

IAG COVER SHEET

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
AND THE
STATE OF DELAWARE
AND THE
UNITED STATES AIR FORCE

IN THE MATTER OF:)	
)	
)	
)	
The U.S. Air Force's)	FEDERAL FACILITY
Dover Air Force Base,)	AGREEMENT UNDER
Dover, Delaware)	CERCLA SECTION 120
)	
)	Administrative Docket
)	Number: III-FCA-CERC-002

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 the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9601 et seq., the National Oil and Hazardous Substance Contingency Plan (NCP) 40 C.F.R. Part 300, superfund guidance and policy, the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 et seq., RCRA guidance and policy and applicable Delaware Law; 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 removal actions, operable units and accelerated operable units which are appropriate at the Site prior to the implementation

of final remedial actions for the Site. Alternatives shall be identified and proposed to the Parties as early as possible prior to formal proposal to EPA pursuant to CERCLA. This process is designed to promote cooperation among the Parties in identifying alternative response actions.

(b) Establish requirements for the performance of Remedial Investigations (RIs) 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 Feasibility Studies (FSs) 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.

(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 response actions in accordance with CERCLA and meet the requirements of CERCLA Section 120(e)(2), 42 U.S.C. Section 9620(e)(2), for an Interagency Agreement (IAG) among the Parties.

(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 Dover Air Force Base (Dover AFB).

(g) Expedite the cleanup process to the extent consistent with protection of human health and the environment.

(h) Provide DNREC involvement in the initiation, development, and selection of remedial actions to be undertaken at Dover AFB, 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 Delaware's applicable or relevant and appropriate requirements (ARARs) into the remedial action process.

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

II. DEFINITIONS

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

(a) "Agreement" shall mean this document and shall include all attachments to this document referred to herein. All such attachments shall be appended to and made an integral and enforceable part of this document.

(b) "Days" shall mean calendar days, unless business days are specified. Any Submittal, Written Notice of Position or Written Statement of Dispute that under the terms of this Agreement would be due on a Saturday, Sunday or federal holiday, shall be due on the following business day.

(c) "DNREC" shall mean the Delaware Department of Natural Resources and Environmental Control.

(d) "Dover AFB" shall mean the Dover Air Force Base. It is located in Dover, Delaware, including all areas identified in Attachment 1 (Facility Map).

(e) "Operable Unit" shall mean a discrete part of the entire response action that addresses a release, threat of release, or pathway of exposure. The Operable Unit concept is flexible, and can refer to geographical or functional subdivisions of the entire response.

(f) "Operating Unit" shall mean a Hazardous Waste Management Unit (HWMU) of a facility operating under a RCRA permit or under interim status.

(g) "Solid Waste Management Unit" (SWMU) shall mean any discernible unit at Dover AFB from which hazardous waste or hazardous constituents might migrate, irrespective of whether the unit was intended for the management of solid and/or hazardous waste.

(h) "Site" shall include Dover AFB and any other areas contaminated by the migration of a hazardous substance, pollutant or contaminant from Dover AFB as discussed in Section IV (Findings) of this Agreement.

(i) "Submittal" shall mean every document, report, schedule, deliverable, work plan or other item to be submitted by one Party to another Party pursuant to this Agreement.

(j) "Air Force" or "AF" shall mean the United States Department of the Air Force.

(k) "EPA" shall mean the United States Environmental Protection Agency.

(1) "Next day mail" shall mean all forms of priority mail, public or private, or courier service, which provide evidence of receipt.

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 III, enters into those portions of this Agreement that relate to the remedial investigations/feasibility studies (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. Section 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. Sections 6961, 6928(h), 6924(u) and (v), as amended by the Hazardous & Solid Waste Amendments of 1984 (HSWA) (hereinafter jointly referred to as RCRA) and Executive Order 12580;

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

(c) The Air Force enters into those portions of this Agreement that relate to the RI/FS pursuant to CERCLA Section 120(e)(1), 42 U.S.C. Section 9620(e)(1), RCRA Section 6001, 3008(h) and 3004(u) & (v), 42 U.S.C. Section 6961, 6928(h), 6924(u) & (v), Executive Order 12580, the National Environmental Policy Act, 42 U.S.C. Section 4321, and the Defense Environmental Restoration Program (DERP), 10 U.S.C. Section 2701 et. seq.;

(d) The Air Force enters into those portions of this Agreement that relate to remedial actions pursuant to CERCLA Section 120(e)(2), 42 U.S.C. Section 9620(e)(2), RCRA Sections 6001, 3008(h) and 3004(u) & (v), 42 U.S.C. Sections 6961, 6928(h), 6924(u) & (v), Executive Order 12580 and the DERP;

(e) The State of Delaware, through the Delaware Department of Natural Resources and Environmental Control (DNREC) and the Attorney General, enters into this Agreement pursuant to CERCLA Sections 120(f), and 121(f), 42 U.S.C. Section 9620(f) and 9621(f); RCRA Section 3006, 42 U.S.C. Section 6926; and, Title 7 Del. Cd. Chapters 60 and 63.

IV. FINDINGS

4.1 The following constitutes a summary of the facts relied upon by EPA to establish its jurisdiction and authority to enter into this Agreement. None of the facts related herein shall be considered admissions by any Party and shall not be used by any person related or unrelated to this Agreement for purposes other than determining the basis of the Agreement or establishing the jurisdiction and authority of EPA to enter into this Agreement.

(a) Dover AFB was once known as the Dover Army Airfield. Activities at the Dover Army Airfield began in December, 1941, and continued until the airfield was deactivated in September, 1946. During this time, the base supported patrol and training operations in addition to serving as the site for development of air-launched rockets. From 1946 until July, 1950, the Air National Guard periodically conducted training exercises on the airfield. Dover Army Airfield was activated as Dover Air Force Base in July, 1950. In March, 1952, with a transfer of command to the Military Air Transport Service (now Military Airlift Command, MAC), the base mission switched from air and land defense to cargo operations. Except for supporting a Strategic Air Command detachment from 1960 to 1965, base operations have consisted primarily of cargo operations.

(b) Dover AFB is located in Kent County, Delaware, approximately 3.5 miles southeast of the center of Dover, Delaware. Including annexes, easements, and leased property, the base encompasses nearly 4,000 acres. Dover AFB is the home of the 436th Military Airlift Wing and the C-5 Galaxy. The primary mission of the Wing is to provide immediate airlift of troops, cargo, and military equipment, and to participate in airland or airdrop operations. The 436th Air Base Group provides support for assigned and attached units at the base.

(c) Most hazardous wastes and hazardous substances generated at Dover AFB resulted from industrial operations, fuels management, and pesticide utilization. Hazardous wastes and hazardous substances generated at the base included: waste fuels, oils and solvents; empty pesticide containers; transformers containing polychlorinated biphenols (PCBs); excess paints; and, wastewaters from industrial shops.

(d) Prior to 1963, waste oils, fuels, solvents, and paints were often disposed of in landfills or pits located along the base perimeter, or were taken to fire training areas and burned during training exercises. During this period, industrial wastewaters were generated primarily by the engine build-up shop, aircraft wash racks and plating shops. Wastewaters were discharged to a storm drainage ditch that drained to a tributary of the Little River.

(e) From 1963 to 1975, waste oils, solvents, and contaminated fuels were collected from various locations around the base and separated for recycling or for use in fire training exercises. After 1975, JP-4 (aviation fuel) was used for fire training, with other waste products being recycled or disposed of.

(f) In July, 1982, EPA completed a Hazard Ranking System evaluation of Dover AFB which resulted in a score of 52.58.

(g) Based on the Hazard Ranking System evaluation, and in accordance with EPA policy, Dover AFB was proposed for inclusion on the National Priorities (Superfund) List (NPL) on September 18, 1984.

(h) Dover AFB was finally listed on the NPL on March 13, 1989.

4.2 The following constitutes a summary of the facts relied upon by the Air Force to establish its jurisdiction and authority to enter into this Agreement. None of the facts related herein shall be considered admissions by any Party and shall not be used by any person related or unrelated to this Agreement for purposes other than determining the basis of the Agreement or establishing the jurisdiction and authority of Air Force to enter into this Agreement.

(a) Installation Restoration Program, Phase I - Records Search, Dover AFB Delaware:

(1) This study was prepared by Engineering-Science, 57 Executive Park South, N.E., Suite 590, Atlanta, GA 30379. The final report was issued October, 1983.

(2) The report identified 35 areas on Dover AFB where past operation and maintenance activities could have resulted in a potential hazard. After evaluation utilizing the Hazard Assessment Rating Methodology (HARM), 11 areas were considered to warrant further evaluation.

(b) Installation Restoration Program, Phase II - Confirmation/Quantification Stage 1, Dover AFB DE:

(1) This study was prepared by Science Applications International Corporation, 8400 Westpark Drive, McLean, VA 22102. The final report was issued in two volumes, June, 1986.

(2) The study involved 11 areas. Nine of these areas were recommended by the Phase I study for further investigation. The additional two areas were D-5 (landfill) and XYZ (JP-4 leak).

