes dispute resolution regarding the document or, if invoked, at completion of the dispute resolution process should the [DOD Component]'s position be sustained. If the [DOD Component]'s determination is not sustained in the dispute resolution process, the [DOD Component] shall prepare, within not more than 35 days, a revision of the draft final report which conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Section XIV hereof.

4.10 Subsequent Modifications of Final Reports: Following finalization of any primary report pursuant to paragraph 4.9 above, EPA or the [DOD Component] may seek to modify the report, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in subparagraphs (a) and (b) below.

(a) EPA or the [DOD Component] may seek to modify a report 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. EPA or the [DOD Component] may seek such a modification by submitting a concise written request to the Project Manager of the other Party. The request shall specify the nature of the requested modification and how the request is based on new information.

(b) In the event that a consensus is not reached by the Project Managers on the need for a modification, either EPA or the [DOD Component] may invoke dispute resolution to determine if such modification shall be conducted. Modification of a report 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.

(c) Nothing in this section shall alter EPA's ability to request the performance of additional work which was not contemplated by this Agreement. The [DOD Component]'s obligation to perform such work must be established by either a modification of a report or document or by amendment to this Agreement.

V. LEAD AGENCY

5.1 For purposes of this Agreement, the [DOD Component] or EPA may be the Lead Agency for any designated operable unit as provided in Executive Order 12580 or any amendments or modifications thereof.

VI. PROJECT MANAGERS AND COMMITTEES

(i) Project Managers

6.1 On or before the effective date of this Agreement, the [DOD Component], EPA, and the State shall each designate a Project Manager. The Project Managers shall be responsible on a daily basis for assuring proper implementation of the RI/FS and the RD/RA in accordance with the terms of the Agreement. In addition to the formal notice provisions set forth in Section X hereof, communications among the [DOD Component], EPA and the State on all documents, including reports, comments, and other correspondence concerning the activities performed pursuant to this Agreement, shall be directed through the Project Manager.

6.2 The [DOD Component], EPA, and the State may change their respective Project Managers. Such change shall be accomplished by notifying the other Parties in writing within five days of the change.

6.3 The Project Managers shall meet informally approximately one each month. Although the [DOD Component] has ultimate responsibility for meeting its respective deadlines or schedule, the Project Managers shall endeavor to assist in this effort by scheduling meetings to address documents, reviewing reports, overseeing the performance all environmental monitoring at the Site, reviewing RI/FS or RD/RA progress, attempting to resolve disputes informally, and making necessary and appropriate adjustments to deadlines or schedules.

6.4 The authority of the Project Managers shall include, but is not limited to:

(a) Taking samples and ensuring the type, quantity and location of the samples taken by the [DOD Component] and done in accordance with the terms of any final work plan;

(b) Observing, and taking photographs and making such other report on the progress of the work as the Project Managers deem appropriate subject to the limitations set forth in Section VIII, Access, hereof; and

(c) Reviewing records, files and documents relevant to the work performed.

6.5 Each Project Manager shall be responsible for assuring that all communications received from the other Project Managers are appropriately disseminated to and processed by the Party that each Project Manager represents.

(ii) Dispute Resolution Committee (DRC)

6.6 The Dispute Resolution Committee (DRC) shall oversee and provide policy guidance regarding all RI/FS activities and remedial actions at the Site, and shall review the work of the Project Managers. The DRC will also serve as the forum for resolution of disputes that are not informally resolved at the Project Manager level. The membership of this committee shall include the Waste Management Division Director of EPA Region ____, [comparable [DOD Component] representative], and [comparable state representative]. The designee of the [DOD Component] for shall serve as the chairman of DRC for the purpose of overseeing the design and implementation of the remedial actions.

6.7 The DRC chairman shall schedule regular meetings of the DRC approximately every [three] months and shall provide a proposed agenda in advance of such meeting. Regular meetings shall be for the purpose of reviewing the progress of the RI/FS or RD/RA. The DRC shall attempt to resolve differences between the Parties and shall address any other agenda matter. Special meetings of the DRC shall be held at the request of any Party. The Chairman shall provide as much notice for special meetings as is feasible under the circumstances.

(iii) Senior Executive Committee (SEC)

6.8 The Senior Executive Committee (SEC) will serve as the appellate forum for resolution of disputes that are not resolved at the DRC level. The membership of this committee shall include [the Regional Administrator of EPA Region ____], the [DOD Component secretariat representative], and the [comparable state official].

(iv) Technical Review Committee (TRC)

6.9 Pursuant to 10 U.S.C § 2705(c), the [DOD Component] shall establish a Technical Review Committee (TRC) and, in

consultation with the Parties, shall provide for representatives from the following organizations to serve as members of the TRC:

(a) A [DOD Component] representative who shall chair the meetings of the TRC;

(b) An EPA representative;

(c) A State representative;

(d) A local government representative; and

(e) A public representative of the local community.

