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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

J.F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203-2211

November 15, 1991

F. Timothy Prior
Environmental Protection Specialist
United States Army
Headquarters Fort Devens
AFZD-DEQ Box 10
Fort Devens, MA 01433-5100

Re: Federal Facility Agreement, dated November 15, 1991, under CERCLA Section 120 for the Fort Devens Army Installation

Dear Mr. Prior:

Enclosed is a copy of the above-captioned Federal Facility Agreement, signed by the Army and EPA.

The draft agreement, dated May 13, 1991, has been modified in response to comments received during the public comment period. Copies of the comments and the response of the parties will be placed in the public information repository at Fort Devens and made part of the administrative record.

The draft agreement has been modified as follows:

1. In Section 2.1, line 10, add the following sentence after the word "date.":

"Accordingly, the Parties intend provisions in this Agreement which state that the Commonwealth or DEP "should", "shall" or "will" perform a certain task to mean that the Commonwealth or DEP may, at its option, perform the task."

2. In Section 7.4, after the second sentence, insert the following sentence:

"The Army shall provide the Commonwealth's Project Manager with advance notice of meetings of the Parties' Project Managers and of the Technical Review Committee."



3. In Section 7.5(a), delete from line 15 the words:
"Commonwealth shall then" and insert the words: "Army shall then request the Commonwealth to."
4. In Section 7.5(a), delete all of the words in the fourth sentence following the word and comma "possible," and replace the comma with a period.
5. In line 3 of the first paragraph of Section 7.8, insert the following after the word "EPA":
"and the Commonwealth."
6. In lines 5 and 6 of the first paragraph of Section 7.8, insert the following after the word "EPA":
", the Commonwealth,";
and delete the following after the word "comments":
", or, if Dispute" and insert a period.
7. Delete line 6 of the first paragraph from Section 7.8.
8. In line 7 of the first paragraph of Section 7.8, insert the following after the word "invoked":
"by the Army or EPA."
9. Insert the following sentence before the first sentence of the second paragraph of Section 7.8:
"If Dispute Resolution is invoked by the Army or EPA, and the Army's position is sustained, the document shall serve as the final Primary report, shall be deemed incorporated herein, and shall become an enforceable part hereof."
10. In line 18 of Section 17.2, insert the following words after the word "EPA":
"and the Commonwealth."
11. After the third sentence in Section 17.3, insert the following sentence:
"The Parties shall consult with the Commonwealth on any remedy which the Parties jointly select."

12. In Section 31.1, delete the six lines under the words:
"As to the Commonwealth"; and insert the following:

"D. Lynne Chappell
Section Chief
Federal Facilities Section
Bureau of Waste Site Cleanup
Department of Environmental Protection
Central Region
75 Grove Street
Worcester, MA 01605"

These modifications are reflected in the enclosed final agreement.

Since the parties have determined that no additional public notice and comment are required, pursuant to Section 27.3 of the agreement, I am transmitting the enclosed copy of the agreement to you and notifying you that the agreement will be effective as of November 15, 1991.

EPA will publish notice of the finalization of the agreement in two local newspapers of general circulation.

We appreciate the efforts of the Army in the negotiation of the agreement, and we look forward to working with you in the cleanup of Fort Devens.

Sincerely,



James P. Byrne
Remedial Project Manager
Federal Facilities Section

enc.

cc: Paul D. Crane, Esq. (w/ enc.)
Robert A. DiBiccaro, Esq. (w/ enc.)

FINAL
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
AND THE
UNITED STATES DEPARTMENT OF THE ARMY

IN THE MATTER OF:
THE U.S. DEPARTMENT
OF THE ARMY
FORT DEVENS ARMY INSTALLATION
FORT DEVENS, MA

FEDERAL FACILITY AGREEMENT UNDER CERCLA SECTION 120

TABLE OF CONTENTS

I.	PURPOSE	1
II.	PARTIES AND SCOPE OF AGREEMENT	3
III.	DEFINITIONS	6
IV.	JURISDICTION	14
V.	STATEMENT OF FACTS	15
VI.	WORK TO BE PERFORMED	20
VII.	CONSULTATION WITH EPA	22
VIII.	PROJECT MANAGERS	30
IX.	ACCESS	33
X.	DATA AND DOCUMENT AVAILABILITY	37
XI.	PERMITS	38
XII.	REMOVAL AND EMERGENCY ACTIONS	40
XIII.	DISPUTE RESOLUTION	44
XIV.	DEADLINES AND SCHEDULES	48
XV.	EXTENSIONS	50
XVI.	FORCE MAJEURE	52
XVII.	RECORDS OF DECISION AND PLANS FOR REMEDIAL ACTION	54
XVIII.	EXEMPTIONS	56
XIX.	EPA CERTIFICATION	57
XX.	STATUTORY COMPLIANCE/RCRA, CERCLA INTEGRATION .	59
XXI.	ENFORCEABILITY	61
XXII.	STIPULATED PENALTIES	63
XXIII.	OTHER CLAIMS	65
XXIV.	TERMINATION AND SATISFACTION	67
XXV.	FUNDING	68

XXVI.	COMMUNITY RELATIONS	69
XXVII.	PUBLIC COMMENT ON THIS AGREEMENT	70
XXVIII.	PRESERVATION OF RECORDS	72
XXIX.	AMENDMENT OR MODIFICATION OF AGREEMENT	73
XXX.	EFFECTIVE DATE	74
XXXI.	NOTICES AND SUBMISSIONS	75
XXXII.	QUARTERLY PROGRESS REPORTS	76
XXXIII.	FIVE YEAR REVIEW	77
XXXIV.	RESERVATION OF RIGHTS FOR RECOVERY OF EPA EXPENSES.....	78
XXXV.	QUALITY ASSURANCE	79
XXXVI.	RELEASE OF RECORDS	80
XXXVII.	TRANSFER OF REAL PROPERTY	81
XXXVIII.	INSTALLATION CLOSURE	82
XXXIX.	SEVERABILITY	83
XL.	APPENDICES AND ATTACHMENTS	84
XLI.	SIGNATURE PAGE	85

APPENDICES

- I. MASTER ENVIRONMENTAL PLAN REQUIREMENTS**
- II. INSTALLATION RESTORATION PROGRAM (IRP) DOCUMENTS REVIEWED**

ATTACHMENTS

- I. A MAP AND LIST OF AREAS OF CONTAMINATION (AOC) AND STUDY AREAS (SA)**

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 the past and present activities at the Site are thoroughly investigated, and to ensure that the appropriate Removal and Remedial Action is taken as necessary to protect human health and the environment;
- (b) Establish a procedural framework and timetable for developing, implementing, and monitoring appropriate Response Actions at the Site in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (collectively CERCLA), the National Contingency Plan (NCP), Superfund guidance and policy, the Resource Conservation and Recovery Act, as amended (RCRA), and RCRA guidance and policy;
- (c) Facilitate the cooperation, the exchange of information and participation of the Parties in such actions.

1.2 Specifically, the purposes of this Agreement are to:

- (a) Identify Operable Unit (OU) alternatives which are appropriate to address the release or threatened release of Hazardous Substances, pollutants, contaminants or Oil at the Site. OU alternatives shall be identified and proposed to the EPA as early as possible, prior to formal proposal of an OU to EPA, pursuant to CERCLA and this Agreement. This Agreement process is designed to promote cooperation among the Parties in identifying OU alternatives prior to selection of a final Remedial Action;
- (b) Establish requirements for the performance of Preliminary Assessment(s) (PA), Site Inspections(s) (SI) and Remedial Investigation(s) (RI) to determine fully the nature and extent of the threat to human health and the environment caused by the release or threatened release of Hazardous Substances, pollutants, or contaminants or Oil at the

Site, and to establish requirements for the performance of Site Feasibility Studies (FS) to identify, evaluate and select alternatives for the appropriate Remedial Action (s) at the identified Areas of Contamination (AOC) to prevent, mitigate or abate the release or threatened release of Hazardous Substances, pollutants, contaminants or Oil at the Site in accordance with CERCLA and this Agreement;

- (c) Identify the nature, objective, and schedule of Response Actions to be taken at the Site, and to ensure that Remedial Actions at the Site shall attain that degree of cleanup of Hazardous Substances, pollutants, contaminants or Oil mandated by CERCLA, RCRA, and this Agreement;
- (d) Implement and maintain the selected Remedial Action(s) in accordance with CERCLA and this Agreement; and to meet the requirements of CERCLA § 120(e)(2) for this Agreement between the Parties;
- (e) Ensure compliance, through this Agreement, with RCRA and other Federal hazardous waste laws and regulations for matters covered herein;
- (f) Coordinate Response Actions at the Site with the mission and support activities at the Federal Facility known as the Fort Devens Army Installation;
- (g) Expedite the cleanup process to the extent consistent with the protection of human health and the environment;
- (h) Provide for the Operation and Maintenance of any Remedial Action selected and implemented pursuant to this Agreement;
- (i) Provide for the Commonwealth's appropriate involvement, as defined by CERCLA and the NCP, in the initiation, development, selection and enforcement of Response Actions to be undertaken at the Federal Facility known as the Fort Devens Army Installation, including the review of all applicable data as it becomes available and the development of studies, reports, and action plans; and to identify and integrate State ARARs into the Remedial Action process;
- (j) Identify Removal Actions which are appropriate for the Site, and provide timely notice to the other Party of such proposed actions.

II. PARTIES AND SCOPE OF AGREEMENT

- 2.1 The Parties to this Agreement are EPA and the Army, and this Agreement shall apply to and be binding upon EPA and the Army. The Commonwealth elected not to be a Party to this Agreement at the time the Agreement was negotiated and executed. However, consistent with CERCLA and the NCP, EPA and the Army have agreed to allow the Commonwealth a participatory role in the Site remediation as defined in this Agreement, and an opportunity to enter into the Agreement, should they choose to, at a later date. Accordingly, the Parties intend provisions in this Agreement which state that the Commonwealth or DEP "should", "shall" or "will" perform a certain task to mean that the Commonwealth or DEP may, at its option, perform the task.
- 2.2 In selecting contractors to perform Work associated with the Site, the Army will comply with the Federal Acquisition Regulation (FAR), 48 C.F.R., and 40 C.F.R. Part 32, Defense Federal Acquisition Regulations, and Army Federal Acquisition Regulations.
- 2.3 Each Party shall be responsible for ensuring that its contractors comply with the terms and conditions of this Agreement. Failure of a Party to provide proper direction to its contractors and any resultant noncompliance with this Agreement by a contractor shall not be considered a Force Majeure event or other good cause for extensions under Section XV, (Extensions), unless the Parties so agree. The Parties upon contractor selection, shall notify the other Party of the identity and the assigned tasks of each of its contractors performing Work under this Agreement.
- 2.4 This Agreement shall apply to and be binding upon the Army and EPA, their respective officers, successors in office, agents and employees and shall not be construed as an agreement to indemnify any person. The Army shall notify its members, employees, agents, lessees and response action contractors of the existence of this Agreement. This Agreement shall also be binding upon any subsequent owners, lessees and operators of Fort Devens Army Installation. The Army agrees to include notice of this Agreement in any document transferring ownership or control to any subsequent owners and operators of any portion of the Facility in accordance with CERCLA § 120(h), 40 C.F.R. § 264.119 and § 264.120, and shall notify EPA and the Commonwealth of any such change of ownership or control at least sixty (60) days prior to such transfer.

- 2.5 The scope of this Agreement extends to the entire Facility, as defined at Section III, herein. The Parties agree that the entire Facility is listed as an EPA CERCLA NPL Site, and therefore the Facility cannot be removed from the NPL until EPA determines, in accordance with CERCLA, and this Agreement, that the Site no longer poses a threat to human health and the environment. Further, the Parties agree that due to the complexity of the Remedial Action at the Site and the methods utilized to identify Hazardous Substances, pollutants, contaminants and Oils at the Site, remediation activities at the Site shall occur in discrete locations called Areas of Contamination (AOC). Contamination that has migrated off-site, or commingled amongst AOCs will be remediated in accordance with this Agreement. The acceptable level of remediation will be based on both an individual AOC and its collective impact upon the entire Site. For each Area of Contamination, or portion thereof, (Operable Unit (OU)) identified at the Site pursuant to this Agreement, the Army shall perform the Work identified in Paragraphs 2.6, 2.7, and 2.8 below, where required in accordance with the requirements of this Agreement.
- 2.6 The Army shall develop, implement and report upon Preliminary Assessments (PA), Site Inspections (SI), and Remedial Investigations (RI) at the Site for each Area of Contamination (AOC)/Study Area (SA) or OU in accordance with Section VI, (Work to be Performed) of this Agreement, the NCP, and applicable EPA policy and guidance. All PA, SI, and RI activities at the Site shall be conducted in accordance with the requirements and Deadlines set forth in Appendix I and Section XIV, (Deadlines and Schedules), of this Agreement. All PA, SI, and RI activities shall be designed to meet the purposes set forth in Section I, (Purpose), of this Agreement.
- 2.7 The Army shall develop, implement and report upon Feasibility Studies (FS) for each AOC or OU at the Site where required in accordance with Section VI, (Work to be Performed) of this Agreement, the NCP, and applicable EPA regulations, policy and guidance. All FS activities shall be conducted in accordance with the requirements and time Schedules set forth in Appendix I and Section XIV, (Deadlines and Schedules), of this Agreement. All FS activities shall meet the purposes set forth in Section I, (Purpose), of this Agreement.

- 2.8 The Army shall perform Remedial Design, Remedial Action (RD/RA) and Operation and Maintenance (O & M) activities at the Site in accordance with CERCLA § 120(e)(2), Section XVII, (Records of Decision and Plans for Remedial Action), of this Agreement, CERCLA, the NCP, RCRA and applicable regulations thereunder.
- 2.9 This Agreement shall apply to all releases and threatened releases of Hazardous Substances, pollutants, contaminants or Oil at or from Fort Devens, including such releases and threatened releases at or from Areas of Contamination/Study Areas at Fort Devens to which CERCLA and RCRA or CERCLA alone applies.