(3) Thirty-two monitoring wells were installed, sampled and analyzed in addition to numerous surface water and soil samples. All areas investigated indicated levels of contamination either above health standards or background levels or both. All eleven areas were recommended for further investigation.

(c) Installation Restoration Program, Phase II/IVA Site Characterization/Feasibility Study, Dover AFB DE:

(1) This project work plan was published March, 1987, by E.C. Jordan Co., 1311 Executive Center Drive, Suite 231, Tallahassee, FL 32301. Project management is being conducted by Hazardous Waste Remedial Action Program (HAZRAP), Marietta Energy Systems, Inc., Oak Ridge, TN.

(2) The study involves three of the areas from the Phase II, Stage 1 study plus one additional area. The purpose is to complete the understanding of the physical environment and assess the distribution, migration and fate of chemicals disposed of at these areas. It will also include an environmental assessment, feasibility study, and proposed remedial action plan, if required.

(3) The work was expanded significantly (October, 1988) to include an increase for site characterization work. Anticipated report date is November, 1989.

(d) Installation Restoration Program, Stage 2, Work Plan, Dover AFB
DE:

(1) This project work plan was prepared by Science Applications International Corp, 8400 Westpark Drive, McLean, VA. Project management is being conducted by USAF Occupational and Environmental Health Laboratory (OEHL), Brooks AFB, TX.

(2) The original work plan involved seven of the areas from the Phase II, Stage 1 study, plus four additional areas. Subsequently, five additional areas were added to the scope of work. (Three areas, SP-5, 6 and 8 are being studied as one zone).

(3) Anticipate completion of study by May 1989.

(e) Area T-1, Industrial Waste Basins, has been "RCRA closed." The area is currently under a DNREC Secretary's Order to achieve postclosure status.

(f) Area D-8, Solid Waste Disposal Area, was remediated and closed January 1988. Both DNREC and EPA Region III were involved in all aspects of the clean-up, analysis and closure.

(g) Copies of all work plans, quality assurance project plans (QAPP) and health and safety plans have been provided to EPA Region III and DNREC for their review and comments before implementation of studies. Additionally, final reports were provided to EPA and DNREC as they became available.

V. DETERMINATIONS

5.1 The following constitutes a summary of the determinations relied upon by EPA and DNREC to establish their jurisdiction and authority to enter into this Agreement. None of the facts or determinations related herein shall be considered admissions by any Party and shall not be used by any person related or unrelated to this Agreement for purposes other than determining the basis of the Agreement or establishing the jurisdiction and authority of EPA and DNREC to enter into this Agreement.

(a) Dover AFB constitutes a "Facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).

(b) The Air Force is an "owner or operator" as defined in Section 101(20) of CERCLA, 42 U.S.C. Section 9601(20), and "owns" or "operates" Dover AFB within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. Section 9607(a)(1).

(c) There has been a release or substantial threat of release of hazardous substances on Dover AFB.

(d) The actions provided for in this Agreement are consistent with the NOHSCP.

(e) The actions provided for in this Agreement are necessary to protect the public health or welfare or the environment.

(f) This Agreement provides for the expeditious completion of all necessary remedial actions.

5.2 The following constitutes a summary of the determinations relied upon by the Air Force to establish its jurisdiction and authority to enter into this Agreement. None of the facts or determinations related herein shall be considered admissions by any Party and shall not be used by any person related or unrelated to this Agreement for purposes other than determining the basis of the Agreement or establishing the jurisdiction and authority of Air Force to enter into this Agreement.

(a) Dover AFB is a facility under the jurisdiction, custody, or control of the Department of Defense within the meaning of Executive Order (E.O.) 12580, 52 Fed. Reg. 2923, January 29, 1987. The Department of the Air Force is authorized for all functions which are relevant to this Agreement delegated to the Secretary of Defense by the President through E.O. 12580.

(b) Dover AFB is a facility under the jurisdiction, custody, or control of the Secretary of Defense within the meaning of Superfund Amendments and Reauthorization Act (SARA) Section 211, 10 U.S.C. Sections 2701, et. seq., and is subject to the Defense Environmental Restoration Program (DERP), therein.

VI. CONSULTATION WITH EPA AND DNREC

Review and Comment Process for Draft and Final Documents

6.1 Applicability: The provisions of this Section establish the procedures that shall be used by the Air Force, EPA, and DNREC to provide the Parties with appropriate notice, review, comment, and response to comments regarding documents specified herein as either primary or secondary documents. In accordance with CERCLA Section 120, 42 U.S.C. Section 9620, and 10 U.S.C. Section 2705, the Air Force will normally be responsible for issuing primary and secondary documents to EPA and DNREC. 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 6.2 through 6.10 below. The designation of a document as "draft" or "final" is solely for purposes of consultation with EPA and DNREC 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.

6.2 General Process for document review:

(a) Primary documents include, but are not limited to, those reports that are major, discrete portions of RI/FS or RD/RA activities. Primary documents are initially issued by the Air Force in draft subject to review and comment by EPA and DNREC. Following receipt of comments on a particular draft primary document, the Air Force 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 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 Air Force in draft subject to review and comment by EPA and DNREC. Although the Air Force 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.

6.3 Primary Documents:

(a) The Air Force shall complete and transmit draft reports for the following primary documents to EPA and DNREC for review and comment in accordance with the provisions of this Part:

- (1) Scopes of Work
- (2) RI/FS Work Plans, including Sampling and Analysis Plan, Quality Assurance Project Plan (QAPP), and plan for obtaining Site access Agreements where applicable
- (3) RI Reports
- (4) Baseline Risk Assessments
- (5) Initial Screenings of Alternatives
- (6) FS Reports
- (7) Proposed Remedial Action Plans
- (8) Remedial Designs
- (9) Remedial Action Work Plans
- (10) Community Relations Plan
- (11) Periodic Review Assessment Reports
- (12) Supplemental Response Work Plans

(b) Only the draft final reports for the primary documents identified above shall be subject to dispute resolution. The Air Force shall complete and transmit draft primary documents in accordance with the timetable and deadlines established in Section XV (Deadlines) of this Agreement.

6.4 Secondary documents:

(a) The Air Force shall complete and transmit draft reports for the following secondary documents to EPA and DNREC for review and comment in accordance with the provisions of this Part:

- (1) Detailed Analyses of Alternatives
- (2) Post-screening Investigation Work Plans
- (3) Treatability Studies
- (4) Sampling and Data Results
- (5) Conceptual Design Documents
- (6) Health and Safety Plans

(b) Although EPA and DNREC 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 6.2 hereof. Target dates shall be established for the completion and transmission of draft secondary reports.

6.5 Meetings of the Project Managers on Development of Reports: The Project Managers shall confer 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 6.3 and 6.4 above, the Project Managers shall 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.

6.6 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 identify and propose, to the best of their ability, all potential ARARs pertinent to the report being addressed. At that time, DNREC shall identify all potential State ARARs of which they are then aware as required by CERCLA Section 121(d)(2)(A)(ii), 42 U.S.C. Section 9621(d)(2)(A)(ii), which are pertinent to the report being addressed. Draft ARAR determinations shall be prepared by the Air Force in accordance with CERCLA Section 121(d)(2), 42 U.S.C. Section 9621(d)(2), the NOHSCP and pertinent guidance issued by EPA, which is not inconsistent with CERCLA and the NOHSCP.

(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 re-examined throughout the RI/FS process until a ROD is issued and may need to be addressed during ROD/RA.

6.7 Review and Comment on Draft Reports:

(a) The Air Force shall complete and transmit each draft primary report to EPA and DNREC on or before the corresponding deadline established for the issuance of the report. The Air Force shall complete and transmit each draft secondary document in accordance with the target dates established for the issuance of such reports pursuant to Section XV (Deadlines) 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 or DNREC may concern all aspects of the report (including completeness) and should include, but not be limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NOHSCP and any pertinent requirements. Comments shall be provided with adequate specificity so that the Air Force 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 Air Force, the EPA or DNREC shall provide a copy of the cited authority or reference. In cases of complex, or unusually lengthy reports, EPA or DNREC may extend the 30 day comment period for an additional 20 days by written notice to the Air Force prior to the end of the 30-day period. On or before the close of the comment period, the EPA and DNREC shall transmit by next day mail their written comments or negative reply to the Air Force.

(c) Representatives of the Air Force shall make themselves readily available to EPA and DNREC 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 Air Force on the close of the comment period.

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

(e) Following the close of the comment period for a draft report, the Air Force 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 Air Force shall transmit to EPA and DNREC 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 Air Force shall transmit to EPA and DNREC, a draft final primary report, which shall include the Air Force's response to all written comments received within the comment period. While the resulting draft final report shall be the responsibility of the Air Force, it shall be the product of consensus to the maximum extent possible.

(f) The Air Force may extend the 30-day period for either responding to comments on a draft secondary report or for issuing the draft final primary report for an additional 20 days by providing notice to EPA and DNREC. In appropriate circumstances, this time period may be further extended in accordance with Section XVI (Extensions) hereof.