6.10 The purpose of the TRC is to afford a forum for cooperation between the [DOD Component] and concerned local officials and citizens and provide a meaningful opportunity for the members of TRC to become informed and to express their opinion about significant aspects of the RI/FS and the RD/RA.

6.11 The chairman shall schedule regular meetings of the TRC approximately every three months. Regular meetings of the TRC shall be for the purpose of reviewing progress under the RI/FS or the RD/RA and discussing other matters of interest to the TRC.

VII. QUALITY ASSURANCE

7.1 The [DOD Component] shall use quality assurance, quality control, and chain of custody procedures throughout all field investigation, sample collection and laboratory analysis activities. The [DOD Component] shall develop an operable unit or element specific Quality Assurance Project Plan (QAPP), as necessary, for review and comment by EPA and the State. The QAPP shall be prepared in accordance with applicable EPA guidance.

7.2 In order to prove quality assurance and maintain quality control regarding all samples collected pursuant to this Agreement, the [DOD Component] shall submit all protocols to be used for sampling and analysis to EPA and the State for review and comment. The [DOD Component] shall also ensure that any laboratory used for analysis is a participant in a quality assurance/quality control program that is consistent with EPA guidance.

7.3 The [DOD Component] shall also ensure that appropriate EPA and the State personnel or their authorized representatives will be allowed access to any laboratory used by the [DOD Component] in implementing this Agreement. Such access shall be for the purpose of validating sample analyses, protocols and

procedures required by the Remedial Investigation and Quality Assurance Project Plan.

VIII. ACCESS

8.1 Without limitation on any authority conferred on EPA and the State by statute or regulation, EPA, the State or their authorized representatives, shall have the authority to enter [installation] at all reasonable times for purposes consistent with the provisions of this Agreement, subject to any statutory and regulatory requirements as may be necessary to protect national security or mission essential activities. Such authority shall include, but not limited to: inspecting records, operating logs or contracts related to the investigative and remedial work at [installation]; reviewing the progress of the [DOD Component] in carrying out the terms of this Agreement; conducting such tests as EPA, the State, or the Project Managers deem necessary; and verifying the data submitted to EPA and the State. The [DOD Component] shall provide an escort whenever EPA or the State require access to restricted areas of [installation] for purposes consistent with the provisions of this Agreement. EPA and the State shall provide reasonable notice to the [DOD Component] Project Manager to request any necessary escorts. EPA and the State shall not use any camera, sound recording or other electronic recording device at [installation] without the permission of the [DOD Component] Project Manager. The [DOD Component] shall not unreasonably withhold such permission.

8.2 The rights to access by EPA and the State, granted in paragraph 9.1 of this section, shall be subject to those regulations as may be necessary to protect national security or mission essential activities. Upon denying any aspect of access the [DOD Component] shall provide an explanation within 48 hours of the reason for the denial and, to the extent possible, provide a recommendation for accommodating the requested access in an alternate manner. The Parties agree that this Agreement is subject to CERCLA § 120(j), 42 U.S.C. § 9620(j), regarding the issuance of Site Specific Presidential Orders as may be necessary to protect national security.

8.3 All Parties with access to [installation] pursuant to this section shall comply with all applicable health and safety plans.

8.4 To the extent that activities pursuant to this Agreement must be carried out on other than [DOD Component] property, the [DOD Component] shall use its best efforts to obtain access agreements from the owners which shall provide reasonable access for the [DOD Component], EPA, the State and their representatives. In the event that the [DOD Component] is

unable to obtain such access agreements, the [DOD Component] shall promptly notify EPA and the State.

IX. DATA AND DOCUMENT AVAILABILITY

9.1 The [DOD Component] shall make all sampling results, test results or other data generated through the implementation of this Agreement available to EPA and the State. EPA and the State will similarly make available to the [DOD Component] the results of sampling, tests or other data or documents generated by EPA or the State.

9.2 At the request of EPA or the State, the [DOD Component] shall allow, to the extent practicable, split or duplicate samples to be taken by EPA or the State or their authorized representatives of any samples collected by the [DOD Component] pursuant to the implementation of this Agreement. The [DOD Component] shall notify EPA and the State not less than fourteen (14) days in advance of any scheduled sample collection activity.

X. NOTICE TO THE PARTIES

10.1 All Parties shall transmit primary and secondary documents, and all notices required herein by next day mail, hand delivery or facsimile. Time limitations shall commence upon receipt.

