



THE OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301-6000

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,
(E, S&OH) SAF/RQ
DIRECTOR, DEFENSE LOGISTICS AGENCY (DLA-W)

SUBJECT: Suggested IAG Language from the State and Federal Agency Workgroup

Over the last three months, DoD representatives met with State organizations to develop acceptable state language on matters covered in the original model IAG language that we agreed to with the Environmental Protection Agency for National Priority List Sites. Representatives of the National Association of Attorneys General, the Association of State and Territorial Solid Waste management Officials, and the National Governors' Association worked with us.

On all but the force majeure and stipulated penalties provisions, we reached agreement with the state organizations on changes to the DoD-EPA model language. EPA also accepts the use of this language in agreements. A copy of this agreed upon language is attached. The DoD components should accept without reservation a state's use of all, or any subset of these provisions in the IAG negotiations. They are a reasonable accommodation of our mutual interests to provide meaningful state participation in our cleanup activities. Their direct use should facilitate the negotiations.

The above state associations are informing their members that the attached provisions are a way to soundly handle the matters that they cover and that DoD and EPA will accept them. This should promote individual state use. However, they cannot bind their member states. You may find some states asking for more favorable language to their interests on these IAG provisions. In those instances, you should feel free to discuss revisions that you would like, also. Installation negotiators should continue to consider any additional state concerns on these provisions and evaluate their reasonableness in the context of the entire IAG negotiations. The negotiators should continue to follow existing Service guidance on stipulated penalties and force majeure.

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

[Attachment](#)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION _____,

STATE OF _____,

AND THE

UNITED STATES [DOD Component]

IN THE MATTER OF:)	
)	
THE U.S. (DOD COMPONENT'S))	FEDERAL FACILITY
)	AGREEMENT UNDER
<NAME OF FACILITY>)	CERCLA SECTION 120
)	
)	Administrative
)	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:

JURISDICTION

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

(i) The U.S. Environmental Protection Agency (U.S. 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), 42 U.S.C. § 9620(e)(1), 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) 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/HSWA or RCRA) and Executive Order 12580;

(ii) U.S. EPA, Region <>, 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;

(iii) The [DOD Component] enters into those 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. § 4321, and the Defense Environmental Restoration Program (DERP) 10 U.S.C. § 2701 et seq.;

(iv) The [DOD Component] 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 DERP.

(v) The [State] enters into this Agreement pursuant to sections 120(f) and 121(f) CERCLA/SARA, 42 U.S.C. §§ 9620(f) and 9621(f), section 3006 of RCRA, 42 U.S.C. § 6926, and [cite any applicable state law].

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 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 applicable state law; 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 the State pursuant to CERCLA/SARA and applicable state law. 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 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 or contaminants at the Site in accordance with CERCLA/SARA and applicable state law.

(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 and applicable state law.

(4) Implement the selected interim and final remedial action(s) in accordance with CERCLA and applicable state law and meet the requirements of Section 120(e)(2) of CERCLA for an interagency agreement ~~between among U.S. EPA and the [DOD Component]~~ the parties.

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

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

(7) 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.

(8) Provide (State) involvement in the initiation, development, selection and enforcement of remedial actions to be undertaken at [installation], including the review of all applicable data as it becomes available and the development of studies, reports, and action plans; and to identify and integrate State ARARs into the remedial action process.

(9) Provide for operation and maintenance of any remedial action selected and implemented pursuant to this Agreement.

SCOPE OF AGREEMENT

[The purpose of this section is to identify the units which are to be addressed by the agreement and the units which will be excluded from the agreement that will be addressed by other authority, if any. At some installations it will be appropriate to cover all of the hazardous waste releases under this agreement while at others it may not be appropriate. Where all releases are covered, there are two options. First, the parties may agree to have all units including non-NPL and RCRA units, covered by the section 120 decisionmaking process set out in this document. The second option would be to include in an agreement a separate decisionmaking process for the non-NPL and RCRA units. Since the terms of this section will vary widely from site to site, no attempt is made to provide model language.]

STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

A. The Parties intent 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 Sections 3004(u) and (v) of RCRA, 42 U.S.C. § 6924(u) and (v), for a RCRA permit, and Section 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 Section 121 of CERCLA, 42 U.S.C. § 9621 and applicable state law.

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~~ will 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 are associated with the NPL portions of the site, RCRA shall be

considered an applicable or relevant and appropriate requirement pursuant to Section 121 of CERCLA. [Releases or other hazardous waste activities not covered by this Agreement remain subject to all applicable state and federal environmental requirements.]

C. 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 on-going 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 on-going hazardous waste management activities at the Site, U.S. EPA and, or [the State] 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~~ With respect to those portions of this Agreement incorporated by reference into permits, the parties intend that judicial review of the incorporated portions shall, to the extent review is authorized by law, only occur under the provisions of CERCLA.