III. DEFINITIONS

3.1 The terms used in this Agreement shall have the same definition as the terms defined in CERCLA and the National Contingency Plan (NCP), unless specifically otherwise defined in this Agreement. The following terms used in this Agreement are defined as follows:

- (a) "Additional Work" shall mean all activities required by Section XIX (EPA Certification), herein;
- (b) "Agreement" shall refer to this document and shall include all Appendices and Attachments to this Agreement. All such Appendices and Attachments shall be appended to and made part of this Agreement as covered under Section XL, (Appendices & Attachments);
- (c) "ARARs" shall mean Federal and State Applicable or Relevant and Appropriate Requirements, standards, criteria, or limitations, identified pursuant to CERCLA § 121. ARARs shall apply under this Agreement in the same manner and to the same extent that ARARs are applied in a non-Federal Facility context pursuant to CERCLA § 120(a)(1);
- (d) "Area(s) of Contamination" or "AOC(s)" shall mean (1) any of the areas listed or described in Section V (Statement of Facts) and in Attachment I of this Agreement, which indicates that a release or threatened release of Hazardous Substances, pollutants, contaminants or Oils has occurred, (2) any area or group of areas to or under which investigations document that a release of Hazardous Substances, pollutants, contaminants or Oils has occurred, migrated, or threatens to migrate from any of the above listed areas or locations; and (3) any area or location or group of areas or locations where a Hazardous Substance has been deposited, stored, disposed of, or placed, or otherwise come to be located within the Site boundaries and identified by any of the Parties, or their agents, or authorized representatives and added to this Agreement pursuant to Section VI (Work To Be Performed) of this Agreement and the MEP consistent with the SI findings and recommendations;

- (e) "Army" shall mean the United States Department of the Army, its employees, members, agents, and authorized representatives to the extent necessary to effectuate the terms of this Agreement, including, but not limited to, appropriations and Congressional reporting requirements;
- (f) "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499;
- (g) "Cleanup Standard(s)" shall mean the numerical criteria representing the degree of cleanup to be achieved at an AOC or OU as set forth in the relevant Record of Decision (ROD);
- (h) "Commonwealth" shall mean the Commonwealth of Massachusetts and its employees, agents, authorized representatives, successors and assigns;
- (i) "Contingency Plan" shall mean a written plan for the purpose of protecting the local affected population in the event of an accident or emergency related to CERCLA cleanup activities. It may include an Air Monitoring Plan and a Spill Control Countermeasures Plan, if applicable, for the site. The following is a list of items to be considered for inclusion in such a plan: the name and telephone number of person(s) responsible for responding in the event of an emergency; a plan and date for meeting with the local community, local, state, and federal agencies involved in the cleanup, as well as local emergency squads and hospitals; first aid and medical information including names of personnel trained in first aid and HAZMAT Response, a map with locations of medical facilities, and emergency phone numbers; an Air Monitoring Plan; a Site Evacuation Plan; and a Spill Control and Countermeasures Plan;
- (j) "Day" or "Days" means calendar day(s), unless business day(s) are specified. However, any submittal or written statement of dispute which under the terms of this Agreement would be due on a Saturday, Sunday, or a holiday shall be due on the next occurring business day;
- (k) "Deadline" shall be the time limitation applicable to issuance by the Army of RI/FS documents for which a limitation has been specifically established under the terms of this Agreement;

- (l) "DEP" shall mean the Commonwealth of Massachusetts' Department of Environmental Protection, its employees, agents, authorized representatives, successors and assigns. For purposes of the implementation of this Agreement, the DEP shall be considered the designated representative of the Commonwealth;
- (m) "EPA" shall mean the United States Environmental Protection Agency, its employees, agents, authorized representatives, successors and assigns;
- (n) "Feasibility Study" or "FS" shall mean a study conducted pursuant to CERCLA, the NCP and relevant guidance, which fully develops, screens and evaluates, in detail, Remedial Action alternatives to prevent, mitigate, or abate the migration or the release or threatened release of Hazardous Substances, pollutants, contaminants or Oil at and from the Site. The Army shall conduct and prepare the FS in a manner to support the intent and objectives of Section XX, (Statutory Compliance/RCRA-CERCLA Integration);
- (o) "Federal Facility" or "Facility" or "Fort Devens" shall mean the Fort Devens Army Installation;
- (p) "Fort Devens Army Installation" or "Fort Devens" shall mean the real property comprising the Fort Devens Army Installation located in the Towns of Ayer, Lancaster, Harvard and Shirley, in the Counties of Middlesex and Worcester, Massachusetts, and consisting of approximately 9400 acres. For purposes of this Agreement, the term "Fort Devens Army Installation", "Fort Devens", "Federal Facility", or "Facility" shall include such real property, even if later acquired or transferred to or from ownership or control of the United States, or an Agency, or Department thereof. That real property presently owned by the Commonwealth and known as the Massachusetts National Guard Armory is not part of the Fort Devens Army Installation;
- (q) "Hazardous Substance(s)" shall mean all those substances which are included under CERCLA § 101(14), 42 U.S.C. § 9601(14); hazardous waste under RCRA § 1004(5), 42 U.S.C. § 6903(5); and hazardous constituents under RCRA § 3008(h) and 40 C.F.R. Part 261 Appendix VIII;

(r) "Master Environmental Plan" or "MEP" shall mean a Primary document which supplies a comprehensive plan for work pursuant to CERCLA. The MEP shall include at a minimum:

(a) A list of Study Areas and Areas of Contamination;

(b) A time Schedule; and

(c) A prioritization scheme for the Work Schedules.

Further, the MEP shall be updated periodically to reflect Additional Work requirements;

(s) "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan and any subsequent amendments, promulgated pursuant to CERCLA and found at 40 C.F.R. Part 300;

(t) "Oil" shall mean, only to the extent that the Oil constitutes an imminent and substantial harm to human health and the environment, Oil of any kind or in any form including, but not limited to petroleum, fuel Oil, sludge, Oil refuse, Oil mixed with wastes other than dredged Oil and waste Oil;

(u) "Operable Unit" or "OU" shall mean a discrete Response Action that comprises an incremental step towards comprehensively addressing an AOC or Hazardous Substance migrating from an AOC. Each AOC may be divided into one or more OUs, at any phase of the Response Action, depending on the type and complexity of contamination associated with the AOC;

(v) Reserved

(w) "Parties" shall mean the Army and EPA;

(x) "Performance Standard(s)" shall mean the criteria representing the degree and method of cleanup to be achieved at an AOC, including all location, chemical, and action-specific ARARs identified in the ROD and the MEP, or by the EPA, prior to Certification of the Completion of the Work; and all other health or environmentally related numerical standards in the ROD. Performance Standards include all Cleanup Standards;

(y) "Person" shall mean an individual, firm, corporation, association, partnership, consortium, joint venture,

commercial entity, U.S. Government, State, municipality, commission, political subdivision of a State or interstate body;

- (z) "Preliminary Assessment" or "PA" shall mean a complete review of existing information, including but not limited to, on-Site reconnaissance and off-Site reconnaissance to determine if a release or threatened release may require additional investigation or Response Action. Such PA shall be performed in accordance with CERCLA, CERCLA guidance and the NCP, as supplemented by the substantive provisions of EPA RCRA Facilities Assessment guidance;
- (aa) "Project Closeout Report" shall mean that report that shall, upon the completion of the Remedial Action and correction of all punch list (deficiency list) items, be proposed by the Federal Facility which certifies that all items contained within this Agreement, and any subsequent agreements (including incorporated documents such as plans and specifications) have been completed. The report shall include documentation (test results) substantiating that the performance standards have been met and a "Record of Drawings" ("As Built") of the project. The Project Managers shall review the Project Closeout Report and verify that all changes and variations from the original contract drawings have been made on "Record Drawings";
- (bb) "RCRA" shall mean the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et. seq., as amended by the Hazardous and Solid Waste Amendments of 1984, Public Law 98-616, and any subsequent amendments;
- (cc) "Record of Decision" or "ROD" shall mean a public document that describes the Remedial Action alternative(s) selected to be implemented at one or more Operable Units at Areas of Contamination and the basis for the selection. The ROD shall be based on information and technical analysis generated during the RI/FS;
- (dd) "Remedial Design" or "RD" shall mean the technical analysis and procedures which follow the selection of a remedy for a Site, and result in a detailed set of plans and specifications for implementation of the Remedial Action;
- (ee) "Remedial Investigation" or "RI" shall mean that investigation conducted pursuant to CERCLA and the

NCP, as supplemented by the substantive provisions of the EPA RCRA Facilities Assessment guidance. The RI serves as a mechanism for collecting data for site and waste characterization and conducting treatability studies as necessary to evaluate performance and cost of the treatment technologies. The data gathered during the RI will also be used to conduct a baseline risk assessment, including characterization of risk of harm to the human health and environment, to perform a Feasibility Study, to evaluate of the natural resources damaged by the releases or threatened releases of Hazardous Substances, and to support the design of a selected remedy. The Army shall conduct and prepare all RIs in a manner to support the intent and objectives of Section XX, (Statutory Compliance/RCRA-CERCLA Integration);

- (ff) "Remedy" or "Remedial Action" or "RA" shall have the same meaning as provided in CERCLA § 101(24), 42 U.S.C. § 9601(24), and the NCP, and may consist of one or more OUs;
- (gg) "Remove" or "Removal" shall have the same meaning as provided in CERCLA § 101(23), 42 U.S.C. § 9601(23);
- (hh) "Response Action(s)" shall mean all Removal and Remedial Actions including enforcement activities related to the Site;
- (ii) "Schedule" shall mean the time limitations established for the completion of Remedial Design and Remedial Actions (RD/RA) at the Site;
- (jj) "Scope of Work" or "SOW" shall mean the Scope of Work for implementation of the PA/SI, RI/FS, RD/RA and Operations and Maintenance (O & M) as set forth in the MEP, and any modification thereto in accordance with this Agreement;
- (kk) "Site" shall mean land owned, operated, controlled, leased, used by right of easement, or licensed by any department or agency of the United States Government or other owners or operators, in the past, present or at a future time at the Federal Facility known as the Fort Devens Army Installation or any area off the Facility to or under which a release of Hazardous Substances has migrated, or threatens to migrate, from a source on or at Fort Devens Army Installation. For purposes of obtaining permits, the term "On-Site" shall include areas within Fort Devens, the areal

extent of contamination and all areas necessary for implementation of Response Actions;

- (ll) "Site Inspection" or "SI" shall mean an On-Site investigation to determine whether a release or potential release exists and the nature of the associated threats to human health and the environment. Sampling and other field data shall be used to augment the SI, and to determine if further investigation or Response Action maybe required. If EPA determines that a Response Action may be required, then the area shall be designated an Area of Contamination. If, however, the SI fails to conclusively establish the need for an AOC designation, the area shall remain a Study Area which shall require no Additional Work pursuant to this Agreement. Such SI work shall be conducted in accordance with CERCLA, CERCLA guidance and the NCP, as supplemented by the substantive provisions of EPA RCRA Facilities Assessment guidance and this Agreement;
- (mm) "State" shall mean the Commonwealth of Massachusetts and its employees, agents, authorized representatives, successors and assigns;
- (nn) "Study Area" or "SA" shall mean a discrete area or areas within the Site that, based upon objective evidence, previous data gathering, interviews or the mutual agreement of the Parties, has been identified by utilizing the procedures described in the Master Environmental Plan as a potential Area of Contamination. If a threat or potential threat to human health or the environment is determined to exist, an RI/FS shall be conducted and the area henceforth shall be designated an AOC. If such a threat or potential threat is determined not to exist, the SI shall so indicate that the area has been removed from further study or consideration, unless it is subsequently determined that a threat or potential threat to human health or the environment exists at the area;
- (oo) "Timetable" shall be the collective term for all the "Deadlines", and "Schedules" established for the RD/RA activities; and,
- (pp) "Work" shall mean activities or obligations required by this Agreement and the MEP, including but not limited to PA/SI, RI/FS, RD/RA, Operation and Maintenance (O & M) and any activities required to be

undertaken pursuant to Section VI, (Work to be Performed), or the MEP.

IV. JURISDICTION

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

- (a) The EPA enters into those portions of this Agreement that relate to the PA/SI, RI/FS and RD/RA pursuant to CERCLA § 120(e)(1) and RCRA §§ 6001, 3008(h), 3004(u) and (v), 7003, and Executive Orders 11735 and 12580;
- (b) EPA enters into those portions of this Agreement that relate to Operable Units, and final Remedial Actions pursuant to CERCLA § 120(e)(2), RCRA §§ 6001, 3008(h), 3004(u) and (v), 7003, and Executive Orders 11735 and 12580;
- (c) The Army enters into those portions of this Agreement that relate to the PA/SI, RI/FS, Operable Unit and the final Remedial Actions pursuant to CERCLA § 120(e)(1)and(2), RCRA §§ 6001, 3008(h) and 3004(u) and (v), 7003, Executive Orders 11735 and 12580, and the Defense Environmental Restoration Program (DERP), 10 U.S.C. § 2701 et. seq.

V. STATEMENT OF FACTS

- 5.1 Fort Devens Army Installation was listed on the National Priorities List (NPL) update of November 21, 1989, 54 Fed. Reg. 48187 and is therefore subject to the special provisions for federal facility NPL sites in CERCLA § 120, 42 U.S.C. § 9620, and the Superfund Amendments and Reauthorization Act (SARA) § 211, 10 U.S.C. § 2701, Defense Environmental Restoration Program et seq.
- 5.2 Fort Devens Army Installation is a facility under the jurisdiction, custody, or control of the Department of Defense within the meaning of Executive Order 12580, 52 Fed. Reg. 2923, January 29, 1987, and within the meaning of DERP, 10 U.S.C. § 2701 et seq. The Department of the Army is authorized to act on behalf of the Secretary of Defense for all functions delegated by the President through Executive Order 12580 which are relevant to this Agreement.
- 5.3 Fort Devens is located in the Towns of Ayer, Lancaster, Shirley and Harvard, Massachusetts. Established in 1917, the Installation has been owned and operated by the United States through the United States Department of the Army at all times relevant to this Agreement, and presently functions as a training facility. The Facility can be characterized by its undulating terrain and wooded hills. Divided into three (3) posts, the north post (1500 acres), includes Moore Army Airfield, the waste water treatment plant and training areas. It is separated from the central post by Ayer's Main Street, which crosses Fort Devens East to West; the central post (2300 acres) contains administrative and support facilities. The south post (5,600 acres), which is separated from the central post by Commonwealth Route 2, contains ranges and training areas. The Nashua River flows through the installation in a South to North direction. One lake and several ponds are located within Fort Devens, as well.
- 5.4 Initially Camp Devens, now Fort Devens, was established in 1917 as a temporary training facility for New England area soldiers during World War I. Since that time it has served a variety of functions. For example, in 1922 it was a summer training camp for military groups; between 1929-1930 it served as a location for test firing rockets; between 1931-1940 the facility's name changed to Fort Devens and it became a training installation; from 1940-1946 it was an induction center; from 1946-1952 it was in a care taker status, and was upgraded to a training and induction center during and after the Korean and Vietnam conflicts.

- 5.5 There are locations within Fort Devens where Hazardous Substances have been deposited, stored, placed, or otherwise come to be located in accordance with 42 U.S.C. § 9601(9) and (14). Additionally, there have been or may be releases into the environment of Hazardous Substances, pollutants, contaminants or Oil at or from the Federal Facility within the meaning of 42 U.S.C. § 9601 (22), §§ 9604, 9606, and 9607 and 42 U.S.C. § 6973.

- 5.6 It has been determined that Fort Devens contains Hazardous Substances deposited, stored, placed, and otherwise located at the Installation in accordance with 42 U.S.C. §§ 9601(9) and (14). Additionally, there have been or may be releases into the environment of Hazardous Substances, pollutants, contaminants or Oil at or from the Federal Facility within the meaning of 42 U.S.C. §§ 9601(22), 9604, 9606, and 9607.