10.2 Notice to the individual Parties shall be provided under this Agreement to the following addresses:

(a) For the [DOD Component]:

(b) For the EPA:

(c) For the State:

XI. EMERGENCY ACTIONS

11.1 Notwithstanding any other provision of this Agreement, the [DOD Component] retains the right, consistent with E.O. 12580, to conduct such emergency actions as may be necessary to alleviate immediate threats to human health or the environment from the release or threat of release of hazardous substances, pollutants or contaminants at or from [installation]. Such actions may be conducted at any time, either before or after the issuance of a ROD.

11.2 The [DOD Component] shall provide the other Parties with oral notice as soon as possible after the [DOD Component] determines that an emergency action is necessary. In addition, within seven days of initiating such an action the [DOD Component] shall provide written notice to the other Parties explaining why such action is or was necessary. Promptly thereafter, the [DOD Component] shall provide the other Parties with the written bases (factual, technical, and scientific) for such action and any available documents supporting such action. Upon completion of an emergency action, the [DOD Component] shall notify the other Parties in writing that the emergency action has been implemented. Such notice shall state whether, and to what extent, the emergency action varied from the description of the action in the written notice provided pursuant to the second sentence of this paragraph.

XII. DISPUTE RESOLUTION

12.1 Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Section 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 Section shall be implemented to resolve a dispute.

12.2 Within thirty (30) days after: (1) the period established for review of a draft final primary document pursuant to Section IV, Consultation, or (2) any action which leads to or generates a dispute, the disputing Party shall submit to the DRC 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 technical, legal or factual information the disputing Party is relying upon to support its position.

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

12.4 The DRC will 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 EPA representative on the DRC is the Waste Management Division Director of EPA's Region _____. The [DOD Component]'s designated member is the [DOD Component equivalent]. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Section X, Notice to the Parties.

12.5 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, within seven (7) days after the close of the twenty-one (21) day resolution period.

12.6 The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The EPA representative on the SEC is the Regional Administrator of EPA's Region _____. The [DoD Component]'s representative on the SEC is the [DOD Component equivalent]. 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, EPA'S Regional Administrator shall issue a written position on the dispute. The [DOD Component] may, within fourteen (14) days of the Regional Administrator's issuance of EPA'S position, issue a written notice elevating the dispute to the Administrator of EPA for resolution in accordance with all applicable laws and procedures. In the event that the [DOD Component] elects not to elevate the dispute to the Administrator within the designated fourteen (14) day escalation period, the [DOD Component] shall be deemed to have agreed with Regional Administrator's written position with respect to the dispute.

12.7 Upon escalation of a dispute to the Administrator of EPA pursuant to paragraph 12.6 above, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the EPA Administrator shall meet and confer with the [DOD Component]'s Secretariat Representative to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the [DOD Component] with a written final decision setting forth resolution of the dispute. The duties of the Administrator set forth in this Section shall not be delegated.

12.8 The pendency of any dispute under this Section shall not affect the [DOD Component]'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.

12.9 When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Hazardous Waste Division Director for EPA's Region —requests, in writing, that work related to the dispute be stopped because, in 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. To the extent possible, EPA shall consult with the [DOD Component] prior to initiating a work stoppage request. After stoppage of work, if the [DOD Component] believes that the work stoppage is inappropriate or may have potential significant adverse impacts, the [DOD Component] may meet with the Division Director to discuss the work stoppage. Following this meeting, 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 the either the DRC or the SEC, at the discretion of the [DOD Component].

12.10 Within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this Part, the [DOD Component] shall incorporate the resolution and final determination into the appropriate plan, schedule or procedures and proceed to implement this Agreement according to the amended plan, schedule or procedures.

12.11 Resolution of a dispute pursuant to this Section of the Agreement constitutes a final resolution of any dispute arising under this Agreement. All Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Section of this Agreement.

XIII. DEADLINES

[This model provision assumes no investigatory work is in progress at the site and no schedules have been previously established for study work. The degree of specificity and completeness of the deadlines contained herein shall be based upon information possessed at the time of development of the site-specific agreement.]

13.1 The following deadlines have been established, in conjunction with the State, for the submittal of draft primary documents pursuant to this Agreement:

(a) [Scope of Work]

13.2 Within twenty-one (21) days of the effective date of this Agreement, the [DOD Component] shall propose deadlines for completion of the following draft primary documents:

(a) [RI/FS Work Plan, including Sampling and Analysis Plan and QAPP]

(b) [Risk Assessment]

(c) [RI Report]

(d) [Initial Screening of Alternatives]

(e) [FS Report]

(f) [Proposed Plan]

(g) [Record of Decision]

Within fifteen (15) days of receipt, EPA, in conjunction with the State, shall review and provide comments to the [DOD Component] regarding the proposed deadlines. Within fifteen (15) days following receipt of the comments the [DOD Component] shall, as appropriate, make revisions and reissue the proposal. The Parties shall meet as necessary to discuss and finalize the proposed deadlines. If the Parties agree on proposed deadlines, the finalized deadlines shall be incorporated into the appropriate Work Plans. If the Parties fail to agree within thirty (30) days on the proposed deadlines, the matter shall immediately be submitted for dispute resolution pursuant to Section XII of this Agreement. The final deadlines established pursuant to this paragraph shall be published by EPA, in conjunction with the State.