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

CONSULTATION WITH U.S. EPA AND THE

STATE OF ()

Review and Comment Process for Draft and Final Comments

A. Applicability:

The provisions of this Part establish the procedures that shall be used by the Parties [~~DOD Component~~] and ~~U.S. EPA~~ to provide ~~the Parties~~ each other 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 and 10 U.S.C. § 2705, the [DOD Component] will normally be responsible for issuing primary and secondary documents to U.S. EPA and [the State]. 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 [the State] 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 the [DOD Component] in draft subject to review and comment by U.S. EPA and [the State]. 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 issuance ~~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.

2. 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 and [the State]. Although the [DOD Component] will respond to comments received, the draft secondary documents may be finalized in the context of the corresponding draft final primary document is issued.

C. Primary Reports:

1. The [DOD Component] shall complete and transmit draft reports for the following primary documents to U.S. EPA and [the State] for review and comment in accordance with 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 U.S. 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. [Site Characterization Report]
5. [Initial Screening of Alternatives]
6. [Treatability Studies Report and, Additional Site Characterization Report 2]
7. [Detailed Analysis of Alternatives]
8. [Proposed Plan]
9. [Record of Decision]
10. [Remedial Design]
11. [Remedial Action Work Plan]

2. 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 Part ____ (Deadlines) of this Agreement.

D. Secondary Documents:

1. The [DOD Component] shall complete and transmit draft reports for the following secondary documents to U.S. EPA and [the State] for review and comment in accordance with the provisions of this Part:

1. [Initial Remedial Action/Data Quality Objectives]
2. [Post-screening Investigation Work Plan]
3. [Sampling and Data Results]

2. Although U.S. EPA and [the State] 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 B hereof. Target dates shall be established for the completion and transmission of draft secondary reports pursuant to Part _____ (Deadlines) of this Agreement.

E. 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 C and D 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.

F. Identification and Determination of Potential ARARs:

1. For those primary reports or secondary documents that consist of or include ARAR determinations, the Project Managers shall meet prior to the issuance of a draft report, to identify

and propose, to the best of their ability, all potential ARARs pertinent to the report being addressed. [The State] shall

identify all potential state ARARs as early in the remedial process as possible consistent with the requirements of CERCLA section 121 and the NCP. The [DOD Component] shall consider any written interpretations of ARARs provided by the state. Draft ARAR determinations shall be prepared by the [DOD Component] in accordance with Section 121(d)(2) of CERCLA, the NCP and pertinent guidance issued by U.S. EPA, ~~which that~~ 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 ROD is issued.

G. Review and comment on Draft Reports:

1. The [DOD Component] shall complete and transmit each draft primary report to U.S. EPA and [the State] 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 the target dates established for the issuance of such reports established pursuant to Part ____ (Deadlines) of this Agreement.

2. 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 U.S. EPA and

[the State] 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~~ issued by the U.S. EPA, and with applicable state law. Comments by the U.S. EPA and [the State] shall be provided with adequate specificity so that that [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 U.S. EPA or [the State] shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy reports, U.S. EPA or [the State] 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, U.S. EPA and [the State] shall transmit by next day mail their written comments to the [DOD Component].

3. Representatives of the [DOD Component] shall make themselves readily available to U.S. EPA and [the State] 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.

4. In commenting on a draft report which contains a proposed ARAR determination, U.S. EPA or [the State] shall include a reasoned statement of whether they object to any

portion of the proposed ARAR determination. To the extent that U.S. EPA or [the State] does object, it shall explain the basis for its objection in detail and shall identify an ARARs which it believes were not properly addressed in the proposed ARAR determination.

5. 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 U.S. EPA and [the State] 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 U.S. EPA and [the State] 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.

6. 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 U.S. EPA and [the State]. In appropriate circumstances, this time period may be further extended in accordance with Part ____ (Extensions) hereof.

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

1. Dispute resolution shall be available to the Parties for draft final primary reports as set forth in Part ____ (Dispute Resolution).

2. When dispute resolution is invoked on a draft primary report, work may be stopped in accordance with the procedures set forth in Part ____ (Dispute Resolution).

I. 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 Part ____ (Extensions) hereof.

J. Subsequent Modification of Final Reports:

Following finalization of any primary report pursuant to Paragraph I above, any party to this Agreement, U.S. 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 Paragraphs 1 and 2 below.

1. ~~A party U.S. 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. A party U.S. EPA or the [DOD Component] may seek such a modification by submitting a concise written request to the Project Manager 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, any party U.S. 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.

3. Nothing in this Subpart shall alter U.S. EPA's or (the State'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.

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 a dispute.

A. Within thirty (30) days after: (1) ~~the period established for review-issuance~~ of a draft final primary document pursuant to Part ____ (Consultation with U.S. EPA and the State) of this agreement, or (2) any action which leads to or generates a dispute, the disputing Party shall submit to the other Parties 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 as many times as are necessary to discuss and attempt resolution of the dispute.