- 5.7 In 1988, the Army, under the auspices of the Installation Restoration Program (IRP) commenced a review of Fort Devens starting with a program records search conducted by the Argonne National Laboratory for U.S. Army Toxic and Hazardous Materials Agency (USATHAMA) by C.A. Biang, R. W. Peters, R. H. Pearl and S. Y. Tsai. The search identified various waste, storage and disposal areas on the Installation, including ones that received hazardous wastes, such as organic solvents, pesticides, paint strippers and other industrial wastes. Pursuant to this study, a Master Environmental Plan (MEP) was created in draft form in November, 1989. These AOC/SA were identified as Solid Waste Management Units (SWMUs) in the Draft MEP Report and in other technical documents, and are enumerated as:

- 1) Cutler Army Hospital Incinerator
- 2) Veterinary Hospital Incinerator
- 3) Intelligence School Incinerator
- 4) Sanitary Landfill Incinerator
- 5) Sanitary Landfill
- 6) Landfill #2
- 7) Landfill #3
- 8) Landfill #4
- 9) Landfill #5
- 10) Landfill #6
- 11) Landfill #7
- 12) Landfill #8
- 13) Landfill #9
- 14) Landfill #10
- 15) Landfill #11
- 16) Landfill #12
- 17) Landfill #13 (Little Mirror Lake)
- 18) Sanitary Landfill Asbestos Cell

- 19) Wastewater Treatment Plant
- 20) Rapid Infiltration Beds
- 21) Sludge Drying Beds
- 22) Hazardous Waste Storage Facility
- 23) Paper Recycling Facility
- 24) Waste Explosives Storage Bunker
- 25) Waste Explosives Detonation Range (EOD)
- 26) Waste Explosives Detonation Range (ZULU I,II)
- 27) Waste Explosives Detonation Range (HOTEL)
- 28) Waste Explosives Detonation Range (AREA 14)
- 29) Transformer Storage Area
- 30) Moore Army Airfield Drum Storage Area
- 31) Fire Fighting Training Area
- 32) DRMO Yard
- 33) DEH Entomology Shop
- 34) Former DEH Entomology Shop
- 35) Former DEH Entomology Shop
- 36) Former DEH Entomology Shop
- 37) Golf Course Entomology Shop
- 38) Battery Repair Area
- 39) Transformer Area near Building 4250
- 40) Cold Spring Brook Landfill
- 41) Unauthorized Dumping Area (Site A)
- 42) Popping Furnace
- 43) Historic Gas Station Sites
- 44) Cannibalization Yard
- 45) Vehicle Wash Area
- 46) Training Area 6D
- 47) MAAF LUST Site (Bldg. 3816)
- 48) Bldg. 202 LUST Site (waste Oil tank)
- 49) Bldg. 3602 LUST Site
- 50) MAAF WWII Fuel Point (Adj. EW Runway)
- 51) O'Neal Bldg. Spill Site
- 52) TDA Class III Leak Storage Yard
- 53) South Post POL Spill Areas
- 54) Bldg. 2680 (Former Gas Station Site)

Locations 1 through 54 constitute the currently identified Areas of Contamination or Study Areas as defined in Section III, (Definitions) of this Agreement. The Army and EPA will continue to conduct further reviews and surveys to determine what other Study Areas may require remedial Work under this Agreement. New AOCs/SA may be added to this Agreement as they are identified in Paragraph 6.5. After a careful review of the above SAs, the Parties have determined that SAs 22 and 23 do not currently pose a threat to human health and the environment, and have been removed from further Work under the terms of this Agreement.

- 5.8 The Draft Master Environmental Plan states that further review shall be conducted by the Army, including but not limited to, the following areas:
- a) Historical information and assumptions about the Site;
 - b) Amending the current AOC/SA prioritization scheme;
 - c) Summary of health and safety regulatory requirements;
 - d) Potential asbestos contamination of old landfills, if excavation is conducted;
 - e) Underground tank storage and releases;
 - f) An installation-wide characterization of general hydrogeology, surface water and ground water quality;
 - g) Establishment of priority groups to better utilize resources.
- 5.9 Attachment I of this Agreement includes a map and a list of AOC/SA.
- 5.10 Pursuant to Executive Order 12088, 43 Fed. Reg. 47707, October 13, 1978, the EPA Administrator is required to provide technical advice and assistance to the Secretary of Defense.
- 5.11 The Army is the authorized delegate of the President under Executive Order 12580 for receipt of notification of Commonwealth ARARs required by CERCLA Section 121(d)(2)(A)(ii).

DETERMINATIONS

- 5.12 The authority of the Army to exercise the delegated Removal authority of the President pursuant to CERCLA § 104, 42 U.S.C. § 9604 is not altered by this Agreement.
- 5.13 The actions to be taken pursuant to this Agreement are reasonable and necessary to protect the human health and the environment.
- 5.14 On the basis of the facts described above, EPA has determined that:
- (a) The Site is a Federal Facility pursuant to CERCLA § 120 (a), 42 U.S.C. § 9620;

- (b) The Site is a Facility within the meaning of CERCLA § 101 (9), 42 U.S.C. § 9601 (9);
- (c) Hazardous Substances, pollutants, and contaminants within the meaning of CERCLA §§ 101 (14) and 104 (a)(2), 42 U.S.C. §§ 9601 (14) and 9604 (a)(2) are located at the Site;
- (d) There have been releases and there continue to be releases and threatened releases of Hazardous Substances, pollutants, contaminants or Oil into the environment within the meaning of CERCLA §§ 101 (22), 104, 106, and 107, 42 U.S.C. §§ 9601 (22), 9604, 9606, and 9607, at and from the Site; and,
- (e) With respect to those releases and threatened releases at the Site, the Army is the responsible person within the meaning of CERCLA § 107, 42 U.S.C. § 9607.

VI. WORK TO BE PERFORMED

- 6.1 The Parties agree to perform the tasks, obligations and responsibilities described in this Agreement and the MEP in accordance with CERCLA, CERCLA guidance and policy, the NCP, RCRA and RCRA guidance and policy, Executive Orders 12580 and 11735, and all terms and conditions of this Agreement including documents prepared and incorporated in accordance with Section VII, (Consultation with EPA). For the purposes of this Agreement only, the Army shall be considered the lead agency. The Army shall be primarily responsible for investigation, design, construction, and Operation and Maintenance (O & M) of all Removal, Response and Remedial Actions at the Site.
- 6.2 With respect to integration of past or ongoing Work into Work required by this Agreement, it is the intent of the Parties that documents completed and data generated prior to the Effective Date of this Agreement be utilized as elements of the PA/SI and RI/FS documents required under this Agreement to the maximum extent practicable without violating CERCLA, CERCLA guidance and policy, the NCP, Federal and State ARARS; and without jeopardizing the technical integrity of any PA/SI or RI/FS based upon such data. The Army need not halt currently ongoing Work, but may be obligated to modify or supplement Work previously done to produce a final product which meets the requirements of this Agreement.
- 6.3 The Army agrees to undertake, seek adequate funding for, fully implement and report on the following tasks, if required, with participation of the Parties as set forth in this Agreement and the MEP:
- (a) Preliminary Assessment and Site Inspection of the Site and all AOC/SA identified in the MEP by the Parties;
 - (b) Remedial Investigations of all Areas of Contamination;
 - (c) Feasibility Studies for all Areas of Contamination;
 - (d) Proposed Plans and RODs for all Areas of Contamination;
 - (e) All Remedial Actions, Removals and Remedial Designs for all Areas of Contamination; and
 - (f) Operation and Maintenance (O & M) of Remedial Actions at the Areas of Contamination.

6.4 The Army shall:

- (a) Make its best efforts to expedite the initiation of Remedial Actions for the Areas of Contamination; and
- (b) Carry out all activities under this Agreement so as to protect human health and the environment.

6.5 Any location on the Site which is identified by a Party as an AOC/SA after the Effective Date of this Agreement shall be added to the list of AOC/SA in Attachment I as an additional AOC/SA to be investigated and remediated pursuant to all requirements pertaining to AOC/SA under this Agreement and the MEP.

6.6 With respect to the Work to be Completed at the Site, the Army agrees that all Work conducted pursuant to this Agreement and the MEP shall be funded by the Army. The Army agrees that it shall conduct, and be responsible for completion of all Work activities required at the Site pursuant to this Agreement and the MEP. The Army shall perform all the Work at the Site. However, the Army reserves any rights it might otherwise have to seek reimbursement from any Person if that Person has contributed to contamination at the Site.

VII. CONSULTATION WITH EPA

Review and Comment Process for Draft and Final Documents

7.1 Applicability:

The provisions of this Section establish the procedures that shall be used by the Parties to provide each other with appropriate notice, technical support, review, comment, and responses to comments regarding documents and reports, specified herein and in the MEP as either Primary or Secondary documents. In accordance with CERCLA § 120, 42 U.S.C. § 9620, and 10 U.S.C. § 2705, the Army shall be responsible for issuing Primary and Secondary documents to EPA and the Commonwealth, unless otherwise agreed to by both Parties in writing. As of the Effective Date of this Agreement, all draft and final reports for any deliverable document(s) identified herein, including any PA/SI, RI/FS and RD/RA documents relating to this Site, prepared prior to the Effective Date of this Agreement, shall be prepared, distributed and subject to dispute in accordance with Paragraphs 7.2 through 7.9 below. The designation of a document as "draft" or "final" is solely for purposes of Consultation with EPA in accordance with this Section. Such designation does not affect the obligation of the Parties to issue documents, which may be referred to herein as "final" as required by law and this Agreement.

7.2 Process for Primary Document Review:

Primary Documents:

- (a) Primary documents include those reports, specified in Paragraph 7.2(b)(i) through (xiv). Primary documents shall be initially issued by the Army in draft form subject to review and comment by EPA and the Commonwealth. Following receipt of comments on a particular draft Primary document, the Army shall 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 forty-five (45) days after issuance, if Dispute Resolution is not invoked, or as modified by decision of the Dispute Resolution process.

In the event of a dispute, the Project Managers shall initially use the informal dispute process referred to in Paragraph 13.3. With the concurrence of the Parties, a Schedule or Deadline affected by the decision of the informal Dispute Resolution may be

extended by providing written notice to both Parties. If, however, no informal decision is reached, the formal Dispute Resolution process shall occur.

(b) As appropriate, the Army shall, for each AOC/SA, complete and transmit draft reports for the following Primary documents to EPA and the Commonwealth for review and comment in accordance with the provisions of this Paragraph:

- (i) SI Work Plan;
- (ii) SI Report;
- (iii) Community Relations/Public Involvement Plan;
- (iv) Risk Assessment Work Plan;
- (v) Master Environmental Plan;
- (vi) RI/FS Work Plan (Health and Safety Plan, Quality Assurance Project Plan, Standard Operating Procedures, Scope of Work, Sampling and Analysis Plan);
- (vii) RI Reports (including Risk Assessment);
- (viii) FS Report (including Initial Screening of Alternatives, Detailed Analysis of Alternatives);
- (ix) Proposed Plan;
- (x) Record of Decision (ROD) (including No Action Decision);
- (xi) Remedial Design/Remedial Action Work Plan;
- (xii) Sixty percent (60%) design of Remedial Action; (including QA/QC and Contingency Plan);
- (xiii) Final Remedial Design; and,
- (xiv) Project Close Out Report.

(c) Only the draft Final reports for the Primary documents identified above shall be subject to Dispute Resolution. The Dispute Resolution process is restricted to the Parties (EPA and the Army). The Army shall complete and transmit draft Primary documents in accordance with the Timetable and

Deadlines established in Section XIV, (Deadlines and Schedules) of this Agreement.

7.3 Secondary Documents:

- (a) Secondary documents include those reports that are discrete portions of the Primary documents and are typically input or feeder documents. Secondary documents shall be issued by the Army in draft subject to review and comment by EPA and the Commonwealth. Although the Army shall respond to comments received, the draft Secondary documents may be finalized in the context of the corresponding Primary documents;
- (b) The Army shall complete and transmit draft reports for the following Secondary documents to EPA and the Commonwealth for review and comment in accordance with the provisions of this Paragraph. However, as an alternative, the Army may submit Secondary documents as part of other documents in order to better facilitate the review process. The Secondary documents shall include:
 - (i) Preliminary Assessment;
 - (ii) Initial Screening of Alternatives;
 - (iii) Detailed Analysis of Alternatives;
 - (iv) Sampling and Data results;
 - (v) Treatability and Pilot Study Work Plans and Reports;
 - (vi) Pre-Remedial Design;
 - (vii) Construction QA/QC Plan;
 - (viii) Pre-Final Remedial Design (95%);
 - (ix) Contingency Plan;
 - (x) Hazardous Waste Minimization Plan (AOC/SA specific); and,
 - (xi) Ordnance Detection and Remediation Plan (AOC/SA Specific).
- (c) Although the EPA and the Commonwealth 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 7.2,

hereof. Dates shall be established for the completion and transmission of draft Secondary reports pursuant to Section XIV, (Deadlines and Schedules), of this Agreement.

7.4 Meetings of the Project Managers on Development of Reports:

The Parties' Project Managers shall meet or confer as necessary approximately every ninety (90) days, except as otherwise agreed to by the Parties, to review and discuss the progress of Work being performed at the Site, including progress on the Primary and Secondary documents. Technical Review Committee (TRC) meetings may satisfy this requirement. The Army shall provide the Commonwealth's Project Manager with advance notice of meetings of the Parties' Project Managers and of the Technical Review Committee. In anticipation of the meeting or conference, an informal progress report shall be distributed by the Army. Prior to preparing any draft report specified in Paragraphs 7.2 and 7.3 above, the Parties' Project Managers shall meet to discuss the report results in an effort to reach a common understanding, to the maximum extent practicable. In order to avoid any conflicting schedules, the Parties shall endeavor to schedule meetings during the months of February, May, August, and November.

7.5 Identification and Determination of Potential ARARs:

- (a) For those Primary reports or Secondary documents that consist of, or include ARAR determinations, the Parties' Project Managers shall, prior to the issuance of a draft report, meet to identify and propose, to the best of their ability, all potential ARARs pertinent to the report being addressed. Draft ARAR determinations shall be prepared by the Army in accordance with CERCLA § 121(d)(2), 42 U.S.C. § 9621(d)(2), the NCP and pertinent guidance issued by EPA that is consistent with CERCLA and the NCP. At a minimum, the Army's proposed list of ARARs shall be chemical specific, location specific, and action specific for each AOC, and may serve as a resource for all Primary and Secondary documents. The Army shall then request the Commonwealth to respond to the Army's determination of all potential State ARARs as early in the remedial process as possible. The Army shall consider the interpretation of State ARARs provided by the Commonwealth. Any dispute concerning the applicability of ARARs may be resolved by the

Parties, through the Dispute Resolution procedures described in Section XIII, (Dispute Resolution);

- (b) The Parties recognize that ARAR identification is necessarily an iterative process and that potential ARARs must be reexamined throughout the RI/FS process until a ROD is issued.