13.3 Within twenty-one (21) days of issuance of the Record of Decision, the [DOD Component] shall propose deadlines for completion of the following draft primary documents:

(a) [Remedial Design]

(b) [Remedial Action Work Plan]

These deadlines shall be proposed, finalized and published utilizing the same procedures set forth in paragraph 13.2 above.

13.4 The deadlines set forth in this section, or to be established as set forth in this section, may be extended pursuant to Section XIV of this Agreement. The Parties recognize that one possible basis for extension of the deadlines for completion of the Remedial Investigation and Feasibility Study Reports is the identification of significant new Site conditions during the performance of the remedial investigation.

XIV. EXTENSIONS

14.1 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 the [DOD Component] shall be submitted in writing and shall specify:

(a) The timetable and deadline or the schedule that is sought to be extended;

(b) The length of the extension sought;

(c) The good cause(s) for the extension; and

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

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

(a) An event of force majeure;

(b) A delay caused by another party's failure to meet any requirement of this Agreement;

(c) A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;

(d) 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; and

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

14.3 Absent agreement of the Parties with respect to the existence of good cause, the [DOD Component] may seek and obtain determination through the dispute resolution process that good cause exists.

14.4 Within seven days of receipt of a request for an extension of a timetable and deadline or a schedule, EPA shall

advise the [DOD Component] in writing of its respective position on the request. Any failure by EPA to respond within the 7-day period shall be deemed to constitute concurrence in the request for extension. If EPA does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

14.5 If there is consensus among the Parties that the requested extension is warranted, the [DOD Component] 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.

14.6 Within seven days of receipt of a statement of nonconcurrence with the requested extension, the [DOD Component] may invoke dispute resolution.

14.7 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.

XV. FORCE MAJEURE

15.1 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 the [DOD Component]; 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 appropriated funds,

if the [DOD Component] shall have made timely request for such funds as part of the budgetary process as set forth in Section XXVI, Funding. 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.

XVI. EXEMPTIONS

16.1 The obligation of the [DOD Component] to comply with the provisions of this Agreement may be relieved by:

(a) A Presidential order or exemption issued pursuant to the provisions of CERCLA § 120(j)(1), 42 U.S.C. § 9620(j)(1), or RCRA § 6001, 42 U.S.C. § 6961;

(b) The order of an appropriate court; or

(c) The dispute resolution process of Section XII of this Agreement.

16.2 Notwithstanding any other provisions of this Agreement, the [DOD Component] reserves the right to take any action affecting [installation] that is not consistent with this Agreement, including use of [installation] for any purpose, upon the occurrence of either of the following events:

(a) A determination by the President that such action is of paramount importance; or

(b) A determination by the United States Secretary of Defense or by the United States Secretary of the [DOD Component] that such action is essential and in the interest of national defense.

XVII. DESIGN AND IMPLEMENTATION OF REMEDIAL ACTIONS

(i) Response Actions Covered By This Section

17.1 Paragraphs 17.2 through 17.17 below shall govern design and implementation of the following response actions: interim or final remedial action for any operable units that may be designated for the Site, and any supplemental response actions selected pursuant to Section XX hereof.

(ii) Design and Implementation Schedules

17.2 Formulation of schedules:

(a) Upon finalization of any ROD, the [DOD Component] shall submit the design schedule to the Parties in accordance with Section XIII for the remedial actions reflected in that ROD.

(b) Promptly upon issuance of a final design document, the [DOD Component] shall submit an implementation schedule to the Parties in accordance with Section XIII for executing the remedial action set forth in the final design document.

(iii) Role of Project Managers

17.3 As provided in Section VI, the Project Managers shall oversee on a daily basis the design and implementation of remedial actions. Promptly upon issuance of a ROD that addresses such a remedial action, the Parties shall each designate an employee to serve as its representative Project Manager for the design and implementation of that remedial action. Each such representative shall be responsible on a daily basis for ensuring his or her respective entity's fulfillment of its responsibilities regarding the design and implementation of the remedial action in accordance with the terms of the ROD and this Agreement. The representative may be the same person who served as the Project Manager during development of the ROD.

17.4 In addition to the formal notice provisions set forth in Section X hereof, the Parties shall also transmit all written communications between each other with respect to the design and implementation of a remedial action to the Project Manager.