C. The Dispute Resolution Committee (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 (Senior Executive Service (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's representative on the DRC is the Waste Management Division Director of U.S. EPA's Region _____. The [State] representative on the DRC is
_____. 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 Part ____ (Notices).

D. 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 signed by all parties. 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.

E. 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 the U.S. EPA's Region _____. The (State representative on the SEC is _____.

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 signed by all parties. If unanimous resolution of the dispute is not reached within twenty-one (21) days, U.S. EPA's Regional Administrator shall issue written position on the dispute. The [DOD Component] or [the State] may, with twenty-one (21) days of the 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 a party ~~the [DOD Component]~~ elects not to elevate the dispute to the Administrator within the designated twenty-one (21) day escalation period, the party ~~[DOD Component]~~ shall be deemed to have agreed with Regional Administrator's written position with respect to the dispute.

F. Upon escalation of a dispute to the Administrator of U.S. EPA pursuant to Subpart E, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the parties U.S. EPA Administrator shall meet and confer with the [DOD Component's] Secretariat-Representative and [the commissioner of the state agency] to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the other parties ~~[DOD Component]~~ with a written final decision setting forth resolution of the

dispute. The duties of the Administrator set forth in this Part shall not be delegated.

G. [The State] reserves its right to maintain an action under section 121(f)(3)(B) of CERCLA, 42 U.S.C. § 9621(f)(3)(B) to challenge the selection of a remedial action that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria or limitation.

H. The pendency of any dispute under this Part 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 or 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 will immediately be discontinued if the Hazardous Waste Division Director for U.S. EPA's Region ____ 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 of implementation process. The state may request the U.S. EPA's Region _____ Division Director to order work stopped for the reasons set out above. To the extent possible, the party seeking a work stoppage U.S. EPA shall consult with the the other parties ~~{DOD Component}~~ prior to initiating a work stoppage request. After stoppage of work, if a party ~~the {DOD Component}~~ believes that the work stoppage is inappropriate or may have potential significant adverse impacts, the party ~~{DOD Component}~~ may meet with the party ordering a work stoppage ~~Division Director~~ to discuss the work stoppage. Following this meeting, and further consideration of the issues, the U.S. EPA Division Director will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the U.S. EPA 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 the party requesting dispute resolution ~~{DOD Component}~~.

J. 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.

K. Resolution of a dispute pursuant to this Part 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 Part of this Agreement.

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 will be subject to civil penalties under Sections 310(c) and 109 of CERCLA; and

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

(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 will be subject to civil penalties under Sections 310(c) and 109 of CERCLA; and

(4) any final resolution of a dispute pursuant to Part ____ 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 will 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. Nothing in this agreement shall be construed as a restriction or waiver of any rights the U.S. EPA or [the State] may have under CERCLA, including but not limited to any rights under sections 113 and 310, 42 U.S.C. §§ 9613 and 9659. The DOD does not waive any rights it may have under CERCLA section 120, SARA section 211 and Executive Order 12580.

D. The parties agree to exhaust their rights under Part [Dispute Resolution] prior to exercising any rights to judicial review that they may have.

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

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.

A. The following deadlines have been established, by U.S. EPA and the State, for the submittal of draft primary documents pursuant to this Agreement:

1. [Scope of Work]

B. 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:

2. [RI/FS Work Plan, including Sampling and Analysis Plan and QAPP]
3. [Risk Assessment]
4. [Site Characterization Report]
5. [Initial Screening of Alternatives]
6. [Treatability Studies Report and, or Additional Site Characterization Report]
7. [Detailed Analysis of Alternatives]
8. [Proposed Plan]
9. [Record of Decision]

Within fifteen (15) days of receipt, U.S. EPA and 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 Part _____ (Dispute Resolution).

The final deadlines established pursuant to this Paragraph shall be published by U.S. EPA and the State.

C. 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:

9. (Remedial Design)

10. (Remedial Action Work Plan)

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

D. The deadlines set forth in this Part, or to be established as set forth in this Part, may be extended pursuant to Part _____ (Extensions) 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.

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 the [DOD Component] shall be submitted in writing 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; and
5. 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, the [DOD Component] may seek and obtain a determination through the dispute resolution process that good cause exists.

D. Within seven days of receipt of a request for an extension of a timetable and deadline or a schedule, U.S. EPA and [the State] shall advise the [DOD Component] in writing of their respective positions on the request. Any failure by U.S. EPA or [the State] to respond within the 7-day period shall be deemed to constitute concurrence in the request for extension. If U.S. EPA or [the State] does not concur in 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, 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 a determination resulting from the dispute resolution process.

F. Within seven days of receipt of a statement of nonconcurrence with the requested extension, the [DOD Component] 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 shall 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, and 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.

FUNDING

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.

In accordance with Section 120(e)(5)(B) of CERCLA, 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.

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.

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

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 U.S. EPA and the states.