7.6 Review and Comment on Draft Reports:

- (a) The Army shall complete and transmit each draft Primary report to EPA and the Commonwealth on or before the corresponding Timetable established for the issuance of such reports;
- (b) The Army shall complete and transmit each draft Secondary document in accordance with the dates established for the issuance of such reports established pursuant to the MEP;
- (c) Unless the Parties mutually agree in writing to another time period, all draft reports shall be subject to the review periods in this paragraph. In appropriate circumstances, this time period may be further extended in accordance with Section XV, (Extensions). Review of any document by the EPA and the Commonwealth may concern all aspects of the report (including completeness) and should include, but not be limited to, a technical evaluation of any aspect of the document, consistency with CERCLA, the NCP, or any pertinent guidance or policy issued by the EPA. At the request of the EPA Project Manager, to expedite the review process, the Army shall make an oral presentation of the report to EPA and the Commonwealth at the next scheduled meeting of the Project Managers following the transmittal of the draft report, or within fourteen (14) days following the request, or whichever is sooner. Comments by the EPA and the Commonwealth shall be provided with adequate specificity so that the Army may respond to the comments, and if appropriate, make changes to the draft report. Comments shall refer to any pertinent sources of authority or references upon which the comments are based; and upon request of the Army, the EPA and the Commonwealth shall provide a copy of the cited authority or reference. On or before the close of the comment period, EPA and the Commonwealth shall transmit by next day mail, hand delivery, facsimile or certified mail its written comments to the Army;
- (d) Representatives of the Army shall make themselves, and their contractors, if appropriate, readily

available to EPA and the Commonwealth 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 written responses by the Army on the close of a comment period;

- (e) In commenting on a draft report which contains a proposed ARAR determination, EPA and the Commonwealth shall include a statement of whether they object to any portion of the proposed ARAR determination. To the extent that EPA or the Commonwealth objects, it shall explain in detail the basis for the objection(s) and shall identify any ARARs which it believes were not properly addressed in the proposed ARAR determination. If the Army rejects an EPA or State ARAR determination, the Army shall explain in detail the basis for its rejection;
- (f) With the exception of the draft ROD and Responsiveness Summary, the review of which is detailed in Section XVII, (Records of Decision and Plans for Remedial Action), the review and comment period for all Draft Primary Documents developed and submitted by the Army to the EPA and DEP shall be as follows:
 - (1) EPA/DEP Review - forty-five (45) days (with a thirty (30) day extension);
 - (2) The Army prepares a response letter forty-five (45) days (with a twenty (20) day extension);
 - (3) EPA/DEP review responses - fifteen (15) days;
 - (4) Army revises and issues Draft Final Report - thirty (30) days;
 - (5) If necessary, the Army will develop an additional scope of work within ninety (90) days after the final decision rendered by the Dispute Resolution process.
- (g) Following the close of the comment period for a draft report, the Army shall give full consideration to all written comments on the draft report submitted during the comment period. The Army shall transmit to EPA and the Commonwealth, its written response to the comments received within the comment period. While the resulting draft Final report shall be the responsibility of the Army, it shall be the product of consensus between the Parties to the maximum

extent possible. The Army's deadline for action does not commence until receipt of comments from the EPA and the Commonwealth.

- (h) With the concurrence of EPA, the Army may extend the thirty (30) day period for issuing the Draft Final Primary report for an additional twenty (20) days by providing written notice to EPA and the Commonwealth prior to the end of the thirty (30) day period. Under appropriate circumstances, this time period may be further extended in accordance with Section XV, (Extensions).

7.7 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 XIII, (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 XIII, (Dispute Resolution).

7.8 Finalization of Report

The Draft Final report shall serve as the Final Primary report, after a forty five (45) day period for review and comment by EPA and the Commonwealth, shall be deemed incorporated into this Agreement, and shall become an enforceable part hereof if neither EPA, the Commonwealth, nor the Army provides comments. If comments are received, and Dispute Resolution is not invoked by the Army or EPA, the Army shall give full consideration to the written comments, and shall submit a revised final document to the EPA and Commonwealth within thirty-five (35) days of receipt of said comments.

If Dispute Resolution is invoked by the Army or EPA, and the Army's position is sustained, the document shall serve as the final Primary report, shall be deemed incorporated herein, and shall become an enforceable part hereof. If the Army's position is not sustained in the Dispute Resolution process, the Army shall, within thirty-five (35) days, prepare a revision of the draft final report which conforms to the results of Dispute Resolution. In appropriate circumstances, the time period for this revision may be extended in accordance with Section XV, (Extensions).

If Dispute Resolution results in Additional Work, the Army shall develop a scope of work to address said Additional Work within ninety (90) days, following the Dispute Resolution decision, for review and comment by EPA and the Commonwealth.

7.9 Subsequent Modifications of Final Reports and Additional Work:

Following finalization of any Primary report pursuant to Paragraph 7.8 above, any Party may seek to modify a report, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in Subparagraphs (a), (b) and (c) below:

- (a) A Party may seek to modify a report after acceptance as a final report by the other Party, if a Party determines, based on new information (i.e., information that became available, or conditions that became known, after the report was finalized) that the requested modification is necessary. A Party may seek such a modification by submitting a concise written request to the Project Managers. The request shall specify the nature of the requested modification; and the new information upon which the request is based;
- (b) In the event that a consensus is not reached by the Project Managers on the need for a modification, only a Party to this Agreement may invoke Dispute Resolution to determine if such modification shall be conducted. Modification of a report shall be required only upon showing that the requested modification is: (1) based on significant new information; and, (2) the requested modification could be of significant assistance in evaluating the selection of remedial alternatives, or in protecting human health or the environment;
- (c) Nothing in this Section shall alter EPA's right to require the performance of Additional Work which was not contemplated by this Agreement. The Army's obligation to perform such Work must be established by either a modification of a report or document, or by amendment to this Agreement. Any Additional Work determined to be necessary by the Parties is subject to the authority and obligations established in this Agreement and the MEP concerning Response Actions.

VIII. PROJECT MANAGERS

- 8.1 Prior to the Effective Date of this Agreement, the Parties shall each designate a Project Manager for the purpose of overseeing the implementation of this Agreement. The Commonwealth should also designate a Project Manager in order to insure compliance with whatever rights the Commonwealth might otherwise have under CERCLA for purposes of remediating the Site. The Project Managers shall be responsible for ensuring implementation of the PA/SI, RI/FS and RD/RA in accordance with CERCLA, the MEP and this Agreement. Communications on all documents among both Parties and the Commonwealth, including reports, comments, and other correspondence concerning the activities performed pursuant to this Agreement to the extent practicable, shall be directed through the Parties' and Commonwealth's Project Managers consistent with Section XXXI, (Notices and Submissions).
- 8.2 The Parties and Commonwealth may change their respective Project Managers. Such change shall be accomplished by notifying the other Party and the Commonwealth, if appropriate, in writing, five (5) days in advance of the change.
- 8.3 The Parties' and Commonwealth's Project Managers shall meet or confer to discuss progress as described in Paragraph 7.4. Although the Army has ultimate responsibility for meeting its respective Deadlines, Schedules or Timetables, the EPA and DEP Project Managers shall endeavor to assist in this effort by scheduling meetings to address documents, reviewing reports, overseeing the performance of environmental monitoring at the Site, reviewing PA/SI, RI/FS or RD/RA progress, and attempting to resolve disputes informally. At least one (1) week prior to each scheduled progress meeting, the Army will provide EPA and the Commonwealth a draft agenda and summary of the status of the Work subject to this Agreement. The minutes and agenda of each progress meeting, and all documents discussed during the meeting (which were not previously provided as attachments), may constitute the Quarterly Progress Report, and shall be sent to the Project Managers within thirty (30) days after the meeting's close. If an extended period occurs between Project Manager progress meetings, the Project Managers may agree that the Army shall prepare an interim progress report and provide it to the EPA and the Commonwealth. The report shall include the information that would normally be discussed in a progress meeting of the Project Managers. Other meetings shall be held more frequently upon request of the EPA or the Army Project Managers.

- 8.4 The Parties and the Commonwealth's Project Managers may recommend and request minor field modifications to the Work performed pursuant to this Agreement, or in techniques, procedures or designs utilized in carrying out this Agreement, which are necessary to the completion of the project. However, minor field modifications proposed under this Section may be approved orally by each Parties' Project Managers. If agreement cannot be reached on the proposed minor modifications to Work, the Dispute Resolution provisions of Section XIII, hereof, shall be invoked by the Party requesting such modification. The Party requesting the modification shall submit a written statement to the other Party in accordance with Section XIII, (Dispute Resolution). Within five (5) business days following an oral agreement of both Parties to a modification made pursuant to this Section, the Party requesting the modification shall prepare a memorandum detailing the modification and the reasons therefore, and shall provide or mail a copy of the memorandum to the other Project Manager for signature and return. In addition, a copy of the modification memorandum shall be sent to the Commonwealth's Project Manager.
- 8.5 Modifications of Work not provided for in Paragraph 8.4 of this Section, must be approved in accordance with Paragraph 7.9 of this Agreement. If agreement cannot be reached on the proposed modification to Work, the Dispute Resolution provisions of Section XIII, shall be invoked by the Party requesting the modification by submitting a written statement to the other Party in accordance with Section XIII, (Dispute Resolution). If the Parties agree to the modification, within five (5) business days following a modification made pursuant to this Section, the Party requesting the modification shall prepare a memorandum detailing the modification and the reasons therefore and shall provide or mail a copy of the memorandum to the other Party for signature and return. In addition, a copy of the modification memorandum shall be sent to the Commonwealth's Project Manager.
- 8.6 The Army Project Manager shall be responsible for the day to day field activities at the AOC/SA. The Army Project Manager or other designee(s) shall be physically present at the AOC/SA, or reasonably available to supervise Work performed at the AOC/SA during implementation of the Work pursuant to the Agreement. For all the times that such Work is being performed, the Army Project Manager shall inform the EPA and Commonwealth Project Managers of the name and telephone number of the designated employee responsible for supervising Work. The absence of the EPA or Commonwealth Project Managers from the Site shall not be cause for Work stoppage or delay. Upon EPA's request,

the Army designee shall immediately cause the Army's contracting officer to issue a stop Work order, if an emergency or threat of an emergency exists. EPA will only request such a stoppage pursuant to the NCP. After the request for a work stoppage, the Army Project Manager shall be notified by EPA immediately, but not later than two (2) hours after the stop Work request.

- 8.7 Both Parties' Project Managers shall be responsible for ensuring that all communications received from the other Project Managers are appropriately disseminated to and processed by the Party which each represents.
- 8.8 The Parties shall transmit Primary and Secondary documents and all notices required herein by next day mail, hand delivery, facsimile or certified letter to the Project Managers specified in Paragraph 31.1, (Notices and Submissions). Time limitations shall commence upon receipt. The Army shall provide EPA and the Commonwealth each with ten (10) copies of the Primary documents and ten (10) copies of the Secondary documents.
- 8.9 Nothing in this Section shall be construed to interfere with or alter the internal organization or procedures of a Party, including, without limitation, signature authority.

IX. ACCESS

9.1 Without limiting any authority conferred on EPA or the Commonwealth by Federal law, including without limitation statutes, regulations and common law, EPA and the Commonwealth shall have Access to the Site and any property to which Access is required for the implementation of this Agreement, to the extent the Access to the property is controlled by or available to the Army for the purposes of conducting activities consistent with this Agreement, including but not limited to:

- (a) inspecting records, operating logs, contracts and other documents relevant to implementation of this Agreement;
- (b) monitoring field activities of the Army and its contractors, lessees, assigns, and employees to assure that such activities are carried out in compliance with the terms of this Agreement;
- (c) verifying data or information submitted by the Army to the EPA and the Commonwealth;
- (d) conducting such tests as the EPA Project Manager deems necessary; and
- (e) assessing the need for planning additional Remedial Actions at the Site.

The Army shall honor all reasonable requests for such Access by the EPA or the Commonwealth conditioned upon the presentation of proper credentials as agreed upon by the Project Managers. The Army Project Manager or designee shall provide briefing information, coordinate Access and escort to restricted or controlled Access areas, arrange for installation passes and coordinate other Access issues that may arise. However, such Access shall be obtained in conformance with all applicable statutes and regulations, including but not limited to regulations respecting national security, and in a manner minimizing interference with military regulations at the Site.

9.2 Upon denying any request for Access made pursuant to Paragraph 9.1, herein, the Army shall provide an oral explanation within twenty-four (24) hours, and a written explanation within seventy-two (72) hours indicating the reason for the denial, and to the extent possible, provide a recommendation for accommodating the requested Access in an alternate manner.

- 9.3 The Parties agree that this Agreement is subject to CERCLA § 120(j), 42 U.S.C. § 9620(j), regarding the issuance of site specific Presidential Orders as may be necessary to protect the national security.
- 9.4 If EPA, or the Commonwealth requests Access in order to observe a sampling event or other Work being conducted pursuant to this Agreement, and Access is denied or limited to protect the health and safety of EPA's or the Commonwealth's personnel, contractors or their agents, the Army agrees to reschedule or postpone such sampling or Work if the EPA so requests, until such mutually agreeable time when the requested Access is allowed; unless such a delay would create an endangerment to human health or the environment. If such a delay would create an endangerment, the Army will provide the EPA and the Commonwealth with all information obtained in such a sampling event or other Work conducted. The Army shall not restrict the Access rights of the EPA to any greater extent than the Army restricts the Access rights of its contractors performing Work pursuant to this Agreement.
- 9.5 If EPA or DEP obtains any samples it shall, upon request and before leaving the Site, give the Army Project Manager, or his/her designated representative, a receipt describing the sample obtained, and, if requested, a portion of each such sample. A copy of the results of any analysis made of such samples shall be provided to the Project Managers within the time limits specified in Paragraph 10.1 of this Agreement.
- 9.6 To the extent that Access is required to areas presently owned by or leased to persons or entities other than the Army, including other branches of DOD, the Army agrees to exercise its best efforts and authorities to obtain Access from the present owners and/or lessees within sixty (60) calendar days after identification of the need for such Access when necessary. "Best efforts" for the purposes of this Paragraph shall include, but not be limited to, identifying and locating the owner(s) and lessees of property onto which Access is required and, if appropriate, seeking judicial assistance and providing the payment of money to obtain Access agreements from the owner(s) or lessees of all property onto which Access is required under this Agreement.
- 9.7 In the event that Site Access is not obtained within the sixty (60) day time period set forth above, within fifteen (15) days after the expiration of the sixty (60) day period, the Army shall in writing notify EPA and the Commonwealth regarding the lack of Access agreements, and describe the efforts undertaken to obtain such Access

agreements. EPA may thereafter, consistent with its authority, assist the Army in obtaining Access. The Army shall reimburse the EPA for all costs incurred by it in obtaining Access, including, but not limited to costs incurred in acquiring all property interests necessary for performance of Work or Additional Work. At the request of the EPA, the Army shall submit for approval, within fifteen (15) days of such request, appropriate modifications to any Response Action affected by an inability to obtain Access.

9.8 With respect to property referred to in Paragraph 9.6, upon which monitoring wells, pumping wells, or treatment facilities are to be located, or other Response Actions are to be taken pursuant to this Agreement, any Access obtained shall be conditioned upon:

- (i) no conveyance of title, easement, or other interest in the property being consummated without provisions for the continued operation of such wells, treatment facilities, or other Response Actions on the property;
- (ii) the owners or lessees of any such property notifying the Army, EPA and the Commonwealth by certified mail, at least sixty (60) days prior to any conveyance of an interest in the property of the property owner's or lessees intent to convey, and of the provisions made for the continued operation of the monitoring wells, treatment facilities, or other Response Actions pursuant to this Agreement; and,
- (iii) the EPA having identical Access as the Army.