(iv) Role of the DRC

17.5 As provided in Section VI of this Agreement, the DRC shall oversee and provide policy guidance regarding all remedial actions at the Site, and review the work of the Project Managers. Promptly upon issuance of a ROD that addresses a final or supplemental remedial action, the Parties shall each designate their respective DRC representative. This representative may be the same person who served on the DRC during development of the ROD.

(V) Design of Remedial Actions

17.6 The [DOD Component] responsible for design of a remedial action identified in a ROD shall designate a Project Manager who shall be responsible for development of the design scope of work, the conceptual design document (at approximately 20 percent completion of the design work) and the final design

document (at approximately 95 percent completion of the design work) for the remedial action.

17.7 The Project Manager shall submit a draft design scope of work to the Parties for review and comment. The Project Managers shall meet to discuss the draft and attempt to reach consensus on its adequacy. Upon the request of any Party, objections to the draft design scope of work shall be subject to the dispute resolution procedures of Section XII. The failure of a Party to request dispute resolution with respect to such draft shall constitute that Party's concurrence in the design scope of work.

17.8 Upon consensus of the Project Managers, or completion of dispute resolution if invoked, with respect to a draft design scope of work, the Project Manager shall issue the document in final form and shall promptly begin the process of developing, or having developed under contract, the conceptual design document. The [DOD Component] shall submit the conceptual design document to the Project Managers for review and comment. The Project Manager shall be available to discuss with the other Parties the adequacy of the conceptual design document. The conceptual design document shall not be subject to dispute resolution.

17.9 The final design document shall include the implementation schedule for the remedial action set forth in the final design document. The Project Manager shall submit the final design document to the Project Managers in draft form for review of comment. The Project Managers members shall meet and discuss the draft and attempt to reach consensus on the adequacy of the draft, including the schedule proposed in the draft. At the request of any Party any dispute with respect to a draft final design document may be resolved pursuant to dispute resolution. The failure of a Party to request dispute resolution with respect to such draft shall constitute that Party's concurrence in the final design document.

17.10 If, following Project Manager review, the Parties are unable to reach consensus with respect to a draft design scope of work or a draft final design document, and either document is the subject of dispute resolution, the modified document shall become final only after the Parties reach consensus at the Project Manager level that the modified document accurately reflects the outcome of dispute resolution. If the Parties fail to reach such consensus, any Party may submit the issue to dispute resolution. After the Parties reach consensus, the Project Manager shall issue the document in final form.

17.11 After the final design document is issued in final form, the Project Manager shall promptly begin implementation Of the remedial action addressed in the final design document.

(vi) Implementation of Remedial Actions

17.12 At the monthly meeting, the Project Managers shall report on their progress in implementing remedial actions. During such meetings, it shall be the responsibility of each Party to raise any objections it may have with respect to the manner in which a remedial action is being implemented. In raising such an objection, a Party shall indicate whether, and to what extent, it believes the activity is not being implemented in accordance with the applicable ROD, the final design document, or this Agreement. The [DOD Component] shall be available to respond to such objections.

17.13 The Project Managers shall attempt to resolve informally any dispute with respect to the manner in which a remedial action is being implemented or whether extension of the implementation schedule should be granted. Any Party may invoke dispute resolution to resolve a disagreement with respect to the implementation of a remedial action that cannot be resolved at the Project Manager level. The failure of a Party to invoke dispute resolution with respect to implementation of a remedial action shall constitute such Party's acknowledgement that the remedial action is being properly implemented. The only issues relating to implementation of a remedial action that may be raised to dispute resolution are:

(a) Whether the remedial action is being implemented in accordance with the ROD;

(b) Whether the remedial action is being implemented in accordance with the applicable final design document;

(c) Whether the remedial action is being implemented in accordance with the terms of this Agreement; and

(d) Whether good cause exists for extending the implementation schedule.

17.1 Subject to the following paragraph, if dispute resolution is invoked with respect to implementation of a remedial action, the implementation of the remedial action shall not continue until dispute resolution has been concluded.

(vii) Extensions of Schedules

17.15 Design and implementation schedules may be extended for good cause in accordance with the provisions of Section XIV hereof.

(viii) EPA Certification

17.16 When the [DOD Component] determines that any final or supplemental remedial action has been completed in accordance with the requirements of this Agreement, it shall so advise EPA and the State in writing, and shall request from EPA certification that the remedial action have been completed in accordance with the requirements of this Agreement. Within 90 days of the receipt of a request for EPA Certification, EPA shall advise the [DOD Component] and the State in writing that:

(a) EPA certifies that the remedial action has been completed in accordance with this Agreement; or

(b) EPA denies the [DOD Component]'s request for certification, stating in full the basis of its denial.