6.8 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 XIV (Dispute Resolution).

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

6.9 Finalization of Reports: The draft final primary report shall serve as the final primary report if no Party invokes dispute resolution regarding the document within 30 days of the document being issued or, if invoked, at completion of the dispute resolution process, should the Air Force's position be sustained. If the Air Force's position is not sustained in the dispute resolution process, the Air Force 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 XVI (Extensions).

6.10 Subsequent Modifications of Final Reports: Following finalization of any primary report pursuant to paragraph 6.9 above, any Party 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) Any Party may seek to modify a report after finalization if it determines that the requested modification is necessary based on information or conditions not known to the requesting Party at the time the report was finalized. A Party may seek such a modification by submitting a concise written request to the Project Managers of the other Parties. The request shall specify the nature of the requested modification and how the request is based on new information.

(b) In the event that a consensus is not reached by the Project Managers on the need for a modification, either EPA, DNREC or the Air Force 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 or the environment.

(c) Nothing in this section shall alter whatever authority the EPA or DNREC may have to request the performance of additional work outside the scope of this Agreement.

6.11 Hazardous Waste Minimization Program: The Air Force shall annually certify to EPA and DNREC that it has a Hazardous Waste Minimization Program in place and operating at Dover AFB. However, nothing in this paragraph shall be construed to create requirements not mandated by RCRA.

VII. PROJECT MANAGERS AND COMMITTEES

Project Managers

7.1 On or before the effective date of this Agreement, the Air Force, EPA, and DNREC shall each designate a Project Manager and an Alternate Project Manager. The Project Managers shall be responsible on a daily basis for assuring proper implementation of all work performed under the terms of this Agreement. In addition to the formal notice provisions set forth in Section XI (Notice to the Parties) of this Agreement, communications among the Air Force, EPA and DNREC on all documents, including reports, comments, and other correspondence concerning the activities performed pursuant to this Agreement, shall, to the maximum extent practicable, be directed through the Project Managers. The Alternate Project Manager shall be authorized to exercise the power of the Project Manager in the Project Manager's absence.

7.2 The Air Force, EPA, and DNREC may change their respective Project Managers. A Project Manager may designate a representative to act, on a temporary basis, in his stead. Such change or designation shall be accomplished by notifying the other Parties, in writing, within five days of the change or designation, and prior to the new Project Manager or representative exercising his delegated authority.

7.3 The Project Managers shall confer informally as provided for in Paragraphs 6.5 and 18.16. Although the Air Force is ultimately responsible 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 of 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.

7.4 The authority of the Project Managers, or their designated representatives shall include, but is not limited to:

(a) Taking samples and ensuring the type, quantity and location of the samples taken by the Air Force is done in accordance with the terms of any final work plan;

(b) Observing, 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 IX (Access), hereof; and

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

7.5 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 which each Project Manager represents. The absence of the EPA and/or DNRRC Project Managers from the Site shall not be cause for the stoppage of work.

Dispute Resolution Committee (DRC)

7.6 The Dispute Resolution Committee (DRC) will serve as the forum for resolution of disputes that are not informally resolved at the Project Manager level.

Senior Executive Committee (SEC)

7.7 The Senior Executive Committee (SEC) will serve as the appellate forum for resolution of disputes that are not resolved at the DRC level.

Technical Review Committee (TRC)

7.8 Pursuant to 10 U.S.C. Section 2705(c), the Air Force shall establish a Technical Review Committee (TRC), and, in consultation with the Parties, shall encourage representatives from the following organizations to serve as members of the TRC:

(a) An Air Force representative who shall chair the TRC;

(b) An EPA representative;

(c) A State representative;

(d) A Kent County representative;

(e) A City of Dover representative; and,

(f) A public representative of the local community.

7.9 The purpose of the TRC is to afford a forum for cooperation between the Air Force, environmental regulators and concerned local officials and citizens, and to provide a meaningful opportunity for the members of the TRC to become informed and to express their opinions about significant aspects of the RI/FSs and the RD/RAs.

7.10 The chairman shall schedule regular meetings of the TRC at least once 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. Special meetings of the TRC may be held at the request of the members.

VIII. QUALITY ASSURANCE

8.1 The Air Force shall use quality assurance, quality control, and chain of custody procedures throughout all field investigation, sample collection and laboratory analysis activities. A Quality Assurance Project Plan (QAPP) shall be submitted as a component of each Work Plan and reviewed as a primary document pursuant to Paragraph 6.2 (General Process for Document Review) of this Agreement. QAPPs shall be prepared in accordance with applicable EPA guidance.

8.2 In order to demonstrate quality assurance and maintain quality control regarding all samples collected pursuant to this Agreement, the Air Force shall submit all protocols to be used for sampling and analysis to EPA and DNREC for review and comment. The Air Force 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.

8.3 The Air Force shall also ensure that appropriate EPA and DNREC personnel or their authorized representatives will be allowed access to any laboratory used by the Air Force 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.

IX. ACCESS

9.1 Without limitation on any authority conferred on EPA and DNREC by statute or regulation, EPA, and DNREC, or their authorized representatives, (Inspectors) shall have the authority to enter Dover AFB at all reasonable times for purposes consistent with the provisions of this Agreement. Such authority shall include, but not be limited to: inspecting records, operating logs or contracts related to the investigative and response work at Dover AFB; reviewing the progress of the Air Force in carrying out the terms of this Agreement; conducting such tests as the Project Managers deem necessary; and verifying the data submitted to EPA and DNREC. This right of access shall be subject to those regulations as may be necessary to protect national security.

9.2 EPA or DNREC shall provide reasonable notice to the Air Force Project Manager prior to entry. The Air Force shall provide an escort for those personnel entering Dover AFB. Upon receiving the request for entry, the Air Force Project Manager shall ascertain if there will be any sensitive activities or areas during the scheduled period. If the Air Force Project Manager determines that the requested access would negatively impact national security, he shall contact the requesting Project Manager to attempt to develop an alternative means to accommodate the requested access.

9.3 If, during the time the Inspectors are on Dover AFB, the escort, or any other person charged with responsibility for security, informs the Inspectors that any action they are about to take will negatively impact national security, the Inspector will refrain from that action pending the following consultations. The escort and the Inspector shall attempt to develop an alternate way to accommodate the requested access or activity. If they are unable to do so, they shall contact the Air Force Project Manager who shall also attempt to develop a way to accommodate the requested access or activity. If they are unable to develop such an accommodation, the Air Force shall provide a written explanation of why the access was denied to the requesting Party's Project Manager within forty-eight (48) hours, if such explanation can be provided without negatively impacting national security.

9.4 If, during the time the Inspectors are on Dover AFB, the escort or any other person charged with responsibility for security, believes that any action already taken by the Inspectors will negatively impact national security, he will notify the Inspectors of that fact. If the Inspectors are in a restricted area, they will comply with the instructions to clear the area. If they have used a recording medium, they will surrender it to be preserved in the Classified vault at Dover AFB Command Post pending ascertainment by the relevant security officials of whether the medium does in fact contain such sensitive information and a resolution of any dispute which may arise over whether or not EPA should receive such information. The Air Force Project Manager shall seek an expedited review of any surrendered item.

9.5 The Parties also agree that this Agreement is subject to CERCLA Section 120(j), 42 U.S.C. Section 9620(j), regarding the issuance of Site Specific Presidential Orders.

9.6 All persons with access to Dover AFB under this section shall comply with all applicable health and safety plans promulgated pursuant to AFOSH on this Agreement.

9.7 To the extent that activities pursuant to this Agreement must be carried out on other than Air Force property, the Air Force shall use its best efforts to obtain access agreements from the relevant property owners or occupiers. These agreements shall provide reasonable and timely access for all Parties and their designated representatives and shall, where appropriate, provide for the continuing operation and maintenance of any installations on such land.

Where problems arise in acquiring said agreements, the Air Force shall notify the other Parties and request their assistance in obtaining the required access. The EPA and DNREC shall take reasonable steps to obtain the necessary site access. Should the Parties fail to obtain adequate site access, any affected work plan shall be modified to reflect reasonable alternatives and appropriate schedule adjustments. One factor which affects the reasonableness of an alternative is cost.

X. DATA AND DOCUMENT AVAILABILITY

10.1 The Parties shall make all sampling results, test results or other data generated through the implementation of this Agreement available to each other.

10.2 At the request of any Party, a Party shall allow, to the extent practicable, split or duplicate samples to be taken by the requesting Party, or their authorized representatives, of any samples collected pursuant to the implementation of this Agreement. Each Party shall notify the other Parties not less than 14 days in advance of any scheduled sample collection activity unless otherwise agreed upon by the Parties.

XI. NOTICE TO THE PARTIES

11.1 All Parties shall transmit primary and secondary documents, and all notices required, herein, by next day mail. Time limitations shall commence upon receipt of such documents or notice by such party.