9.9 The Army shall take appropriate actions to ensure that all Response Actions to be undertaken pursuant to this Agreement shall not be impeded or impaired by any transfer of title or transfer of any other interest in real property relating to the Facility or any structures located thereon. Such steps shall include, but shall not be limited to providing covenants in deeds and leases transferring such property which provide that:

- (i) the Parties shall have the rights of Access to and over such property which are set forth in Paragraph 9.1 above;
- (ii) no subsequent transfer of such property shall be made without provisions for such rights of

Access and for the continued operation of any Response or Remedial Action on such property (including, but not limited to: monitoring wells, pumping wells and treatment facilities); and,

- (iii) the owners or lessees of any such property shall notify the Army, EPA and the Commonwealth by certified mail, at least sixty (60) days prior to any conveyance of an interest in the property, of the property owner's or lessee's intent to transfer any interest in the property, and of the provisions made for the continued operation of the monitoring wells, treatment facilities, or other Response Action pursuant to this Agreement.

9.10 All Parties with Access to the Site under this Section shall comply with all applicable Health and Safety Plans. Implementation of Health and Safety Plans during activities under this Agreement shall be the responsibility of the Army and its contractors;

X. DATA AND DOCUMENT AVAILABILITY

- 10.1 The Army shall make all sampling results, test results or other data generated through the implementation of this Agreement available to EPA and the Commonwealth within sixty (60) days. If data validation is not completed within sixty (60) days, preliminary data or results shall be made available within the sixty (60) day period, and quality assured data or results shall be submitted as they become available, but in no event later than ninety (90) days after the date of the sampling event. These periods can be extended upon the mutual agreement of the EPA and Army Project Managers.
- 10.2 At the request of EPA, the Army shall allow, to the extent practicable, split or duplicate samples to be taken by EPA or the Commonwealth, or their authorized representatives, of any samples collected by the Army pursuant to the implementation of this Agreement. The Army shall notify the EPA and the Commonwealth not less than ten (10) days in advance of any scheduled sample collection activity, well drilling or other monitoring activity conducted pursuant to this Agreement. The ten (10) day notification may be waived with the agreement of the EPA Project Manager consistent with Section XV, (Extensions).
- 10.3 If preliminary analysis indicates a potential imminent and substantial endangerment to human health or the environment, EPA and the Commonwealth Project Managers shall be immediately notified, and confer as to the Response Action necessary in accordance with this Agreement.

XI. PERMITS

- 11.1 The Army shall be responsible for obtaining all Federal, Commonwealth and local Permits which are necessary for the performance of Work under this Agreement and the MEP.
- 11.2 The Parties recognize that pursuant to CERCLA § 121(e)(1), 42 U.S.C. § 9621(e)(1), and the NCP, portions of the Remedial Actions called for by this Agreement and conducted entirely on the Site are exempt from the procedural requirement to obtain Federal, State, or local Permits. All activities must, however, comply with the permit issue(s) under appeal. However, as to Work that cannot be so implemented, any corresponding Timetables, Deadlines, or Schedules shall be subject to Section XV, (Extensions), of this Agreement.
- 11.3 When the Army proposes a Remedial Action to be conducted entirely on the Site, which in the absence of § 121(e)(1) of CERCLA and the NCP would require a Federal or State Permit, and for which the Army does not seek a Permit, the Army shall include in the relevant submittal to the EPA and the Commonwealth:
- (a) Identification of each Permit which would be required;
 - (b) Identification of the substantive standards, requirements, criteria, or limitations which otherwise would have to be met to obtain each such Permit; and,
 - (c) Explanation of how the proposed Response Action will meet the substantive standards, requirements, criteria or limitations identified in Subparagraph (b).
- Upon request of the Army, EPA or the Commonwealth will provide their respective positions and assistance with respect to Subparagraphs (b) and (c) in a timely manner.
- 11.4 Paragraph 11.2 above is not intended to relieve the Army of the requirement(s) of obtaining a Permit whenever it proposes a Response Action involving the shipment or movement of a hazardous waste off the Site, or in any other circumstances where the exemption provided for at 42 U.S.C. § 9621(e) does not apply.
- 11.5 The Army shall notify EPA and the Commonwealth in writing of any Permits required for any activities it plans to undertake as soon as it becomes aware of the requirement. The Army shall apply for any such Permits and provide EPA

and the Commonwealth with copies of all completed applications and Permits.

- 11.6 During any appeal by the Army of any Permit required to implement this Agreement, or during review of any proposed modification(s) to the Permit, the Army shall continue to implement those portions of this Agreement which can be reasonably implemented, independent of final resolution of the Permit issue(s) under appeal. However, as to Work that cannot be so implemented, any corresponding Timetables, Deadlines, or Schedules shall be subject to Section XV, (Extensions), of this Agreement.

XII. REMOVAL AND EMERGENCY ACTIONS

12.1 Discovery and Notification

If any Party discovers or becomes aware of an emergency or other situation that may present an imminent and substantial endangerment to human health or the environment at or near the Site which is related to or may affect the Work performed under this Agreement, that Party shall immediately orally notify EPA and the Commonwealth and provide written notice within forty-eight (48) hours of discovery of such emergency. Upon such discovery or notification, the Army shall take immediate action to notify the appropriate Federal, State and local agencies and affected members of the public.

12.2 Work Stoppage

In the event a Party determines that activities conducted pursuant to this Agreement will cause or otherwise be threatened by a situation described in Paragraph 12.1, the Party may require the termination of such activities for such period of time as the Project Managers determine is needed to abate the danger. Any unilateral Work stoppage for longer than twenty-four (24) hours requires a written notice to the other Party. Any dispute under this Paragraph shall be referred to the EPA Region I, Waste Management Division Director for a Work stoppage determination in accordance with Section XIII, (Dispute Resolution) of this Agreement.

12.3 Removal Actions

- (a) The provisions of this Section shall apply to all Removal Actions as defined in CERCLA § 101(23), 42 U.S.C. § 9601(23), including all modifications to, or Extensions of, the ongoing Removal Actions, and all new Removal Actions proposed or commenced following the Effective Date of this Agreement;
- (b) Any Removal Actions conducted at the Site shall be conducted in a manner consistent with this Agreement, CERCLA, the NCP and Executive Orders 12580 and 11735;
- (c) If a Party determines that there may be a threat to human health or the environment, because of an actual or threatened release of a Hazardous Substance, the Army shall perform a Removal Site Evaluation as required by § 300.410 of the NCP. This evaluation shall investigate the source and nature of the release, the magnitude of the threat, and shall

include an evaluation of factors necessary to make a determination of whether a Removal is necessary;

- (d) Nothing in this Agreement shall alter the Army's authority with respect to Removal Actions conducted pursuant to CERCLA § 104, 42 U.S.C. § 9604, and Executive Orders 12580 and 11735;
- (e) If a Party makes a determination, based on the Removal Site Evaluation, that there is a threat, the Army must take any appropriate Removal Action to abate, prevent, minimize, stabilize, mitigate, or eliminate the release or the threat of release. Section 300.415 of the NCP describes the factors to be considered when determining whether a Removal Action is necessary;
- (f) If a Party determines that a Removal Action is appropriate, Removal Actions shall begin as soon as possible. Whenever a planning period of at least six (6) months exists before on-Site activities must be initiated, an Engineering Evaluation/Cost Analysis (EE/CA) shall be conducted. The EE/CA is an analysis of Removal alternatives for a Site. In addition, if sampling is to be performed, Sampling and Analysis Plans shall be prepared and submitted to EPA for review;
- (g) If the Army determines that the Removal Action will not fully address the threat posed by the release and the release may require Remedial Action, the Army shall ensure an orderly transition from Removal to Remedial Response activities; and,
- (h) In the event the Army fails to take the necessary Removal Actions to abate such threat and protect human health and the environment, the EPA may take such Removal Actions as are necessary to protect human health and the environment. The Army shall reimburse the EPA, to the extent allowed by law, for all costs involved in abating any danger or threat to human health and the environment.

12.4 Notice and Opportunity to Comment

- (a) In the case of all Removal Actions, the Army shall designate a spokesperson, who shall inform the community of actions taken, respond to inquiries and provide information concerning the release. The spokesperson shall notify, at a minimum, immediately affected citizens, and State and affected local officials;

- (b) For actions where the Army determines that a Removal is appropriate and less than six (6) months exist before on-Site Removal will commence, the Army shall:
- (i) Publish a notice of availability of the Administrative Record in a major local newspaper within sixty (60) days of initiation of an on-Site Removal; and,
 - (ii) Provide a public comment period of not less than thirty (30) days from the time the Administrative Record is made available; and develop a written response to significant comments;
- (c) If a Removal Action will extend beyond one hundred and twenty (120) days from the initiation of on-Site Removal activities, the Army shall by the end of the one hundred and twenty (120) day period:
- (i) Conduct interviews with local officials, community residents, and other interested or affected parties to solicit their concerns;
 - (ii) Prepare a formal Community Relations Plan (CRP) which specifies the activities the Army expects to undertake during the Removal activity; and,
 - (iii) Establish at least one (1) local information repository at or near the location of the Response Action, which should contain items made available for public information, as well as the Administrative Record;
- (d) If a planning period of at least six (6) months exists prior to initiation of on-Site Removal activities, the Army shall at a minimum:
- (i) Comply with the requirements of subparagraph 12.4(c)(i), (ii) and (iii) prior to the completion of EE/CA. In addition, the information repository and Administrative Record shall be established no later than when the EE/CA approval memorandum is signed;
 - (ii) Publish a notice of availability, and a brief description of the EE/CA in two local major newspapers;
 - (iii) Provide a reasonable opportunity, not less than thirty (30) calendar days, for submission of written and oral comments; and,

(iv) Prepare a written response to significant comments;

(e) All activities related to ongoing Removal Actions shall be reported by the Army in the progress reports as described in Section VIII, (Project Managers).

12.5 Notwithstanding any other provision of this Agreement, the Army retains the rights consistent with Executive Orders 12580 and 11735 to conduct such emergency actions as may be necessary to alleviate immediate threats to human health or the environment from the release or threatened release of Hazardous Substances, pollutants, contaminants or Oil at or from Fort Devens. Such actions may be conducted at any time, either before or after the issuance of a ROD.

12.6 Any dispute among the Parties as to whether a non-emergency Response Action proposed under Section XII, (Removal and Emergency Actions), is properly considered a Removal Action, as defined by 42 U.S.C. § 9601(23), or as to the consistency of such a Removal Action with the final Remedial Action, shall be resolved pursuant to Section XIII, (Dispute Resolution). Such dispute may be brought directly to the Dispute Resolution Committee (DRC) or the Senior Executive Committee (SEC) at the EPA's request.

XIII. DISPUTE RESOLUTION

- 13.1 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.
- 13.2 Within forty-five (45) days after: (1) the issuance of a draft Final Primary document pursuant to Section VII, (Consultation with EPA), or (2) any action which generates a dispute, the disputing Party shall submit to the other Party a written statement of dispute setting forth the nature of the dispute, the Work affected by the dispute, the disputing Party's position with respect to the dispute and the technical, legal or factual information the disputing Party is relying upon to support its position.
- 13.3 Prior to referring any dispute to the Dispute Resolution Committee (DRC), the disputing Party shall engage the other Party in informal Dispute Resolution at the Project Manager or the Project Managers' immediate supervisor level. During this informal Dispute Resolution period, the Parties shall meet as many times as is necessary to discuss and attempt resolution of the dispute.
- 13.4 The Dispute Resolution Committee (DRC) is hereby established for the purpose of resolving disputes arising under this Agreement. The DRC will serve as a forum for resolution of disputes for which agreement has not been reached through informal Dispute Resolution. Any Party may invoke the Dispute Resolution described in this Paragraph through Paragraph 13.9 at any time subsequent to fulfilling the requirements of Paragraphs 13.1 to 13.3. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (Senior Executive Service (SES) or equivalent) or be delegated the authority to participate on the DRC for the purposes of Dispute Resolution under this Agreement. The EPA representative on the DRC is the Waste Management Division Director of EPA's Region I (EPA Division Director). The Army's designated member is Fort Devens' Installation Commander. Written notice of any delegation of authority from the Parties' designated representative on the DRC shall be provided to the other Party pursuant to the procedures of Section VIII, (Project Managers).

- 13.5 Following the submittal of a dispute to the DRC, the DRC shall have twenty-one (21) days to unanimously resolve the dispute and issue a written decision signed by the Parties. If the DRC is unable to unanimously resolve the dispute within this twenty-one (21) day period, the written statement of dispute shall be forwarded to the Senior Executive Committee (SEC) for resolution within seven (7) working days after the close of the twenty-one (21) day resolution period.
- 13.6 An SEC is hereby established for the purpose of resolving disputes for which agreement has not been reached by the DRC. The EPA representative on the SEC is the Regional Administrator of EPA's Region I. The Army representative on the SEC is the Deputy Assistant Secretary of the Army for Environment, Safety and Occupational Health. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a unanimous written decision signed by both Parties. If unanimous resolution of the dispute is not reached within twenty-one (21) days, EPA's Regional Administrator shall issue a written position on the dispute. The Army may, within twenty-one (21) 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 a Party elects not to elevate the dispute to the Administrator within the designated twenty-one (21) day period, the Party shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.
- 13.7 Upon submittal of a dispute for resolution to the Administrator of EPA pursuant to Paragraph 13.6 above, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the EPA Administrator shall meet and confer with the Army Secretariat Representative to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the Parties with a written final decision setting forth the resolution of the dispute, and a statement of the information upon which the decision is based. The duties of the Administrator set forth in this Section shall not be delegated.
- 13.8 The EPA Region I Division Director may request, in writing, that Work affected by a dispute in the Dispute Resolution process be discontinued, if EPA believes such Work is inadequate or defective and would adversely impact human health or the environment; or that such Work would substantially affect the process of Remedial Action selection or implementation. To the extent possible, EPA

shall consult with the Army prior to initiating a Work stoppage request. After stoppage of Work, if a Party believes the Work stoppage is inappropriate or may have potential significant adverse impacts, the Party may meet with the other Party to discuss the Work stoppage. Following this meeting, and after further consideration of the issues, the EPA Division Director will issue, in writing, a final decision with respect to the Work stoppage. The final written decision of the EPA Division Director may immediately be subjected to formal Dispute Resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the Party requesting Dispute Resolution.

- 13.9 The pendency of any dispute under this Section shall not affect the Army'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 to be completed in accordance with the applicable Schedule.
- 13.10 As soon as possible, and no later than within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this Section, the Army shall incorporate the resolution and final determination into the appropriate plan, Timetable, Schedule or procedures and proceed to implement this Agreement according to the amended plan, Timetable or procedures.
- 13.11 Resolution of a dispute pursuant to this Section of the Agreement constitutes a final resolution of any dispute arising under this Agreement. The Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Section of this Agreement.
- 13.12 A timely and good faith request for Dispute Resolution shall toll any assessment of Stipulated Penalties or application for judicial enforcement of the affected issue. If the disputed request or position is rejected by the Dispute Resolution process, Stipulated Penalties may be assessed and accrue from the date of the original dispute, but will not be payable until a final decision is rendered by the Dispute Resolution process. Following an affirmative decision for the Army, no Stipulated Penalties will be due and owing.