17.17 If EPA denies the [DOD Component]'s request for certification that a remedial action has been completed in accordance with this Agreement, or the [DOD Component] may invoke dispute resolution to review EPA's determination. If EPA's denial of certification is upheld in dispute resolution, EPA shall describe the additional work needed to bring the remedial action into compliance with the requirements of this Agreement. After performing such additional work, the [DOD Component] shall resubmit a request for certification to EPA. EPA shall then grant or deny certification pursuant to the process set forth in this paragraph and the previous paragraph.

XVIII. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

18.1 *The Parties intend to integrate the [DOD Component]'s CERCLA response obligations and RCRA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes, 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. § 9601 et seq.; to satisfy the corrective action requirements of RCRA §§ 3004(u) & (v), 42 U.S.C. §§ 6924(u) & (v), for a RCRA permit, and RCRA § 3008(h), 42 U.S.C. § 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 CERCLA § 121, 42 U.S.C. § 9621.*

18.2 *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 (i.e., no further corrective action shall be required). 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 pursuant to CERCLA § 121, 42 U.S.C. § 9621.

18.3 The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties further recognize that ongoing hazardous waste management activities at the [installation] may require the issuance of permits under Federal and State laws. This Agreement does not affect the requirements, if any, to obtain such permits. However, if a permit is issued to the [DOD Component] for ongoing hazardous waste management activities at the Site, 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 permit conditions which reference this Agreement shall, to the extent authorized by law, only be reviewed under the provisions of CERCLA.

18.4 Nothing in this Agreement shall alter the [DOD Component]'s authority with respect to removal actions conducted pursuant to CERCLA § 104, 42 U.S.C. § 9604.

XIX. PERIODIC REVIEW

19.1 Subject to the paragraph 19.2 below, the [DOD Component] shall conduct a periodic review of any final and supplemental response action taken at the Site to determine whether and to what extent any additional remedial action is necessary. The periodic review shall be conducted in accordance with CERCLA § 121(c), 42 U.S.C. § 9621(c), any pertinent regulation or guidance issued by EPA that is not inconsistent with CERCLA and the NCP. Upon completion, the [DOD Component] shall provide the assessment report to the Parties.

19.2 The periodic review for each operable unit shall be conducted not less often than every five years after initiation of the final response action for that operable unit, as long as hazardous substances, pollutants or contaminants remain within the area covered by that operable unit.

19.3 The assessment and selection of any additional response action determined necessary in the course of a periodic review shall be in accordance with Section XX hereof. Except for emergency actions, which shall be governed by Section XI hereof, such response action shall be implemented as a supplemental response action in accordance with Section XX hereof.

XX. ASSESSMENT AND SELECTION OF SUPPLEMENTAL RESPONSE ACTIONS

20.1 The Parties recognize that subsequent to finalization of ROD, a need may arise for one or more supplemental response actions to remedy continuing or additional releases or threats of releases of hazardous substances, pollutants or contaminants at or from the Site. If such a release or threat of release presents an immediate threat to human health or the environment, it shall be addressed pursuant to Section XI, Emergency Actions. If such release or threat of release does not present an immediate threat to human health or the environment, it shall be addressed pursuant to paragraphs 20.2 through 20.6 below, regardless of whether the determination of the need for such supplemental response action is based on a Periodic Review conducted pursuant to Section XIX, hereof or on some other source of information.

20.2 A supplemental response action shall be undertaken only when:

(a) A determination is made that as a result of the release or threat of release of a hazardous substance, pollutant or contaminant at or from the Site an additional response action is necessary and appropriate to assure the protection of human health and the environment; and

(b) Either of the following conditions is met for any determination made pursuant to subparagraph 20.2(a) above:

(1) For supplemental response actions proposed after finalization of the ROD, but prior to EPA Certification, the determination must be based upon conditions that were unknown at the time of finalization of the ROD or based upon information received in whole or in part by EPA following finalization of the ROD; or

(2) For supplemental response actions proposed after EPA Certification, the determination must be based upon conditions that were unknown at the time of EPA Certification or based upon information received in whole or in part by EPA following EPA Certification.

20.3 If, after finalization of the ROD, any Party concludes that a supplemental response action is necessary, based on the criteria set forth in paragraph 20.2, such Party may promptly notify the others of its conclusion in writing. The Project Managers shall confer and attempt to reach consensus on the need for such an action within 45 days of the receipt of such notice. If within that 45-day period, the Project Managers have failed to reach consensus, any Party may notify the other Parties in writing that it intends to invoke dispute resolution. If the Project Managers are still unable to reach consensus within 14

days of the issuance of such notice, the question of the need for the supplemental response action shall be resolved through dispute resolution.