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

- (a) For the AF: Dover AFB Remedial Project Manager
 436 ABG/DEEV
 Dover, DE 19902

- (b) For the EPA: EPA Region III
 Attn: Dover AFB Project Manager(3HW17)
 841 Chestnut Building
 Philadelphia, PA 19107

- (c) For DNREC: Department of Natural Resources &
 Environmental Control
 Attn: Dover AFB Project Manager
 715 Grantham Lane
 New Castle, DE 19720

XIII. PERMITS

12.1 The Parties recognize that under Sections 121(d) and 121(e)(1) of CERCLA/SARA, 42 U.S.C. Sections 9621(d) and 9621(e)(1), and the NOHSCP, portions of the response actions called for by this Agreement and conducted entirely on the Site are exempted from the procedural requirement to obtain a federal, state, or local permit but must satisfy all applicable or relevant and appropriate federal and state standards, requirements, criteria or limitations.

12.2 Paragraph 12.1 above is not intended to relieve the Air Force from the requirement(s) of obtaining a permit or other authorization whenever it proposes a response action involving the shipment or movement off-Site of a hazardous substance, or undertakes any activities that are not on the Site.

12.3 The Air Force shall notify DNREC and EPA in writing of any permits or other authorizations required for off-Site activities as soon as it becomes aware of the requirement. When required, the Air Force shall file a complete and timely application for all such permits and shall diligently pursue all such applications. Upon request, the Air Force shall provide DNREC and EPA with copies of all such permit applications and other documents related to the permit or authorization process.

12.4 If a permit or other authorization which is necessary for implementation of this Agreement is not issued, or is issued or renewed in a manner which is materially inconsistent with the requirements of this Agreement, the Air Force agrees to notify DNREC and EPA of its intention to propose modifications to this Agreement to obtain conformance with the permit (or lack thereof). Notification by the Air Force of its intention to propose modifications shall be submitted within seven calendar days of receipt by the Air Force of notification that: (1) A permit will not be issued; (2) A permit has been issued or reissued; or (3) A final determination with respect to any appeal related to the issuance of a permit has been entered. Within 30 days from the date it submits its notice of intention to propose modifications, the Air Force shall submit to DNREC and EPA its proposed modifications to this Agreement with an explanation of its reasons in support thereof.

12.5 DNREC and EPA shall subject the Air Force's proposed modifications to this Agreement to review in accordance with Part XXXI (Amendment or Modification of Agreement) of this Agreement. If the Air Force submits proposed modifications prior to a final determination of any appeal taken on a permit needed to implement this Agreement, DNREC and the EPA may elect to delay review of the proposed modifications until after such final determination is entered. If DNREC or the EPA elect to delay review, the Air Force shall continue implementation of this Agreement as provided in paragraph 12.6 of this Section.

12.6 During any appeal of any permit required to implement this Agreement or during review of any of the Air Force's proposed modifications as provided

in paragraph 12.4 above, the Air Force shall continue to implement those portions of this Agreement which can be reasonably implemented pending final resolution of the permit issue(s).

12.7 Except as otherwise provided in this Agreement, the Air Force shall comply with all state and federal laws and regulations at the Site. Nothing in this Agreement shall be construed to affect Dover AFB's obligation to obtain a RCRA permit for its active hazardous waste management units, and to comply with the DNREC Secretary's Order, 87/HW/03, as amended, with respect to the Industrial Wastewater Basins, Site T-1.

XIII. EMERGENCY RESPONSE ACTIONS

13.1 Notwithstanding any other provision of this Agreement, the Parties retain their respective rights, 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 Dover AFB. Such actions may be conducted at any time, either before or after the issuance of a ROD.

13.2 A Party conducting an emergency response action shall provide the other Parties with oral notice as soon as possible after determining that an emergency action is necessary. In addition, within seven days of such determination, the responding Party shall provide written notice to the other Parties explaining why such action is or was necessary. Promptly thereafter, the responding Party 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 responding Party shall notify the other Parties in writing that the emergency action has been completed. 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.

13.3 Imminent and Substantial Endangerments: If EPA or DNREC, or their agents, ascertain that an activity being taken, or about to be taken, by anyone on the Site may create an imminent and substantial endangerment to health or welfare or the environment, they shall so inform the person creating the danger. They shall also notify the Dover AFB Program Manager, or his representative, who shall immediately take steps necessary to ascertain if such a threat exists and take any necessary steps to eliminate the threat.

13.4 Any removal actions conducted on the Site shall be conducted in a manner consistent with CERCLA, the NOHSCP, and 10 U.S.C. 2705, including provisions for timely notice and consultation with EPA and appropriate State and local officials.

Nothing in this Agreement shall alter Dover AFB's authority with respect to removal actions conducted pursuant to Section 104 of CERCLA, 42 U.S.C. 9604.

EPA and DNREC reserve any authority they may have concerning removal actions conducted on the Site.

XIV. DISPUTE RESOLUTION

14.1 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.

14.2 Within 30 days after: (1) The issuance of a draft final primary document pursuant to Section VI (Consultation with EPA and DNREC) 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 and/or factual information upon which the disputing Party is relying.

14.3 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 confer as many times as are necessary to discuss and attempt resolution of the dispute.

14.4 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 Hazardous Waste Management Division Director of EPA Region III. The Air Force's designated member is the Headquarters, Military Airlift Command Civil Engineer, HQ MAC/DE. DNREC's designated member is the Division Director, Air and Waste Management Division. 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 XI (Notice to the Parties).

14.5 Following elevation of a dispute to the DRC, the DRC shall have 21 days to unanimously resolve the dispute and issue a written decision. If the DRC is unable to unanimously resolve the dispute within this 21-day period, the written statement of dispute shall be forwarded to the Senior Executive Committee (SEC) for resolution, within seven days after the close of the 21 day resolution period.

14.6 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 Region III. The Air Force's representative on the SEC is the Air Force Military Airlift Command Chief of Staff. The DNREC representative on the SEC is the Secretary, DNREC. 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 21 days, EPA's Regional Administrator shall issue a written position on the dispute. The Air Force or DNREC, may, within 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 Air Force and DNREC elect not to elevate the dispute to the Administrator within the designated 14 day escalation period, the Air Force and DNREC shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.

14.7 Upon escalation of a dispute to the Administrator of EPA pursuant to paragraph 14.6, above, the Administrator will review and resolve the dispute within 21 days. Upon request, and prior to resolving the dispute, the EPA Administrator shall meet and confer with the Secretary of the Air Force or his representative and DNREC's Secretariat Representative to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the Air Force and DNREC 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.

14.8 The pendency of any dispute under this Section shall not affect any Party'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.

14.9 When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Hazardous Waste Management Division Director for EPA's Region III 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 practicable, the EPA shall consult with the Air Force and DNREC prior to initiation of a work stoppage request. After stoppage of work, if the Air Force believes that the work stoppage is inappropriate or may have potential significant adverse impacts, the Air Force may meet with the Parties to discuss the work stoppage. Following this meeting, and further consideration of the issues, the EPA Hazardous Waste Management Division Director will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the Division Director may immediately be subjected

to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the Air Force.

14.10 Within 21 days of resolution of a dispute pursuant to the procedures specified in this Part, the Air Force 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.

14.11 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 the Agreement.

XV. DEADLINES

15.1 Within ten days of receipt from the other Parties of comments on existing documents as described in paragraph 18.2 of this Agreement (Initial Review of Existing Documents) the Air Force shall propose a schedule for submission of the draft Statement of Work and work plan (including a Sampling and Analysis Plan and QAPP for each operable unit).

15.2 In the Work Plan for each operable unit, the Air Force shall propose deadlines for completion of the following draft primary documents:

- (a) RI Reports;
- (b) Initial Screenings of Alternatives;
- (c) FS Reports;
- (d) Proposed Plans;
- (e) Community Relations Plans; and,
- (f) Baseline Risk Assessments.

These deadlines are an integral part of the respective work plan and shall be finalized in conjunction with that work plan. The Parties shall confer 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 30 days on the proposed deadlines, the matter shall immediately be submitted for dispute resolution pursuant to Section XIV (Dispute Resolution) of this Agreement.

The final deadlines established pursuant to this Paragraph shall be published by EPA, in conjunction with the State.

15.3 Within 21 days of issuance of each Record of Decision, the Air Force shall propose deadlines for completion of the following draft primary documents:

- a. Remedial Designs; and,
- b. Remedial Action Work Plans.

These deadlines shall be finalized and published utilizing the same procedures set forth in Paragraph 15.2.

15.4 The deadlines set forth in this Part, or to be established as set forth in this Part, may be extended pursuant to Section XVI (Extensions) of this Agreement. The Parties recognize that one possible basis for extension of the deadlines for completion of the RI/PS Reports is the identification of significant new site conditions during the performance of the remedial investigation.

XVI. EXTENSIONS

16.1 Either a timetable and deadline or a schedule shall be extended upon receipt of a timely request for extension when good cause exists for the requested extension. Any request for extension by any Party shall be in writing, by separate dispatch, with evidence of receipt, specifying:

- (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.

16.2 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.

16.3 Absent agreement of the Parties with respect to the existence of good cause, any Party may seek a determination through the dispute resolution process that good cause exists.