13.13 If the Commonwealth is not a Party to this Agreement, they shall not be entitled to initiate or participate in the Dispute Resolution process.

XIV. DEADLINES AND SCHEDULES

- 14.1 The Parties agree that all Timetables, Deadlines, and Schedules shall conform to the requirements set forth in CERCLA § 120.
- 14.2 The Parties agree to the Deadlines set forth in the MEP for completion of the following draft Primary documents:
- (1) Master Environmental Plan
 - (2) SI Workplan
 - (3) SI Report
 - (4) Community Relations/Public Involvement Plan
 - (5) Risk Assessment Workplan
 - (6) RI/FS Workplans (including HASP, QAPP, SOP, SAP)
 - (7) RI Reports (including Risk Assessment)
 - (8) FS Reports (including Initial Screening of Alternatives and Detailed Analysis of Alternatives)
 - (9) Proposed Plan
 - (10) Record of Decision (including No Action Decisions)
- 14.3 Upon completion of each ROD, the Army shall adhere to the Schedule in the MEP for the completion of the following draft Primary Documents:
- (1) Remedial Design Workplan
 - (2) Remedial Action Workplan (including Construction QA/QC and Contingency Plan)
 - (3) 60% of Remedial Design
 - (4) Final Remedial Design
 - (5) Project Closeout Report
- 14.4 The Army shall submit the Draft MEP by July 15, 1991.
- 14.5 The Army shall submit the draft RI/FS Report for each AOC or OU within six hundred and sixty (660) days after the final RI/FS Workplan for such AOC or OU is approved by the EPA. For the Shepley's Hill Landfill and the Cold Spring Brook AOC's, a draft RI Workplan shall be delivered to EPA and the Commonwealth by March 1, 1991.
- 14.6 The Army shall submit a draft Proposed Plan for each AOC or OU within thirty (30) days following approval of the Draft Final RI/FS.
- 14.7 The Army shall submit the draft ROD and Responsiveness Summary for each AOC or OU within one hundred and twenty (120) days following approval of the final Proposed Plan.
- 14.8 The Army shall, no later than fifteen (15) months after the completion of the investigation and study (ROD)

commence substantial continuous on-site Remedial Action at each AOC or OU, consistent with CERCLA § 120 (e).

- 14.9 For any SA/AOC or OU not identified as of the Effective Date of this Agreement, the Army shall propose Timetables for all documents listed in Paragraphs 14.2 and 14.3 within twenty-one (21) days of the addition of an Area of Contamination to the list of AOCs found in Attachment I of this Agreement. Within fifteen (15) days following receipt of comments, the Army shall, as appropriate, make revisions and reissue the proposal. The Parties shall meet as necessary to discuss and finalize the proposed Timetables. If the Parties agree on proposed Timetables, the finalized Timetables shall be incorporated into the Workplans listed in Paragraphs 14.2 and 14.3. If the Parties fail to agree within thirty (30) days on the proposed Timetables, the matter shall immediately be submitted for Dispute Resolution pursuant to Section XIII, (Dispute Resolution), of this Agreement. The final Timetables established pursuant to this Paragraph shall be published by EPA, and shall become an Appendix to this Agreement. The proposed Timetables shall be consistent with the time frames set forth in Paragraphs 14.5, 14.6 14.7, and 14.8.
- 14.10 The Deadlines and Schedules set forth in this Section, or to be established, as set forth in this Section, after the Effective Date of this Agreement, may be extended pursuant to Section XV, (Extensions), of this Agreement.

XV. EXTENSIONS

- 15.1 A Timetable, Deadline or Schedule may be extended by the Parties upon receipt of a timely request for Extension and when good cause for the requested Extension exists. Any request for Extension by a Party shall be submitted in writing to the other party and shall specify:
- (a) The Timetables, Deadlines or Schedules that are sought to be extended;
 - (b) The length of the Extension sought;
 - (c) The good cause(s) for which the Extension is sought; and,
 - (d) Any related Timetables, Deadlines or Schedules that would be affected if the Extension were granted.
- 15.2 Good cause exists for an Extension when sought in regard to:
- (a) An event of Force Majeure;
 - (b) A delay caused by the other 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 Timetables, Deadlines or Schedules;
 - (e) Any other event or series of events mutually agreed to by the Parties as constituting good cause;
 - (f) Any Work stoppage within the scope of Section XII, (Removal and Emergency Actions);
 - (g) A delay caused by materially and previously unknown circumstances, act, omission or occurrence that could not have been reasonably uncovered, and materially alters the AOC such that it would require a modification of the RI/FS; and,
 - (h) A proposal which will expedite the cleanup process, to the extent such proposal is consistent with (1) the protection of human health and the environment, and (2) this Agreement;

- 15.3 Denial of a request for Extension is subject to the Dispute Resolution procedures of Section XIII (Dispute Resolution), hereof.
- 15.4 Within twenty (20) days of receipt of a request for an Extension of Timetables, Deadlines or Schedules, the receiving Party shall advise the requesting Party, in writing, of their respective positions on the request. Any failure by a Party to respond within the twenty (20) day period shall be deemed to constitute concurrence in the request for Extension. If the receiving Party does not concur with the requested Extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.
- 15.5 If there is a consensus among the Parties that the requested Extension is warranted, the Army shall extend the affected Timetables, Deadlines or Schedules accordingly, or to a mutually agreed upon alternative. If there is no consensus among the Parties as to whether all or part of the requested Extension is warranted, the Timetables, Deadlines or Schedules shall not be extended, except in accordance with the determination resulting from the Dispute Resolution process.
- 15.6 A Party must invoke Dispute Resolution within seven (7) days of receipt of a statement of nonconcurrence with the requested Extension.
- 15.7 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, Deadline or Schedule until a decision is reached on whether to approve the requested Extension. 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, but will not be payable until a final decision is rendered by the Dispute Resolution process. 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, Deadline or Schedule most recently extended, and no Stipulated Penalties will be due and owing as a result of a grant of Extension.

XVI. FORCE MAJEURE

- 16.1 A Force Majeure shall mean any event arising from causes beyond the control of the 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; unusual delay in transportation; adverse weather conditions that could not be reasonably anticipated; inability to obtain at a reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits or licenses due to action or inaction of any non-DOD governmental agency or authority; restraint by court order or order of a public authority; 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 Army shall have made a timely request for such funds as part of the budgetary process set forth in Section XXV, (Funding) of this Agreement. Force Majeure shall not include increased costs or expenses of Response Actions, whether or not anticipated at the time such Response Actions were initiated; or non-attainment of the Cleanup or Performance Standards set forth pursuant to Section VI, (Work to be Performed), or the MEP, of this Agreement.
- 16.2 When circumstances occur which may delay or prevent the completion of any obligation of the Agreement, whether or not caused by a Force Majeure event, the Army shall notify the EPA orally of the circumstances within forty-eight (48) hours after the Army's Project Manager first knew or should have known of such circumstances. If the EPA Project Manager is unavailable, the Army shall immediately thereafter notify the Director of the Waste Management Division, EPA Region I. Within five (5) working days after the Army's Project Manager first becomes aware of such circumstances, Army shall supply to EPA, in writing, an explanation of the cause(s) of any actual or expected delay, the anticipated duration of any delay, the measures taken and to be taken by the Army to prevent or minimize the delay, and the Timetable for implementation of such measures. The Army shall exercise best efforts to avoid or minimize any delay, and any effects of a delay. Failure to give timely oral and written notice to the EPA in accordance with this Section shall constitute a waiver of any claim of Force Majeure with respect to the circumstances in question.

- 16.3 If EPA agrees that an event delaying or preventing the completion of an obligation under this Agreement is or was caused by a Force Majeure event, EPA shall notify the Army in writing of its agreement to provide such additional time as may be necessary to allow the completion of the specific phase of the Work and any succeeding phase of the Work directly affected by such delay. Such additional time shall be no longer than the actual delay resulting from the Force Majeure event or that shall allow for the completion of a substitute activity in furtherance of the Work if EPA determines that a substitute activity is appropriate.
- 16.4 In proceedings on any dispute regarding a delay or prevention in performance, the Army shall have the burden of proving by a preponderance of the evidence (1) that the delay is or was caused by a Force Majeure event, and (2) that the amount of additional time requested is necessary to compensate for that event.
- 16.5 Delay in achievement of any milestone established by the PA/SI, RI/FS or RD/RA Work Plans and/or other documents shall not automatically justify or excuse delay in achievement of any subsequent milestone.

XVII. RECORDS OF DECISION AND PLANS FOR REMEDIAL ACTION

- 17.1 This Section shall apply to the selection of Remedial Action(s) and any disputes relating thereto.
- 17.2 As appropriate for each AOC or OU, the Army shall submit the final draft RI/FS and Proposed Plan to EPA and the Commonwealth for review within the time frame detailed in Section XIV, (Deadlines and Schedules), and the MEP of this Agreement. These documents shall contain a statement of the preferred Remedial alternative(s). EPA's and the Commonwealth's comments shall be addressed by the Army when preparing the final RI/FS report and drafting the Proposed Plan. The RI/FS and Proposed Plan shall be distributed to the public, and the Army will hold a public information meeting to discuss the preferred alternative for each AOC or OU. A public comment period will be announced, and a public hearing will be held by the Army to receive comments on the RI/FS and Proposed Plan for each AOC or OU. Copies of all written and oral public comments received shall be provided to EPA and the Commonwealth. Following public comment, the Army, in consultation with EPA and the Commonwealth, will modify the FS or Proposed Plan based on the comments received. Upon request by EPA, modifications will be made by the Army, and the modified documents will be reviewed by EPA and the Commonwealth.
- 17.3 Based on the RI/FS, Proposed Plan and comments received from EPA, the Commonwealth and the public, the Army shall draft and submit to EPA and the Commonwealth, a draft ROD for each AOC or OU within sixty (60) days of the close of the public comment period. The draft ROD will include a Responsiveness Summary in accordance with applicable EPA guidance. The Parties shall have thirty (30) days to attempt to jointly select a Remedy following the Army submission of a draft ROD. The Parties shall consult with the Commonwealth on any remedy which the Parties jointly select. If the Parties are unable to reach agreement on the draft ROD, selection of a Remedial Action shall be made by the EPA Administrator, and EPA shall then prepare the final ROD after consultation with the Commonwealth consistent with CERCLA § 104(c)(2).
- 17.4 After consultation with the Commonwealth, EPA shall issue the ROD for the selected Remedial Action, and the RI/FS phase shall be deemed completed.
- 17.5 The selection of Remedial Action(s) by the EPA Administrator shall be final, and not subject to dispute by the Army.

- 17.6 Upon issuance of each ROD, the Army shall submit all Workplans, other Plans or documents described in the MEP, and Remedial Design/Remedial Action (RD/RA) requirements, in compliance with all Schedules and Timetables specified therein.
- 17.7 Once the ROD is approved by EPA, the Army shall implement the Remedial Action(s) in accordance with the requirements of this Agreement, and time Schedules as described in the MEP.
- 17.8 The sixty percent (60%) Remedial Design and Remedial Design/ Remedial Action Workplan are Primary documents subject to the review and comment process in Section VII, (Consultation With EPA). The Remedial Design/Remedial Action Workplan shall at a minimum contain: (a) a project Schedule for construction and implementation of the Remedial Action; (b) an Operation and Maintenance (O & M) Plan which shall cover both implementation and long-term maintenance of the Remedial Action; (c) a Construction Quality Assurance Plan which shall ensure that a completed Remedial Action meets or exceeds all design criteria, Plans and specifications; (d) a Sampling and Analysis Plan; (e) a Waste Management Plan; and, (f) a Contingency Plan for a response to systems malfunctions. The Army shall implement the Plan immediately upon approval by EPA in accordance with the requirements and Schedules set forth in CERCLA, CERCLA guidance and policy, and the Timetables and Schedules set forth in Section XIV, (Deadlines and Schedules), and Appendix I of this Agreement.
- 17.9 Upon approval by EPA, all terms, conditions, Timetables, Deadlines, Schedules, proposed Work, and RODs relating to any AOC or OU required by this Section shall be incorporated into this Agreement and become an enforceable part thereof.

XVIII. EXEMPTIONS

- 18.1 The obligation of the Army to comply with the provisions of this Agreement may be relieved by a Presidential Order or exemption issued pursuant to the provisions of CERCLA § 120(j)(1), 42 U.S.C. § 9620(j)(1), or RCRA Section § 6001, 42 U.S.C. § 6961; or the order of an appropriate court.

XIX. EPA CERTIFICATION

- 19.1 When the Army determines that all Remedial Actions at the Site have been completed in accordance with the requirements of this Agreement, it shall so advise EPA in writing, and shall request Certification from EPA that the Remedial Actions have been completed in accordance with the requirements of this Agreement. The Army shall schedule and conduct a pre-certification inspection to be attended by the Army, EPA and the Commonwealth. Such inspection shall be followed within thirty (30) days by a written report signed by the Army's Project Manager, and by a Registered Professional Engineer certifying that all Remedial Actions have been completed in full satisfaction of the pertinent requirements of this Agreement. Within ninety (90) days of receipt of the Pre-Certification Inspection Report, EPA, in consultation with the Commonwealth, shall, in writing:
- (a) Certify that all Remedial Actions have been completed in accordance with this Agreement based on conditions known at the time of Certification and limited by Section XXIII, (Other Claims); or,
 - (b) Deny the Army request for Certification, stating in full, the basis of the denial.
- 19.2 If EPA denies the Army request for Certification that all Remedial Actions have been completed in accordance with this Agreement, the Army may invoke Dispute Resolution to review EPA's determination. If EPA denial of Certification is upheld in Dispute Resolution, EPA shall describe the Additional Work needed to bring the Remedial Action into compliance with the requirements of this Agreement. After performing such Additional Work, the Army shall resubmit a request for Certification to EPA. EPA, in consultation with the Commonwealth, shall then grant or deny Certification pursuant to the process set forth in this Section.
- 19.3 In the event that EPA determines that Additional Work, including Additional Work identified in Paragraph 19.2 and during the CERCLA § 121(c) review process, is necessary to meet the Performance and Cleanup Standards described in any ROD, or is necessary to protect human health and the environment, the Army shall complete such Work in accordance with the standards, specifications, and Schedules approved or established by EPA. Unless otherwise stated by EPA, within ninety (90) days of the Army's receipt of notice that Additional Work is necessary, or otherwise agreed to by the Parties, the Army shall submit

for EPA's approval, a supplemental RA Workplan for the Additional Work. The Plan shall conform to the requirements of this Agreement, the National Contingency Plan, Superfund Remedial Design and Remedial Action Guidance and any additional guidance documents provided by EPA. Upon approval pursuant to the procedures set forth in Section VII, (Consultation with EPA), the Army shall implement the Plan for Additional Work in accordance with the Schedule contained therein.