20.4 If the Project Managers agree or if it is determined through dispute resolution that a supplemental response action is needed based on the criteria set forth in paragraph 20.2, the [DOD Component] shall prepare a draft supplemental response action plan that shall include supplemental RI/FS deadlines. Supplemental RI/FS deadlines may be extended pursuant to Section XIV, Extensions. The [DOD Component] shall provide the draft supplemental response action plan to the other Parties. The other Parties shall have 30 days in which to comment. The [DOD Component] shall respond to those comments within 30 days after close of the comment period. Any Party may then invoke dispute resolution to resolve a dispute with respect to the supplemental response action plan. After any disagreements with respect to the supplemental response action plan have been resolved, the [DOD Component] shall supplement the administrative record with the supplemental RI/FS deadlines.

20.5 After any dispute with respect to a supplemental response action plan have been resolved, the [DOD Component] shall conduct a supplemental RI/FS and issue a supplemental ROD in accordance with the supplemental response action plan. The provisions in Section IV (Consultation) and Section XVII (Design and Implementation of Remedial Actions) shall govern the planning and selection of supplemental response actions to the same extent they govern the planning and selection of final response actions, unless it is the consensus of the Parties that a particular provision does not apply. The supplemental ROD shall include the design schedule that shall govern completion of the design work for the supplemental response action.

20.6 Following issuance of the supplemental response action ROD, the supplemental response action shall be implemented pursuant to that ROD and Section XX hereof.

XXI. ENFORCEABILITY

21.1 *The Parties agree that:*

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

(b) All timetables or deadlines associated with the RI/FS shall be enforceable by any person pursuant to CERCLA § 310, and any violation of such timetables or deadlines will be subject to civil penalties under CERCLA §§ 310(c) and 109;

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

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

21.2 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 CERCLA § 113(h).

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

XXII. STIPULATED PENALTIES

22.1 In the event that the [DOD Component] fails to submit a primary document (i.e., Scope of Work, RI/FS Work Plan, Risk Assessment, RI Report, Initial Screening of Alternatives, FS Report, Proposed Plan, Record of Decision, Remedial Design, Remedial Action Work Plan) to 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, EPA may assess a stipulated penalty against the [DOD Component]. 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.

22.2 Upon determining that the [DOD Component] has failed in a manner set forth in paragraph 22.1, EPA shall so notify the [DOD Component] in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the [DOD Component] 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. The [DOD

Component] shall not be liable for the stipulated penalty assessed by EPA if the failure is determined, through the dispute resolution process, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.

22.3 The annual reports required by CERCLA § 120(e)(5), 42 U.S.C. § 9620(e)(5), shall include, with respect to each final assessment of a stipulated penalty against the [DOD Component] under this Agreement, each of the following:

(a) The facility responsible for the failure;

(b) A statement of the facts and circumstances giving rise to the failure;

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

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

(e) The total dollar amount of the stipulated penalty assessed for the particular failure.

22.4 Stipulated penalties assessed pursuant to this Section shall be payable to the Hazardous Substances Response Trust Fund only in the manner and to the extent expressly provided for in Acts authorizing funds for, and appropriations to, the DOD.

22.5 In no event shall this Section give rise to a stipulated penalty in excess of the amount set forth in CERCLA § 109, 42 U.S.C. § 9609.

22.6 This Section shall not affect the [DOD Component]'s ability to obtain an extension of a timetable, deadline or schedule pursuant to Section XIV of this Agreement.

22.7 Nothing in this Agreement shall be construed to render any officer or employee of the [DOD Component] personally liable for the payment of any stipulated penalty assessed pursuant to this Part.

XXIII. OTHER CLAIMS

23.1 Subject to Section XVIII, Statutory Compliance, nothing in this Agreement shall restrict EPA or the State from taking any action under CERCLA, RCRA, state law, or other

environmental statutes for any matter not specifically part of the work performed pursuant to this Agreement.

23.2 Nothing in this Agreement shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not a signatory to this Agreement for any liability it may have arising out of or relating to any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from [installation].

XXIV. RESERVATION OF RIGHTS

24.1 The [DOD Component] reserves the right to raise or assert any defense, whether procedural or substantive, in law or equity, or to raise any issue as to jurisdiction, or standing of any Party, or any other matter in any proceeding related or not related to this Agreement, which the [DOD Component] might otherwise be entitled to raise or assert.

XXV. TERMINATION AND SATISFACTION

25.1 The provisions of this Agreement shall be deemed satisfied upon a consensus of the Parties that the [DOD Component] has completed its obligations under the terms of this Agreement. Following EPA Certification of the remedial actions at the Site pursuant to paragraphs 17.16 and 17.17 of Section XVIII, any Party may propose in writing the termination of this Agreement upon a showing that the objectives of this Agreement have been satisfied. A Party opposing termination of this Agreement shall serve its objection upon the proposing Party within 30 days of receipt of the proposal. Without prejudice to the [DOD Component]'s obligation for periodic review under Section XX, no Party shall unreasonably withhold or delay termination of this Agreement.