16.4 Within seven business days of receipt of a request for an extension of a timetable and deadline or a schedule, the other Parties shall each advise the requesting Party, in writing, of its respective position on the request. Any failure by the other Parties to respond within the seven-business-day period shall be deemed to constitute concurrence in the request for extension. If a Party does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

16.5 If there is consensus among the Parties that the requested extension is warranted, the Air Force 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.

16.6 Within seven days of receipt of a statement of nonconcurrence with the requested extension, the requesting Party may invoke dispute resolution.

16.7 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.

XVII. FORCE MAJEURE

17.1 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 Department of Defense or the Air Force; 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 Air Force shall have made timely request for such funds as part of the budgetary process as set forth in Section XXVII (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.

XVIII. WORK TO BE PERFORMED

18.1 Prior to the initiation of an RI or FS for any operable unit at Dover AFB, the Air Force shall submit to EPA and DNREC a workplan detailing the procedures to be followed and a schedule for completion of those procedures. All work plans submitted shall be subject to review as primary documents pursuant to Section VI (Consultation with EPA and DNREC) of this Agreement.

It is the intent of the Parties to this Agreement that work done and data generated prior to the effective date of this Agreement be retained and utilized as elements of the RI/FS to the maximum extent feasible without violating applicable or relevant and appropriate laws, regulations, or guidelines, and without risking significant technical errors.

The Air Force need not halt currently ongoing work but may be obligated to modify or supplement work previously done to produce a final product which passes review.

Initial Review of Existing Documents by EPA/DNREC

18.2 The Parties recognize that a significant amount of background information exists, and must be reviewed prior to developing the Statements of Work required by this Agreement.

The Air Force will provide EPA and DNREC with copies of all relevant studies and reports within 14 days following the effective date of this Agreement.

Within 120 days following receipt of the studies and reports, EPA and DNREC will each provide comments to the Air Force identifying data gaps and quality control problems in the existing studies and reports. The Air Force shall utilize the EPA and DNREC comments when preparing the Statements of Work called for by this Agreement.

During the 120-day period, the project managers shall make themselves available to meet and confer as necessary to facilitate this process.

Statement of Work

18.3 The Air Force shall develop and submit to EPA and DNREC a Statement of Work (SOW) for the completion of an RI/FS for each operable unit. Each SOW

shall describe an RI/FS which meets the requirements of all relevant laws and requirements and contains enough specificity for EPA and DNREC to determine that all major elements of an RI/FS are provided for. Each SOW shall be a Primary Document as described in Section VI (Consultation with EPA and DNREC) of this Agreement. Each SOW shall be delivered according to the schedule created pursuant to Section XV (Deadlines).

Work Plans

18.4 The Air Force shall develop and submit to EPA and DNREC a Work Plan (WP) for the completion of an RI/FS for each operable unit. Each WP shall provide for the performance of an RI/FS which meets the requirements of all relevant laws and requirements including EPA RI/FS guidance documents and contains enough specificity for EPA and DNREC to determine that the subject RI/FS will be adequate. Each WP shall contain a schedule for the completion of the RI/FS. Each WP shall be a Primary Document as described in Section VI (Consultation with EPA and DNREC) of this Agreement. Each WP shall be delivered according to the schedule created pursuant to Section XV (Deadlines).

Remedial Investigation

18.5 For each Operable Unit at the Site, the Air Force shall develop, implement and report upon an RI which passes the review provided for by Section VI (Consultation with EPA and DNREC) of this Agreement, and which is in accordance with the requirements and time schedules set forth in the approved Work Plan. Each RI shall be a Primary Document. The RI shall meet the purposes set forth in Paragraph 18.8 (Remedial Action Selection) of this Agreement.

18.6 The Parties specifically agree that all criteria contained in the approved Work Plans relate solely to the scope of the RIs and do not reflect a predetermination of the Site cleanup level criteria. The Parties further agree that final Site clean-up level criteria will only be determined following completion of the Baseline Risk Assessment, except as provided in Paragraph 18.8 (Remedial Action Selection) of this Agreement.

Feasibility Study

18.7 For each operable unit at the Site, the Air Force shall design, propose, undertake and report upon an FS which passes the review set forth in Section VI (Consultation with EPA and DNREC) and which is in accordance with the requirements and time schedules set forth in the approved Work Plan. Each FS shall be a Primary Document. The FS shall meet the purposes set forth in Paragraph 18.8 (Remedial Action Selection) of this Agreement.

Remedial Action Selection

18.8 Following finalization of the RI and the FS for each operable unit, the Air Force shall, after consultation with EPA and DNREC, publish its

proposed plan for 45 days of public review and comment. The Air Force shall submit its draft ROD to EPA and DNREC within 45 days following the close of the public comment period. The Parties shall review the alternative remedial actions in the draft ROD and jointly select a remedial action(s). If the Air Force and EPA are unable to reach Agreement, the Administrator of EPA shall select a remedial action(s). The selection of remedial action(s) shall be final and not subject to dispute by the Air Force. Within 21 days following the ROD, the Air Force will propose a remedial design due date. If EPA or DNREC disagrees with this date, the date will be established through dispute resolution. A dispute arising under this Section, on any matter other than EPA's final selection of a remedial action, shall be resolved pursuant to Section XIV (Dispute Resolution).

Solid Waste Management Units

18.9 There are currently 58 Solid Waste Management Units (SWMUs) at Dover AFB. Of the 58 SWMUs, 20 listed in Attachment 2 to this Agreement are, or will be, included in the ongoing CERCLA RI/FS activities. The Air Force will initiate a Site Investigation (SI) study to determine if there have been releases of hazardous wastes, hazardous constituents or hazardous substances to the environment from the remaining 38 SWMUs which are not included in the current RI/FS process.

The Air Force will conduct the SI for the 38 remaining SWMUs in accordance with current CERCLA/SARA guidance. The SWMUs to be studied are identified in Attachment 3 to this Agreement.

Based on the review of the SI, the Parties will determine which (if any) of the SWMUs will move into the RI/FS process. If a new RI/FS is required, the Air Force shall, within 60 days of notification by EPA and DNREC of the requirement, submit to EPA and DNREC a Statement of Work which will contain a schedule for completion of the RI/FS process.

Remedial Designs and Remedial Actions (RD/RA)

18.10 Formulation of schedules:

(a) Upon finalization of each ROD, the Air Force shall submit the schedule for the Remedial Design and Remedial Action Workplan to the Parties in accordance with Paragraph 15.2.

(b) The Remedial Action Workplan shall contain a schedule for the completion of the Remedial Action.

Design of Remedial Actions

18.11 The Air Force organization 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.

18.12 The Air Force Project Manager shall submit a draft design scope of work to the Parties for review and comment. The design scope of work shall be a primary document as defined in Section VI (Consultation With EPA And DNRRC).

18.13 Upon finalization of the design scope of work, the Project Manager shall begin the process of developing, or having developed under contract, the conceptual design document. The Air Force shall submit the conceptual design document to the Project Managers for review and comment. The conceptual design document shall be a secondary document as described in Section VI (Consultation with EPA and DNRRC).

18.14 Following receipt of EPA and DNRRC's comments on the conceptual design document, the Air Force shall prepare a final design document. The final design document shall be a primary document as defined in Section VI (Consultation With EPA and DNRRC).

18.15 After the final design document is finalized, the Air Force Project Manager shall submit a draft Remedial Action Workplan for implementation of the remedial action addressed in the final design document. The Remedial Action Workplan shall be a primary document. After the Remedial Action Workplan is finalized, the Air Force shall perform the RA in accordance with the final Workplan.

Implementation of Remedial Actions

18.16 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 Air Force shall be available to respond to such objections.

18.17 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. It shall be each Party's responsibility to communicate any concerns they have regarding implementation of a remedial action promptly upon becoming aware of those concerns. With respect to information and circumstances known to a Party, the failure of that Party to invoke dispute resolution, within a reasonable time, with respect to a remedial action shall constitute such Party's acknowledgment that the remedial action is being conducted in accordance with the remedial action workplan.

Extensions of Schedules

18.18 Design and implementation schedules may be extended in accordance with the provisions of Section XVI (Extensions).

EPA Certification

18.19 When the Air Force determines that any final or supplemental remedial action has been completed in accordance with the requirements of this Agreement, it shall so advise EPA, in writing, and shall request from EPA certification that the remedial action has 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 Air Force and DNREC in writing that:

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

(b) EPA denies the Air Force's request for certification, stating in full the basis of its denial.

18.20 If EPA denies the Air Force's request for certification that a remedial action has been completed in accordance with this Agreement, the Air Force may invoke dispute resolution to review the EPA's determination. If a denial of certification is upheld in dispute resolution, the 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 Air Force may resubmit a request for certification to the EPA. The EPA shall then grant or deny certification pursuant to the process set forth in this paragraph and the previous paragraph.