XX. STATUTORY COMPLIANCE/RCRA, CERCLA INTEGRATION

- 20.1 The Parties intend to integrate the Army's CERCLA response obligations and RCRA corrective action obligations which relate to the release(s) of Hazardous Substances, hazardous wastes, pollutants, contaminants or Oils covered by this Agreement. Therefore, the Parties intend that activities covered by this Agreement will achieve compliance with CERCLA, 42 U.S.C. § 9601 et. seq, and satisfy the corrective action requirements of RCRA § 3004(u) and (v), 42 U.S.C. § 6924(u) and (v), for RCRA permits, and § 3008(h), 42 U.S.C. § 6928(h) for interim status facilities; RCRA § 7003, 42 U.S.C. § 6973; and meet or exceed all Applicable or Relevant and Appropriate Federal and State laws and regulations to the extent required by CERCLA § 121, 42 U.S.C. § 9621.
- 20.2 Based upon the foregoing, the Parties intend that any Remedial Action selected, implemented and completed under this Agreement will be protective of human health and the environment such that there shall be no further need for corrective action under RCRA for remediation of releases covered by this Agreement. The Parties agree that with respect to releases or threatened releases of Hazardous Substances covered by this Agreement that are associated with the Site, RCRA shall be considered an Applicable or Relevant and Appropriate Requirement pursuant to CERCLA § 121. Any releases or other hazardous waste activities not covered by this Agreement remain subject to all applicable State and Federal environmental requirements.
- 20.3 The Parties recognize that the requirement to obtain Permits for Response Actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties further recognize that ongoing hazardous waste management activities at the Facility require the issuance of Permits under Federal and State law. This Agreement does not affect the requirement to obtain such Permits. When a Permit is issued to the Facility for ongoing hazardous waste management activities, the 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. With respect to those portions of this Agreement incorporated by reference into Permits, the Parties intend that judicial review of the incorporated portions shall, to the extent review is authorized by law, only be reviewed under the provisions of CERCLA.
- 20.4 Nothing in this Agreement shall alter the Army's authority with respect to Removal Actions conducted pursuant to

CERCLA Section 104, 42 U.S.C. Section 9604, consistent with Section XII, (Removal and Emergency Actions) of this Agreement.

XXI. ENFORCEABILITY

- 21.1 Upon the Effective Date of this Agreement, any standard, regulation, condition, requirement or order which has become effective under CERCLA and is incorporated into this Agreement is Enforceable by any Person pursuant to CERCLA § 310, and any violation of such standard, regulation, condition, requirement or order will be subject to civil penalties under CERCLA §§ 310(c) and 109.
- 21.2 All Timetables, Deadlines, terms and conditions associated with the PA/SI, RI/FS, and RD/RA shall be Enforceable by any Person pursuant to CERCLA § 310, and any violation of such Timetable and Deadlines will be subject to civil penalties under CERCLA §§ 310(c) and 109.
- 21.3 All terms, conditions, and Schedules of this Agreement which relate to Areas of Contamination, Operable Units or final Remedial Actions, including corresponding Timetables, Deadlines or Schedules, and all Work associated with the Areas of Contamination, Operable Units or final Remedial Actions, shall be Enforceable by any Person pursuant to CERCLA § 310(c), and any violation of such terms or conditions will be subject to civil penalties under CERCLA §§ 310(c) and 109.
- 21.4 Any final resolution of a dispute pursuant to Section XIII, (Dispute Resolution), of this Agreement which establishes a condition, requirement, order, Timetable, Deadline or Schedule shall be Enforceable by any Person pursuant to CERCLA § 310(c), and any violation of such term, condition, Timetable, Deadline or Schedule will be subject to civil penalties under CERCLA §§ 310(c) and 109.
- 21.5 Nothing in this Agreement shall be construed as authorizing any Person to seek judicial review of any Remedial Action or Work where review is barred by any provision of CERCLA, including CERCLA § 113(h).
- 21.6 Nothing in this Agreement shall be construed as a restriction or waiver of any rights EPA may have under CERCLA, including but not limited to any rights under CERCLA §§ 113 and 310, 42 U.S.C. §§ 9613 and 9659. The Army does not waive any rights it may have under CERCLA § 120, SARA § 211 and Executive Orders 12580 and 11735.
- 21.7 The Parties agree to exhaust their rights under Section XIII, (Dispute Resolution) prior to exercising any rights to judicial review that they might otherwise have.

21.8 The Parties agree that both Parties shall have the right to Enforce the terms of this Agreement.

XXII. STIPULATED PENALTIES

- 22.1 In the event that the Army fails to submit a Primary document set forth in this Agreement to EPA pursuant to the appropriate Schedules, Timetable or Deadlines in accordance with the requirements of this Agreement, which relates to an interim or final Remedial Action, or fails to comply with a term or condition of this Agreement, EPA may assess a Stipulated Penalty against the Army. However, the EPA shall notify the Army of any request for Stipulated Penalties within thirty (30) days of the violation. The Army agrees it shall pay all assessed Stipulated Penalties not rescinded through Dispute Resolution. A Stipulated Penalty may be assessed in an amount not to exceed \$5,000 for the first week (days one (1) through seven (7), or part thereof) and \$10,000 for each additional week (or part thereof) for which the violation described in this Paragraph occurs.
- 22.2 Upon determining that the Army has violated the Agreement as described in Paragraph 22.1, EPA shall so notify the Army in writing. If the violation in question is not already subject to Dispute Resolution at the time such notice is received, the Army shall have fifteen (15) days after receipt of the notice to invoke Dispute Resolution on the question of whether the violation did in fact occur. The Army shall not be liable for the Stipulated Penalty assessed by the EPA, if the violation is determined, through the Dispute Resolution process not to have occurred. No assessment of a Stipulated Penalty shall be final until the conclusion of Dispute Resolution procedures related to the assessment of the Stipulated Penalty.
- 22.3 The annual reports required by CERCLA § 120(e)(5), 42 U.S.C. § 9620(e)(5), shall include, with respect to each final assessment of a Stipulated Penalty against the Army under this Agreement, each of the following:
- (a) The facility responsible for the failure;
 - (b) A statement of the facts and circumstances giving rise to the failure;
 - (c) A statement of any administrative or other corrective action taken at the Facility, or a statement of why such measures were determined to be inappropriate;

- (d) A statement of any additional action taken by or taken at the facility to prevent recurrence of the same type of failure; and,
 - (e) The total dollar amount of the Stipulated Penalty assessed for the particular failure.
- 22.4 Stipulated Penalties assessed pursuant to this Section shall be payable to the Hazardous Substances Response Trust Fund only in the manner and to the extent expressly provided for in Acts authorizing funds for, and appropriations to the DOD. Any Stipulated Penalty paid on behalf of the Facility shall be distributed to the Hazardous Substance Response Trust Fund.
- 22.5 In no event shall this Section give rise to a Stipulated Penalty in excess of the amount set forth in CERCLA § 109, 42 U.S.C. § 9609.
- 22.6 This Section shall not affect the Army's ability to obtain an Extension of a Timetable, Deadline or Schedule pursuant to Section XV, (Extensions), of this Agreement.
- 22.7 Nothing in this Agreement shall be construed to render any officer or employee of the Army personally liable for the payment of any Stipulated Penalty assessed pursuant to this Section.
- 22.8 In the event that the Army fails to pay any Stipulated Penalty, as provided hereunder, based upon the lack of appropriated or authorized funds, the Army shall:
 - (a) Inform the EPA of the specific basis for failure to pay; and,
 - (b) Request funding for such Stipulated Penalties by submitting requests for appropriation and authorization of funds for the payment of penalties in the first annual budget request following the assessment through the DOD budgetary process.

XXIII. OTHER CLAIMS

- 23.1 Subject to the limitations set forth in Section XX, (Statutory Compliance/CERCLA/RCRA Integration), nothing in this Agreement shall restrict EPA from taking any action under CERCLA, RCRA, or other Federal statutes for any matter not specifically part of the Work performed under CERCLA which is the subject matter of this Agreement.
- 23.2 Nothing in this Agreement shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, agent or corporation not a signatory to this Agreement for any liability it may have arising out of or relating to the generation, storage, treatment, handling, transportation, release, or disposal of any Hazardous Substances, hazardous wastes, pollutants, contaminants or Oil found at, taken to, taken from, or emanating from the Site. EPA shall not be held as a party to any contract entered into by the Army to implement the requirements of this Agreement.
- 23.3 This Agreement does not constitute any decision or pre-authorization by EPA of funds under CERCLA § 111(a)(2), 42 U.S.C. § 9611(a) for any person, agent, contractor or consultant acting for the Army.
- 23.4 This Agreement does not affect any claim for:
- (a) Natural resources damage assessments, or for damage to natural resources;
 - (b) Claims based on a failure or refusal by the Army to meet a requirement of the Agreement;
 - (c) Liability arising from the past, present, or future disposal, release, or threatened releases of Hazardous Substances, pollutants, contaminants, Oils or waste material outside of the Site and not attributable to the Site; and,
 - (d) Liability for the disposal of any Hazardous Substances, pollutants, contaminants, Oils or waste material taken from the Site.
- 23.5 The Army reserves the right to raise or assert any defense, whether procedural or substantive, in law or in

equity, or to raise any issue as to jurisdiction or standing of any Party, or any other matter outside the scope of this Agreement, which the Army might otherwise be entitled to raise or assert.

XXIV. TERMINATION AND SATISFACTION

- 24.1 The provisions of this Agreement shall be deemed satisfied upon a consensus of the Parties that the Army has completed its obligations under the terms of this Agreement. Following EPA Certification of the Remedial Actions at the Site pursuant to Paragraphs 19.1 and 19.2 of Section XIX, (EPA Certification), any Party may propose, in writing, the termination of this Agreement upon a showing that the objectives of this Agreement have been satisfied. A Party opposing termination of this Agreement shall serve its objections upon the proposing Party within thirty (30) days of receipt of the proposal.
- 24.2 Upon termination of this Agreement the Party which proposed termination shall place a public notice announcing termination in two (2) major local newspapers of general circulation and in the Federal Register.

XXV. FUNDING

- 25.1 The Parties to this Agreement expect that all obligations of the Army arising under this Agreement will be fully funded. The Army agrees to seek sufficient funding through the Department of Defense (DOD) budgetary process to fulfill its obligation under this Agreement.
- 25.2 In accordance with CERCLA § 120(e)(5)(B), 42 U.S.C. § 9620(e)(5)(B), the Army shall include in its annual report to Congress the specific cost estimates and budgetary proposals associated with the implementation of this Agreement.
- 25.3 Any requirement for the payment or obligation of funds, including Stipulated Penalties, by the Army, established by the terms of this Agreement shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted.
- 25.4 If appropriated funds are not available to fulfill the Army obligations under this Agreement, EPA reserves the right to initiate an action against any other person, or to take any Response Action, which would be appropriate absent this Agreement.
- 25.5 Funds authorized and appropriated annually by Congress under the "Defense Environmental Restoration Program, (DERP)" appropriation in the Department of Defense Appropriation Act and allocated by the Deputy Assistant Secretary of Defense (Environment) to the Army will be the source of funds for activities required by this Agreement consistent with SARA § 211, 10 U.S.C. § 2701 et seq. However, should the "Defense Environmental Restoration Program" appropriation be inadequate in any year to meet the total Army CERCLA Implementation requirements, the DOD shall follow a standardized DOD prioritization process which allocates the years 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.

XXVI. COMMUNITY RELATIONS

- 26.1 The Parties agree to comply with all EPA public participation requirements in accordance with CERCLA, the NCP and other applicable guidance. Community Relations activities shall be conducted by the Army in consultation with EPA during activities conducted at the Fort Devens Army Installation, as outlined in Section VII, (Consultation with EPA).
- 26.2 The Army shall develop a Community Relations Plan (CRP) pursuant to Section VII, (Consultation with EPA). The Army shall have primary responsibility for implementation of the CRP, subject to oversight by EPA.
- 26.3 In accordance with requirements of CERCLA § 117(d), 42 U.S.C. § 9617(d), a public information repository shall be established at or near Fort Devens Army Installation for public inspection. The Army shall place all Primary documents as listed in Section XIV, (Deadlines and Schedules), in the information repository upon finalization and release for comment. This repository may be maintained at the same location as the Administrative Record which will be located at or near Fort Devens Army Installation pursuant to Paragraph 26.4.
- 26.4 The Army shall establish and maintain an Administrative Record at two locations. The first location shall be at or near Fort Devens Army Installation, and the second location shall be at the EPA Region I Records Center, 90 Canal Street, Boston, MA.
- 26.5 The Administrative Record developed by the Army shall be updated and supplied to EPA, and an index of documents shall accompany each update to the Administrative Record. EPA may furnish documents to the Army which they shall place in the Administrative Record file to ensure that the Administrative Record includes all documents that form the basis for the selection of the Response Action.

XXVII. PUBLIC COMMENT ON THIS AGREEMENT

- 27.1 Within fifteen (15) days after the date the last Party executes this Agreement, the Army shall announce the availability of this Agreement to the public for a thirty (30) day review and comment period, including notice of such availability to be published in at least two (2) major local newspapers of general circulation. The procedures of 40 C.F.R. Parts 124.10(c) and 124.10(d) shall apply. Comments received shall be promptly transmitted to the other Party and the Commonwealth after the end of the comment period. The Parties shall review such comments and shall determine within thirty (30) days whether or not modifications to the Agreement should be made.
- 27.2 If the Parties agree that the Agreement shall be made effective without any modifications, EPA shall transmit a copy of the signed Agreement to the Army and the Commonwealth, and shall notify the Army and the Commonwealth in writing that the Agreement is effective as of the date of the notification.
- 27.3 If the Parties agree that modifications are needed, they shall modify the Agreement by mutual consent within sixty (60) days after the expiration of the Public Comment period. EPA shall determine whether the modified Agreement requires additional public notice and comment pursuant to any provision of CERCLA. If EPA determines that no additional notice and comment is required, EPA shall transmit a copy of the modified Agreement to the Army and shall notify the Army in writing that the modified Agreement is Effective as of the date of the notification. If the Parties amend the Agreement within the sixty (60) day period, and if EPA concludes that such modifications require that the public receive additional opportunity for notice and comment, such additional notice and comment shall be provided consistent with the provisions stated in Paragraph 27.1 above. If the Parties agree, after such additional notice and comment has been provided, that the Agreement does not require any further modification, EPA shall send a copy of the agreed upon Agreement to the Army and the Commonwealth, and shall notify the Army and the Commonwealth that the Agreement is effective as of the date of the notification.
- 27.4 If, sixty (60) days after the expiration of the thirty (30) day comment period, the Parties have not reached an agreement on:
- (a) Whether modifications to the Agreement are needed;

- (b) What modifications to the Agreement are required;
- (c) Any language, provisions, Timetables, Work to be Performed or context of the Agreement or any Attachments to the Agreement; or,
- (d) Whether additional public notice and comments are required;

then the matters which are in dispute shall be resolved by the Dispute Resolution procedures of Section XIII, (Dispute Resolution). For the purpose of this Section, the Agreement shall not be effective while the Dispute Resolution proceedings are underway. The Parties reserve the right to withdraw from the Agreement by providing written notice to the other Party within twenty (20) days after receiving the notice of the resolution of the matters in dispute. Failure by a Party to provide such a written notice of withdrawal within this twenty (20) day period shall act as a waiver of the right of the Party to withdraw from the Agreement. If no Party withdraws from the Agreement within this twenty (20) day period, EPA shall thereafter send a copy of the final Agreement to the Army and the Commonwealth, and shall notify the Army and the Commonwealth that the Agreement is Effective. The Effective Date of the Agreement shall be the date that the Army receives notice from EPA.