XXVI. FUNDING

26.1 *It is the expectation of the Parties to this Agreement that all obligations of the [DOD Component] arising under this Agreement will be fully funded. The [DOD Component] agrees to seek sufficient funding through the DOD budgetary process to fulfill its obligations under this Agreement.*

26.2 *In accordance with CERCLA § 120(e)(5)(B), 42 U.S.C. § 9620(e)(5)(B), the [DOD Component] shall include in its annual*

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

26.3 Any requirement for the payment or obligation of funds, including stipulated penalties, by the [DOD Component] 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. § 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.

26.4 If appropriated funds are not available to fulfill the [DOD Component]'s obligations under this Agreement, EPA reserves the right to initiate an action against any other person, or to take any response action, which would be appropriate absent this Agreement.

26.5 Funds authorized and appropriated annually by Congress under the "Environmental Restoration, Defense" appropriation in the Department of Defense Appropriation Act and allocated by the DASD(E) to the [DOD Component] will be the source of funds for activities required by this Agreement consistent with Section 211 of SARA, 10 U.S.C. Chapter 160. However, should the Environmental Restoration, Defense appropriation be inadequate in any year to meet the total [DOD Component] CERCLA implementation requirements, the DOD shall employ and the [DOD Component] shall follow a standardized DOD prioritization process which allocates that year's appropriations in a manner which maximizes the protection of human health and the environment. A standardized DOD prioritization model shall be developed and utilized with the assistance of EPA and the states.

XXVII. COMMUNITY RELATIONS

27.1 The Parties shall coordinate any statements to the press with respect to this Agreement or any aspect of the processes set forth in this Agreement. Except in case of an emergency requiring the release of necessary information, any Party issuing a press release with reference to any of the work required by this Agreement to any publication shall advise the other Parties of such press release and the contents thereof, at least 48 hours prior to issuance.

27.2 The Parties agree to comply with all relevant EPA policy and guidance on community relations programs which are in accordance with CERCLA and consistent with the NCP.

27.3 The [DOD Component] shall develop and implement a Community Relations Plan within sixty (60) days after the effective date of this Agreement which responds to the need for an interactive relationship with all interested community elements, both on [installation] and off, regarding environmental activities conducted pursuant to this Agreement by the [DOD Component].

XXVIII. PUBLIC COMMENT

28.1 This Agreement shall be subject to public comment as follows:

(a) On or about [Date], the [DOD Component] shall publish notice in at least one major local newspaper of general circulation that this Agreement is available for a 30-day period of public review and comment.

(b) Promptly upon completion of the public comment period, the [DOD Component] shall transmit to the other Parties copies of all comments received within the comment period.

(c) After the close of the public comment period, any Party may seek to have this Agreement amended, in accordance with Section XXX hereof, in response to the comments received.

28.2 The Parties agree that this Agreement and any subsequent proposed plan or alternative proposals considered for remedial action at the Facility arising out of this Agreement shall comply with public participation requirements of CERCLA § 117, 42 U.S.C. § 9617.

28.3 The [DOD Component] agrees it shall establish and maintain an Administrative Record at or near [installation] in accordance with CERCLA § 113(k), 42 U.S.C. § 9613. A copy of each document placed in the Administrative Record will be provided to the EPA and the State. The Administrative Record developed by the [DOD Component] shall be periodically updated and supplied to the EPA and the State.

XXIX. PRESERVATION OF RECORDS

29.1 Despite any document retention policy to the contrary, the Parties shall preserve, during the pendency of this Agreement and for a minimum of seven (7) years after its termination, all records and documents in their possession which relate to the actions carried out pursuant to this Agreement. After this seven year period, each Party shall notify the other Parties at least thirty (30) days prior to destruction of any such documents. Upon request by any Party, the requested Party shall

make available such records or copies of any such records, unless withholding is authorized and determined appropriate by law.

XXX. AMENDMENT OR MODIFICATION OF AGREEMENT

30.1 This Agreement can be amended or modified solely upon written consent of all Parties. Such amendments or modifications shall have as the effective date that date on which they are signed by all Parties and notice thereof is provided to each signatory pursuant to Section X.

XXXI. EFFECTIVE DATE

31.1 The effective date of this Agreement shall be the date upon which it has been executed by all the Parties or upon any mutually agreeable subsequent date.

31.2 Any deadlines and timetables, schedules, or records of decision required by this Agreement are effective upon finalization and incorporated into this Agreement.

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