Accelerated Operable Unit

18.21 Accelerated Operable Unit (AOU): Any Party may propose that an Operable Unit (OU) be conducted as an AOU. The Party proposing an AOU shall be responsible for drafting an Accelerated Operable Unit Proposal (AOUP) which shall clearly define the purpose, scope and goals of the AOU.

The Project Managers shall make every reasonable effort to unanimously resolve any disagreements concerning the AOUP. If the Project Managers are unable to resolve their disagreements within 30 days of the issuance of the AOUP, a disputing Project Manager may elect to refer the matter to the Dispute Resolution Committee (DRC) by forwarding a written statement of the dispute. That statement shall set forth the nature of the dispute, the work affected by it, and the disputing Party's position, including all factual, technical and legal data upon which the Party is relying.

In considering the appropriateness of an AOU, the Parties shall consider the following factors:

- a. Protectiveness of public health or welfare or the environment;
- b. Cost efficiencies;
- c. Other efficiencies;
- d. Effectiveness of the anticipated final remedy;
- e. Compliance with ARARs;
- f. Potential for affecting final completion of cleanup;
- g. Avoidance of duplication of cleanup of the underlying OU;
- h. Impact on the Air Force mission; and,
- i. Other factors agreed to be appropriate by the Parties.

The Parties shall determine on a case specific basis the weight to be given to each of the above factors.

After referral of the dispute to the DRC, it shall have 21 days to resolve the dispute and issue a written decision. Should the DRC fail to unanimously resolve the dispute, the disputing Party may elect to forward the dispute to the Senior Executive Committee (SEC) within seven days of a DRC decision.

The SEC shall have 21 days to resolve the dispute and issue a written decision. Should the SEC fail to unanimously resolve the dispute, the AOU shall not be required. An SEC decision or failure to resolve the dispute shall be a final decision.

Within 30 days following agreement of the Parties, or a determination through the Dispute Resolution Process, that an AOU is necessary, the Air Force will submit an OU SOW including a schedule for completion of a focused feasibility study, a proposed plan, and a draft OU ROD to the other Parties. Following finalization of the OU SOW as provided in Section XV (Deadlines of this Agreement), the Air Force shall implement the OU SOW in accordance with the schedule and requirements therein.

XIX. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

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

19.2 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 also constitute 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 Section 121, 42 U.S.C. Section 9621.

19.3 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 NOHSCP. The Parties further recognize that ongoing hazardous waste management activities at Dover AFB 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 Air Force 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 any 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.

19.4 Nothing in this Agreement shall alter the EPA's or the Air Force's authority with respect to removal actions conducted pursuant to CERCLA Section 104, 42 U.S.C. Section 9604.

XX. PERIODIC REVIEW

20.1 Subject to the paragraph 20.2, below, the Air Force 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 Section 121(c), 42 U.S.C. Section 9621(c), and any pertinent published regulation or guidance issued by EPA that is not inconsistent with CERCLA and the NOHSCP. Upon completion, the Air Force shall provide the assessment report to the Parties. This report shall be a primary document.

20.2 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.

20.3 The assessment and selection of any additional response action determined necessary in the course of a periodic review shall be in accordance with Section XXI (Assessment and Selection of Supplemental Response Actions) hereof. Except for emergency response actions, which shall be governed by Section XIII (Emergency Response Action) hereof, such response action shall be implemented as a supplemental response action in accordance with Section XXI, hereof.

XXI. ASSESSMENT AND SELECTION OF SUPPLEMENTAL RESPONSE ACTIONS

21.1 The Parties recognize that subsequent to finalization of a 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 XIII (Emergency Response 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 21.2 through 21.6 below, regardless of whether the determination of the need for such supplemental response action is based on a Periodic Review conducted pursuant to Section XX (Periodic Review) hereof, or on some other source of information.

21.2 A supplemental response action shall be undertaken only when:

(a) A determination is made that:

(1) 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; or

(2) there is or has been a release of hazardous waste or hazardous constituents into the environment and corrective action is necessary to protect human health or the environment; and,

(b) Either of the following conditions is met for any determination made pursuant to subparagraph 21.2(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.

21.3 If, after finalization of the ROD, any Party concludes that a supplemental response action is necessary, based on the criteria set forth in paragraph 21.2, 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 30 days of the receipt of such notice. If within that 30 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.

21.4 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 21.2, the Air Force shall, within 30 days, propose a deadline for submission of a draft supplemental response work plan. This deadline will be established through consensus by all Parties or through the dispute resolution process of Section XIV (Dispute Resolution). On or before the deadline, the Air Force shall prepare a draft supplemental response work plan that shall include supplemental RI/FS deadlines. The supplemental response work plan shall be a primary document. Review of draft supplemental response work plans shall be conducted according to the procedures detailed in Section VI (Consultation with RPA and DNREC). Supplemental RI/FS deadlines may be extended pursuant to Section XVI (Extensions).

21.5 After finalization of a supplemental response work plan, the Air Force shall conduct a supplemental RI/FS and prepare a draft supplemental ROD in accordance with the supplemental response work plan. The provisions in Section VI (Consultation) and Section XVIII (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.

21.6 Following issuance of the supplemental response action ROD, the supplemental response action shall be implemented pursuant to that ROD in accordance with paragraphs 18.10 through 18.17.

XXII. ENFORCEABILITY

22.1 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 Section 310, and any violation of such standard, regulation, condition, requirement or order will be subject to civil penalties under CERCLA Sections 310(c) and 109;

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

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

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

22.2 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 Section 113(h).

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

XXIII. STIPULATED PENALTIES

23.1 In the event that the Air Force fails to submit a primary document (as listed in paragraph 6.3) to EPA or DNREC 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 Air Force. 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.

23.2 Upon determining that the Air Force has failed in a manner set forth in paragraph 23.1, EPA or DNREC shall so notify the Air Force in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the Air Force shall have 15 days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. The Air Force shall not be liable for the stipulated penalty assessed by EPA if the failure is determined, through the dispute resolution procedures, 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.

23.3 The annual reports required by CERCLA Section 120(e)(5), 42 U.S.C. Section 9620(e)(5), shall include, with respect to each final assessment of a stipulated penalty against the Air Force 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 action taken at the relevant facility to correct the failure, 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.

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

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

23.6 This Section shall not affect the Air Force's ability to obtain an extension of a timetable, deadline or schedule pursuant to Section XVI (Extensions) of this Agreement.

23.7 Nothing in this Agreement shall be construed to render any officer or employee of the Air Force personally liable for the payment of any stipulated penalty assessed pursuant to this Section.

XXIV. OTHER CLAIMS

24.1 Subject to Section XIX (Statutory Compliance) nothing in this Agreement shall restrict any Party 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.

24.2 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 in 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 the Site.

XXV. RESERVATION OF RIGHTS

25.1 The Parties, after exhausting their remedies under this Agreement, reserve any and all rights they may have under CERCLA, or any other law, where those rights are not inconsistent with the provisions of this Agreement.

XXVI. TERMINATION AND SATISFACTION

26.1 The provisions of this Agreement shall be deemed satisfied upon a consensus of the Parties that the Air Force has completed its obligations under the terms of this Agreement.

XXVII. FUNDING

27.1 It is the expectation of the Parties to this Agreement that all obligations of the Air Force arising under this Agreement will be fully funded. The Air Force agrees to seek sufficient funding through the DOD budgetary process to fulfill its obligations under this Agreement.

27.2 In accordance with CERCLA Section 120(e)(5)(B), 42 U.S.C. Section 9620(e)(5)(B), the Air Force shall provide to DOD for inclusion in its annual report to Congress the specific cost estimates and budgetary proposals associated with the implementation of this Agreement.

27.3 Any requirement for the payment or obligation of funds, including stipulated penalties, by the Air Force established by the terms of this Agreement shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted.

27.4 If appropriated funds are not available to fulfill the Air Force's obligations under this Agreement, EPA and DNREC reserve the right to initiate an action against any other person, or to take any response action, which would be appropriate absent this Agreement.

27.5 Funds authorized and appropriated annually by Congress under the "Environmental Restoration, Defense" appropriation in the Department of Defense Appropriation Act and allocated by the Deputy Assistant Secretary of Defense (Environment) to the Air Force 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 Air Force CERCLA implementation requirements, the DOD shall employ and the Air Force 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.

XXVIII. COMMUNITY RELATIONS

28.1 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 shall advise the other Parties of such press release and the contents thereof, at least 48 hours prior to issuance.

28.2 The Parties agree to follow all relevant EPA policy and guidance on community relations programs which are in accordance with CERCLA and consistent with the NOHSCP.

28.3 The Air Force shall develop and implement a Community Relations Plan (CRP) within 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 Dover AFB and off, regarding environmental activities conducted pursuant to this Agreement by the Air Force. The CRP shall comply with CERCLA and relevant EPA guidance documents. The CRP shall be a Primary Document.

XXIX. PUBLIC COMMENT

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

(a) All remedial action plans completed pursuant to this Agreement shall comply with the public comment provisions of CERCLA Section 117, 42 U.S.C. Section 9617.

(b) Within 15 days after all Parties have signed this Agreement, the EPA shall publish notice in at least one major local newspaper of general circulation and cause announcements to be made on two local radio stations that this Agreement is available for a 45-day period of public review and comment and that a public hearing may be held. The Air Force shall be the repository for comments. Upon the comment period closing, the Air Force shall promptly transmit copies of all comments received to the other Parties by overnight mail. Prior to the start of the public comment period, the Air Force shall make available to the public the following documents and such other documents as EPA or DNREC shall provide to the Air Force for inclusion in such record:

<u>DATE</u>	<u>DOCUMENT TITLE</u>	<u>CONTRACTOR</u>
OCT 83	Installation Restoration Program Phase I - Records Search	Engineering-Science

<u>DATE</u>	<u>DOCUMENT TITLE</u>	<u>CONTRACTOR</u>
	USAF Installation Restoration Program Phase II - Confirmation/Quantification Stage 1	SAIC/JRB Associates
JUN 86	FINAL Vol 1 - Technical Report Vol 2 - Appendix	
MAR 86	Health and Safety Program Installation Restoration Program	E.C. Jordan Co.
NOV 86	Quality Assurance Project Plan Installation Restoration Program	E.C. Jordan Co.
JUL 87	Phase II/IV A, Final Work Plan Part A: Technical Approach Installation Restoration Program	E.C. Jordan Co.
Jan 88	USAF Installation Restoration Program Stage 2	SAIC Corp.
JAN 88	Work Plan	SAIC Corp.
JAN 88	Health and Safety Plan	SAIC Corp.
MAR 88	Quality Assurance Plan	SAIC Corp.
OCT 88	USAF Installation Restoration Program Phase II/IV A: Site Characterization/ Feasibility Study - Final Work Plan	ORNL/HAZWRAP

(c) Within 15 days of the close of the comment period, a Party shall notify the others if it believes that changes should be made to the Agreement as a result of the public comments received.

(d) This Agreement shall not become effective until EPA makes a determination based on the public comments received that no changes to the signed Agreement are necessary. Should all the Parties agree that no changes need be made to this Agreement as a result of the public comments received, it shall become effective as signed.

(e) A Party requesting a change shall, within 30 days, present to the other Parties a written statement of its position and proposed

language changes. The other Parties shall then have 15 days to concur or state their opposition. If a Party opposes the recommended changes, the matter shall be resolved in accordance with Section XIV (Dispute Resolution).

(f) Within 30 days of the dispute being resolved, any Party may withdraw from the Agreement by notifying the other Parties in writing. Not doing so within that period signifies that all Parties concur that the Agreement will be modified to reflect the changes arrived at through the dispute resolution process.

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

29.3 The Air Force will establish an Administrative Record (AR) at or near Dover AFB and at HQ MAC, Scott AFB, IL, in accordance with CERCLA Section 113(k), 42 U.S.C. Section 9613(k), CERCLA Section 117(d), 42 U.S.C. Section 9617(d), and the proposed NOHSCP, 53 Fed. Reg. 51465-66. The AF shall include in the AR any document which EPA or DNREC provides to the AF with a request for inclusion in the AR. The AF shall provide a list of all documents in the AR to both the EPA and DNREC on a semi-annual basis at a meeting of the Project Managers. The AF shall provide to EPA or DNREC copies of documents in the AR if either EPA or DNREC requests a copy of them. Classified portions, if any, of the AR shall be maintained in the AR located at HQ MAC. No security clearance restrictions shall be imposed on any person seeking to review the AR located at or near Dover AFB.

XXX. PRESERVATION OF RECORDS

30.1 Despite any document retention policy to the contrary, the Parties shall preserve, during the pendency of this Agreement, and for a minimum of seven 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 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.

XXXI. AMENDMENT OR MODIFICATION OF AGREEMENT

31.1 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 XI (Notice to the Parties).

31.2 If any rule or written guidance is applied to alter the terms and conditions of this Agreement, the substance of said guidance or rule shall be subject to review during any dispute resolution process conducted pursuant to Section XIV (Dispute Resolution) unless that rule or guidance has been promulgated following notice and comment substantially similar to that provided for in the Administrative Procedures Act, 5 U.S.C 9553, et seq.

XXXII. PROPERTY TRANSFER

32.1 To the extent practicable, the Air Force agrees to give the other Parties 30 days notice prior to the sale or transfer by the United States of any title, easement, or other interest in the real property affected by this Agreement. No transfer of property shall in any way release the AF from any of its obligations under this Agreement.

XXXIII. PROGRESS REPORTS

33.1 The Air Force shall submit to the EPA and the DNREC quarterly written progress reports which describe the actions which the Air Force has taken during the previous quarter to implement the requirements of this Agreement. Progress reports shall also describe the activities scheduled to be taken during the upcoming quarter. Progress reports shall be submitted by the tenth day of each third month following the effective date of this Agreement. The progress reports shall include a statement of the manner and extent to which the requirements and time schedules set out in this Agreement and approved Work Plans are being met. In addition, the progress reports shall identify any anticipated delays in meeting time schedules, the reason(s) for the delay and actions taken to mitigate the delay.

XXXIV. EFFECTIVE DATE

34.1 Sections XXIX (Public Comment) and XIV (Dispute Resolution) of this Agreement shall be effective upon signature by all Parties. This Agreement is effective in its entirety between the Parties following implementation of Section XXIX (Public Comment), subparagraph 29.1, of this Agreement.

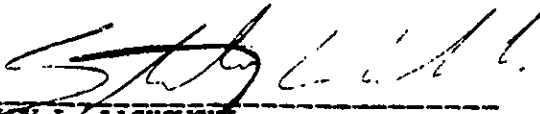
XXXV. REIMBURSEMENT OF DNREC EXPENSES

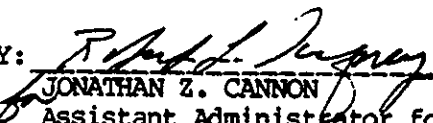
35.1 In accordance with 10 U.S.C. 2701(d), the Air Force and DNREC agree to negotiate a cooperative agreement within 100 days after the signing of this Agreement by all Parties to reimburse DNREC for expenses incurred in performance of this Agreement. The cooperative agreement shall include the substance of Attachment 4 in its terms. Reimbursement shall cover expenses incurred by DNREC subsequent to the signing of this Agreement.

35.2 It is expressly understood by the Parties that this Agreement does not create any new duty for DNREC to perform any act or service with regard to the matters related herein, should the Air Force and DNREC be unable to conclude an appropriate Agreement, or should the Air Force be unable to obtain adequate funding to fulfill its reimbursement obligations.

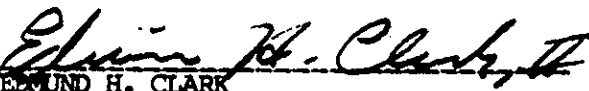
IT IS SO AGREED:

FOR THE ENVIRONMENTAL PROTECTION AGENCY:


BY:  8/2/89
Date
STANLEY L. LASKOWSKI
Deputy Regional Administrator
signing for
EDWIN B. ERICKSON
Regional Administrator
EPA Region III

BY:  13 July 1989
Date
JONATHAN Z. CANNON
Assistant Administrator for
Solid Waste and Emergency Response


FOR THE STATE OF DELAWARE:


BY:  29 June 1989
Date
EDMUND H. CLARK
Secretary
Department of Natural Resources
& Environmental Control

BY:  7/13/89
Date
MICHAEL F. FOSTER
State Solicitor

BY:  7.14.89
Date
KEVIN P. MALONEY
Deputy Attorney General

FOR THE AIR FORCE:

BY:  29 Jun 89
Date
ANTHONY J. BURSニック, Lt General, USAF
Vice Commander In Chief, MAC

BY:  29 JUN 89
Date
DENNIS L. PRIMOLI, Colonel, USAF
Commander, 436 MAW

DOVER AIR FORCE BASE SWMUs
CURRENTLY UNDERGOING RI/FS ACTIVITIES

#	SWMU ID	CODE
1	INDUSTRIAL WASTE (IW) BASINS	T-1
2	FIRE TRAINING AREA 3	FT-3
3	FUEL PUMP STATION	XYZ
4	AAFES GAS STN LEAK (BLDG 517)	AAPES
5	JP-4 FUEL LEAK (BLDGS 500/501)	JP-4
6	JP-4 PIPELINE LEAK (BLDG 1310)	SP-4
7	HAZARDOUS WASTE STORAGE AREA	S-1
8	OIL STORAGE TANK SITE (BLDGS 608/609)	OSTS
9	JP-4 FUEL SPILL 5	SP-5
10	JP-4 FUEL SPILL 6	SP-6
11	JP-4 PIPELINE LEAK 8	SP-8
12	DRAINAGE DITCH	DD-1
13	LANDFILL (RUBBLE AREA)	D-2
14	LANDFILL (LIQ WASTE DISPOSAL)	D-4
15	LANDFILL (RCVR STN LANDFILL)	D-5
16	LANDFILL	D-6
17	LANDFILL	D-7
18	LANDFILL (GOLF COURSE LANDFILL)	D-10
19	LANDFILL	D-12
20	MOTOR POOL FILLING STN	SP-9

Atch 2

DOVER AIR FORCE BASE SWMUs
TO UNDERGO SITE INVESTIGATION

#	SWMU ID	CODE
1	FIRE TRAINING AREA	FT-2
2	LANDFILL	D-1
3	LANDFILL	D-3
4	LANDFILL	D-8
5	LANDFILL	D-9
6	LANDFILL	D-11
7	FIRE TRAINING AREA	FT-1
8	OLD W/W TREATMENT PLANT	T-4
9	SLUDGE SPREADING AREA	SD-1
10	"W" TANK	S-3
11	HVY MAINT WASTE OIL TANK 780/1	S-5
12	HOBBY SHOP WASTE OIL TANK 124	S-6
13	UNDERGR WASTE LIQ STORAGE TANK	S-2
14	ENTOMOLOGY SHOP BUILDING 921	S-4
15	JP4 TANK VALVE FAILURE	SP-1
16	DIRSEL FUEL TANK SPILL	SP-2
17	JP4 PIPELINE LEAK	SP-3
18	JP4 PIPELINE SPILLS	SP-5
19	METERING PIT SPILL	SP-7
20	O/W SEP BUILDING 583 WASH RACK	
21	O/W SEP BUILDING 635 BATTERY SHOP	
22	O/W SEP BUILDING 636 REFUEL VEH MAINT	
23	O/W SEP BUILDING 725 JET ENG INSP	
24	O/W SEP IND WASTE BASINS	
25	O/W SEP BUILDING 613 JET ENG TEST	
26	O/W SEP BUILDING 711 BATTERY SHOP	
27	O/W SEP BUILDING 945 FUEL CELL DOC	
28	O/W SEP BUILDING 715 NOSE DOCK	
29	O/W SEP BUILDING 794 TRUCK STORAGE	
30	O/W SEP NORTH STORAGE TANK FARM	
31	O/W SEP SOUTH STORAGE TANK FARM	
32	O/W SEP FUEL OIL STORAGE TANK FARM	
33	O/W SEP BUILDING 124 HOBBY SHOP	
34	O/W SEP FT-3	
35	O/W SEP BUILDING 914 GROUND MAINT STOR	
36	O/W SEP WHISKEY TANK	
37	O/W SEP BUILDING 918	
38	INDUSTRIAL WASTE COLL DRAIN	

Atch 3

REIMBURSEMENT OF DNREC EXPENSES

A. For those services which are provided after the date of signing this Agreement through September 30, 1989, Dover AFB agrees to negotiate an appropriate agreement with DNREC to reimburse Delaware for specified services provided to DAFB's environmental restoration program at the Site funded under the Environmental Restoration, Defense (ER, D) appropriation pursuant to subparagraph B of this Section.

B. Anticipated services to be requested and provided under this Agreement will include the following types of assistance:

1. Timely technical review and specific comment on needed improvements, on reports or studies which DAFB prepares in support of its response actions and submits to Delaware.
2. Identification and explanation State ARARs applicable to military installations in performing response actions.
3. Field visits to review cleanup activities for consistency with agreed upon conditions between Delaware and DAFB that are established in the framework of this Agreement.
4. Support and assistance to DAFB in the conduct of public education and public participation activities in accordance with Federal and State requirements for public involvement.
5. Participation in the DAFB Technical Review Committee for review of and comment on documents and other services DAFB requests.
6. Other services specified in this Agreement.

C. It is anticipated that the negotiated agreement will require DNREC to comply with all federal acquisition requirements, regulations, policies, guidelines and requirements, including OMB Circulars No. A-102 and A-87, and Executive Order 12372, as they relate to the application, acceptance, and use of Federal funds for a Federally assisted project. Reimbursement for these services for DAFB shall not exceed 1% of the expected total costs through construction of the response actions at DAFB which are funded through the Environmental Restoration, Defense (ER, D) appropriation, as computed in accordance with subparagraph E, below.

D. It is anticipated that the negotiated agreement will contain the substance of the following paragraph: Delaware and DAFB will at key points in the clean up process review the total estimated DERA (i.e., ER, D) funded project costs through construction of the response actions and revise these estimates to reflect current estimates. In accordance with subparagraph E, below, reimbursable Delaware expenses, which cannot exceed one percent of the

total project costs through construction, shall be adjusted in line with these revisions. If project costs are to be substantially lower than originally predicted, Delaware remains entitled to reimbursement for services already completed to the point of that discovery as long as they are in line with the estimate used to arrive at their original Delaware service level. Within 30 days after all Parties sign this Agreement, DAFB agrees to notify Delaware of its current best estimate of total project costs. DAFB further agrees to provide Delaware with updates of its best estimate of total project costs at least annually thereafter. Upon request by Delaware, DAFB agrees to provide Delaware verification of amounts actually expended for project costs during the most recent accounting period (quarter).

E. It is anticipated that the negotiated agreement will contain the substance of the following paragraph: Within 60 days after the end of each quarter, Delaware shall submit to DAFB an accounting of all Delaware costs actually incurred during the accounting period (quarter) in providing direct support services under this Section. Such accounting shall be accompanied by cost summaries and be supported by documentation which meets Federal auditing requirements. The summaries will lay out man-hours and other expenses by major type of support service. All costs submitted must be for work directly related to implementation of this Agreement and not inconsistent with the NOHSCP. DAFB has the right to audit cost reports used by Delaware to develop the cost summaries. In the event DoD and Delaware have not entered into a DSMOA by September 30, 1989, before the beginning of fiscal year 1990 (i.e., before October 1, 1989) Delaware shall supply a budget estimate of what it plans to do in the next year in the same level of detail as the billing documents. DAFB and Delaware agree, that in the event Delaware and DoD are unable to reach Agreement in a DSMOA by September 30, 1989, DAFB and Delaware shall renegotiate the cost-reimbursement issue pursuant to subparagraph 35.1 of this Section, but that in no event shall DAFB reimburse Delaware in an amount exceeding one percent of the total costs for the life of the project.

F. It is anticipated that the negotiated agreement will contain the substance of the following paragraph: Except as allowed pursuant to subparagraph G or H, below, within 90 days of receipt of the accounting provided pursuant to subparagraph E, above, DAFB shall reimburse Delaware in the amount set forth in the accountings in accordance with the OMB circulars and standard forms referred to in subparagraph C, above.

G. It is anticipated that the negotiated agreement will contain the substance of the following paragraph: In the event Dover AFB contends that any of the costs set forth in the accounting provided pursuant to subparagraph E, above, are not properly payable, the matter shall be resolved through the following bilateral dispute resolution process between Dover AFB and DNREC:

1. If the DNREC and Dover AFB Project Managers are unable to agree, the matter shall be referred to the Dover AFB installation commander or his designated representative and then to the DNREC CERCLA Branch Manager.

2. Should the Dover AFB installation commander and the DNREC CERCLA Branch Manager be unable to agree within 10 working days, the matter shall be elevated to the DNREC Director and the Chief of Staff, Military Airlift Command, Scott AFB, Illinois.

3. Should the DNREC Director and the Chief of Staff Military Airlift Command fail to resolve the dispute within twenty (20) working days, the matter shall be referred to the Governor of the State of Delaware and the Secretary of the Air Force, or their designates.

4. It is the intention of the Parties that all disputes related to cost reimbursement by Dover AFB to DNREC shall be resolved in this manner. In the event the Governor of the State of Delaware and the Secretary of the Air Force or their designees are unable to resolve a dispute related to cost reimbursement, DNREC retains any enforcement authority it may have under applicable law.

H. It is anticipated that the negotiated agreement will contain the substance of the following paragraph: Dover AFB shall not be responsible for reimbursing DNREC for any costs actually incurred in the implementation of this Agreement in excess of 3.3% of the total Dover AFB costs incurred through RI and FS activities in any single fiscal year not in excess of one percent of the total Dover AFB costs incurred for the life of the project. In fiscal year 1989, Dover AFB costs for RI and FS activities are estimated to total \$800,000. Total Dover AFB costs for the life of the project are currently estimated to total \$39,000,000.

I. It is anticipated that the negotiated agreement will contain the substance of the following paragraph: The Parties understand that actual costs may be more or less than those estimated, and thus, the actual reimbursements and dollar caps may be more or less than those expressed in this Section, but in any event, the Parties agree that reimbursement by Dover AFB to DNREC shall not exceed the percentage caps. For fiscal year 1989, DNREC costs are estimated to be \$70,000.

J. It is anticipated that the negotiated agreement will contain the substance of the following paragraph: DNREC agrees to seek payment for its expenses solely through the mechanisms established in this Agreement which is in settlement of any claims for the State response costs relative to Dover AFB's environmental restoration activities at the Site. The Air Force and DNREC agree that the terms and conditions of this cooperative agreement shall become null and void when the State enters into a Defense/State Memorandum of Agreement (DSMOA) with the Department of Defense (DOD) which addresses State reimbursement.