XXVIII. PRESERVATION OF RECORDS

28.1 Despite any document retention policy to the contrary, the Parties shall preserve, during the pendency of this Agreement and for a minimum of ten (10) years after its termination, or the conclusion of any litigation relating to the Agreement, whichever is later, all records and documents in their possession of whatever kind, nature or description retained in the ordinary course of business which relate to the actions carried out pursuant to this Agreement. The Army agrees to require its contractors, assigns and agents to turn over, as part of the contract, the above described records to the Army at the completion of the contract. After this ten (10) year period, each Party shall provide the other Party with a list of documents to be destroyed at least ninety (90) days prior to destruction of any such documents. Upon request by either Party, the requested Party shall make available such records or copies of such records, unless withholding is authorized and determined appropriate by law.

XXIX. AMENDMENT OR MODIFICATION OF AGREEMENT

- 29.1 Except as provided in Section VIII, (Project Managers), Paragraph 8.4, (regarding minor field modifications) and Paragraph 8.5, (regarding adjustments to Deadlines and Schedules), this Agreement can be Amended or Modified solely upon the written consent of the Parties. Such Amendments or Modifications shall have as the Effective Date that date on which they are signed by both Parties, and notice thereof is provided to each signatory pursuant to Section VII, (Consultation with EPA).
- 29.2 The Party initiating the Amendment of this Agreement shall propose in writing the Amendment for distribution and signature of the other Party.
- 29.3 Any Amendment or Modification to this Agreement relating to a Remedial Action which the Parties mutually agree will not significantly effect the authority or obligations established under this Agreement, shall be published in two (2) major local newspapers of general circulation. Any Amendments or Modifications to this Agreement which the Parties mutually agree will significantly effect authority or obligations established under this Agreement, shall be published in two major local newspapers of general circulation and the public shall be given an opportunity to comment in a manner consistent with Section XXVII (Public Comment On This Agreement). In the event the Parties cannot mutually agree, the Amendments or Modifications shall be treated as significant changes.

XXX. EFFECTIVE DATE

- 30.1 This Agreement shall become Effective in accordance with Section XXVII, (Public Comment On this Agreement).
- 30.2 Any Timetable, Deadline, Schedule, or ROD required by this Agreement or the MEP is Effective upon finalization pursuant to Section XIV, (Deadlines and Schedules) and Section XVII, (Records of Decision and Plans for Remedial Action) hereof, and are hereby incorporated into this Agreement upon such finalization.

XXXI. NOTICES AND SUBMISSIONS

31.1 Whenever, under the terms of this Agreement, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the Parties' and the Commonwealth's Project Managers at the addresses specified below, unless those individuals or their successors give written notice of a change to the other Parties. Written notice as specified herein and in accordance with Sections XIV, (Deadlines and Schedules) of this Agreement shall constitute complete satisfaction of any written notice requirement of the Agreement with respect to the EPA, the Commonwealth, and the Army, respectively.

As to the EPA:

James P. Byrne
Environmental Protection Agency
Region 1
JFK Federal Building
Boston, MA. 02203-2211
Mailstop: Han-Can 1

As to the Commonwealth:

D. Lynne Chappell
Section Chief
Federal Facilities Section
Bureau of Waste Site Cleanup
Department of Environmental Protection
Central Region
75 Grove Street
Worcester, MA 01605

As to the Army:

U.S. Army
AFZD-DEQ, Box 10
ATTN: Mr. F. Timothy Prior
Fort Devens, MA. 01433-5100

XXXII. QUARTERLY PROGRESS REPORTS

- 32.1 The Army shall provide written Quarterly Progress Reports to EPA and the Commonwealth, unless otherwise agreed to by the Parties in accordance with the MEP. At a minimum these progress reports shall:
- (a) Include all results of sampling (including screening data), tests, and all other data (or summary thereof) received or generated and verified by the Army during the reporting period;
 - (b) Include all activities completed pursuant to this Agreement during the past quarter as well as such actions and plans which are scheduled for the next quarter;
 - (c) Describe any delays; the reasons for such delays; anticipated delays; concerns over possible Schedule implementation or problems that arise in the execution of the Workplan during the quarter; and any steps that were taken to alleviate the delays or problems; and,
 - (d) Detail Permit(s) status.
- 32.2 Each previous quarter's report(s) shall be submitted to EPA and the Commonwealth by the 20th day of each month following the last day of each quarter (February 20, May 20, August 20, and November 20).

XXXIII. FIVE YEAR REVIEW

- 33.1 Consistent with 42 U.S.C. § 9621(c), and in accordance with this Agreement, if a selected Remedial Action results in any Hazardous Substance, pollutants, contaminants or Oil remaining at an AOC, the Parties shall review each such Remedial Action at least every five (5) years after the initiation of the selected Remedial Action at each such AOC or OU to assure that human health and the environment are being protected by the Remedial Action.
- 33.2 If, upon such review, it is the conclusion of the Parties that Additional Work for any Remedial Action is appropriate at the AOC in accordance with 42 U.S.C. §§ 9604 or 9606, the Army shall implement such Additional Work pursuant to Paragraph 19.3 herein, except for emergency actions which shall be governed by Section XII, (Removal and Emergency Actions).
- 33.3 Any Parties' dispute regarding the need for or the scope of Additional Work to a Remedial Action shall be resolved under Section XIII, (Dispute Resolution), of this Agreement and enforceable hereunder.
- 33.4 Any Additional Work agreed upon pursuant to this Section shall be made a part of this Agreement.

**XXXIV. RESERVATION OF RIGHTS FOR RECOVERY OF EPA
EXPENSES**

- 34.1 The Parties agree to amend this Agreement at a later date in accordance with any subsequent federal legislation or Presidential Orders concerning the issue of EPA cost reimbursement. Pending such resolution, EPA reserves any rights it may have with respect to cost reimbursement.

XXXV. QUALITY ASSURANCE

- 35.1 In order to provide Quality Assurance and maintain Quality Control regarding all field Work and sample collection performed pursuant to this Agreement, the Army agrees to follow EPA criteria, guidance and policy with respect to Quality Assurance and Quality Control (QA/QC), or to submit equal or more rigorous Army QA/QC requirements for EPA review. Review of proposed alternative QA/QC procedures shall be accomplished in accordance with Paragraph 7.6 of this Agreement. The Army agrees to designate a Quality Assurance Officer (QAO), who will ensure that all Work is performed in accordance with EPA approved Work Plans, Sampling Plans and QAPPs. The QAO shall maintain for inspection a log of Quality Assurance field activities and provide copies to EPA and the Commonwealth upon request.
- 35.2 To ensure compliance with the QAPP, the Army, upon request by EPA, shall arrange for Access to all laboratories performing analysis on behalf of the Army pursuant to this Agreement.

XXXVI. RELEASE OF RECORDS

- 36.1 The Parties may request of one another Access to any record or document. If the Party that is the subject of the request (the receiving Party) has the record or document, that Party shall provide access to the record or document. However, no access to or copies of records or documents need be provided, if the record or document is subject to claims of attorney-client privilege, attorney work product, or properly classified for national security under law or executive order. If a requested document is subject to any Federal nondisclosure statute, release of that document shall be processed in accordance with said Federal nondisclosure statutes and appropriate regulations.
- 36.2 Except for documents received from the Army pursuant to this Agreement, no Party shall copy or retain any record or document, or make it an Agency record without the prior written approval of the originating Party. The said restriction shall also be applicable to the Commonwealth.
- 36.3 Subject to CERCLA § 120 (j)(2), 42 U.S.C. § 9620 (j)(2), any document required to be provided by Section VII, (Consultation with EPA), and analytical data showing test results will always be releasable in final draft form and no exemption shall be asserted by either party.
- 36.4 A determination to withhold a document for one of the reasons specified above shall not be subject to Section XIII, (Dispute Resolution). Any Party objecting to the other Party's determination may pursue the objection through the determining Party's appeal procedures.

XXXVII. TRANSFER OF REAL PROPERTY

- 37.1 The Army shall not transfer by lease, sale, easement, or otherwise release its control over real property comprising an Area of Contamination to a non-DOD entity until the Army has completed all Remedial Action and Operation and Maintenance (O & M) for such Area of Contamination as required by this Agreement (including without limitation, Section IX, Access) and has complied with the provisions of CERCLA § 120(h), 42 U.S.C. § 9620(h). The Army shall give EPA and the Commonwealth written notice as soon as possible, but not later than at least sixty (60) days prior to such transfer.
- 37.2 The Army may transfer real property comprising the Facility which does not include an Area of Contamination, provided:
- (a) The transfer is completed in accordance with CERCLA § 120(h) and this Agreement;
 - (b) The document transferring such property contains covenants granting the Parties to this Agreement rights of Access contained in Section IX, (Access), in order to effectuate the purposes of this Agreement in connection with any Area of Contamination under this Agreement, including where such property itself becomes an Area of Contamination after the date of such transfer;
 - (c) The document shall warrant that the Army shall take all investigative actions and Remedial Responses necessary to protect human health and the environment if such property or any portion of it becomes an Area of Contamination as defined under this Agreement subsequent to the transfer from the Army; and,
 - (d) The Army gives EPA and the Commonwealth at least sixty (60) days written notice prior to such transfer, together with a copy of the proposed transfer document.
- 37.3 Transfer of property pursuant to this Section shall not relieve the Army of its obligations under this Agreement or applicable regulations with respect to such property or other property at the Site.

XXXVIII. INSTALLATION CLOSURE

38.1 Closure of the Federal Facility will not affect the Army's obligation to comply with the terms of this Agreement.

XXXIX. SEVERABILITY

39.1 If any provision of this Agreement is ruled invalid, illegal, or unconstitutional, the remainder of the Agreement shall not be affected by such ruling.

XL. APPENDICES AND ATTACHMENTS

40.1 Appendices shall be an integral and enforceable part of this Agreement. They shall include the most current versions of:

- (a) Master Environmental Plan; and,
- (b) Installation Restoration Program Documents.

40.2 The Attachment shall be for information only, and shall not be an enforceable part of this Agreement. The information in this Attachment is provided to support the initial review and comment upon this Agreement, and it is only intended to reflect the conditions known at the signing of this Agreement. None of the facts related herein shall be considered admissions by, nor are they legally binding upon, either Party with respect to any claims related to, or persons not a Party to this Agreement. The Attachments shall include:

- (a) Maps and a list of AOC/SA for the Fort Devens Army Installation.

XLI. SIGNATURE PAGE

Each undersigned representative of a Party certifies that he/she is fully authorized to enter into the terms and conditions of this Agreement, and to legally bind such Party to this Agreement.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

Julie Belaga
Julie Belaga
Regional Administrator

May 13, 1991
DATE

UNITED STATES DEPARTMENT OF THE ARMY

BY:

Richard W. Hoover
Richard W. Hoover
Colonel, U.S. Army
Installation Commander

5 APR 91
DATE

BY:

Lewis D. Walker
Lewis D. Walker
Deputy Assistant Secretary
of the Army (Environment,
Safety, and Occupational Health)

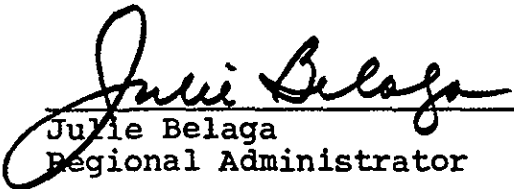
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XLI. SIGNATURE PAGE---MINOR MODIFICATIONS MADE IN RESPONSE TO PUBLIC REVIEW COMMENTS

Each undersigned representative of a Party certifies that he/she is fully authorized to enter into the terms and conditions of this Agreement incorporating modifications made in response to comments received during the public comment period on this Agreement, and to legally bind such Party to this Agreement as so modified.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

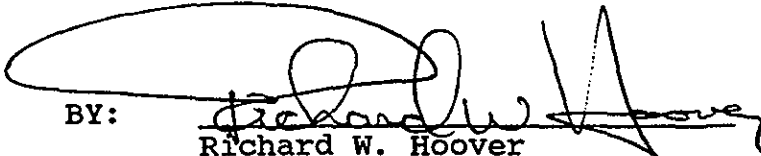
BY:


Julie Belaga
Regional Administrator

Nov. 15 1992
DATE

UNITED STATES DEPARTMENT OF THE ARMY

BY:


Richard W. Hoover
Colonel, U.S. Army
Installation Commander

12 NOV 91
DATE

APPENDIX I

The Master Environmental Plan (MEP) is a document which shall be the detailed, comprehensive plan for the Work to be performed pursuant to CERCLA at the Fort Devens Army Installation CERCLA Site. The Parties to this Agreement shall meet to discuss the development and the format of the MEP prior to its issuance. The MEP shall be a Primary Document and shall be subject to all provisions governing Primary Documents in this Agreement. The MEP shall be due in draft form on July 15, 1991. The MEP shall then be subject to review and comment prior to finalization in accordance with this Agreement by the Environmental Protection Agency (EPA). The Commonwealth shall also have an opportunity to review the MEP and other reports consistent with the terms of this Agreement.

The MEP shall include, at a minimum, the following information:

- A. A summary of the history of Fort Devens;
- B. A description of Fort Devens including:
 1. information on location and geography, climate, soils and geology, and hydrology. The latter shall include site-wide characterizations of surface water, groundwater, and overall water quality, which shall be developed in conjunction with ongoing Site Work;
- C. A summary of applicable Federal, State, and local environmental regulations;
- D. A list and description of all Study Area(s) (SA) and Area(s) of Contamination (AOC) including:
 1. a history and background;
 2. geology and hydrology data;
 3. a description of the nature and extent of contamination for past Work performed;
 4. routine current reviews of ongoing work, proposed work and future work to be performed;
 5. periodic SA/AOC status and additional requirements updates; and,
 6. a detailed justification for deletion of an SA/AOC from further consideration.
- E. Schedules and Deadlines including:
 1. a prioritization scheme for SA/AOCs;
 2. a five-year schedule and plan and projections for all work to be performed at the Site;
 3. annual schedules and plans and projections, and
 4. detailed current year schedules/plans including monthly activities and deliverables expected for Operable Units.

F. EPA guidance for conducting Preliminary Assessments and Site Inspections (PA/SI) (including the EPA Region I Scope of Work previously submitted to the Army on June 28, 1990). The following deliverables shall be required at SA phase of the cleanup:

1. Preliminary Assessment (where applicable);
2. Site Inspection Work Plan; and,
3. Site Inspection Report.

G. EPA guidance for conducting Remedial Investigations and Feasibility Studies (RI/FS) under CERCLA (including the EPA Region I Scope of Work previously submitted to the Army). The RI/FS performed at Fort Devens shall include the following eleven (11) specific tasks:

1. Project Planning and Scoping;
2. Community Relations;
3. Field Investigations (to include where applicable: Air Quality Assessments, Soil Sampling, Subsurface and Hydrogeological Investigations, Surface Water and Sediment Sampling, and Long Term Monitoring and Sampling;
4. Sample Analysis/Validation;
5. Data Validation;
6. Risk Assessment (Human Health and Ecological);
7. Treatability Studies;
8. RI Report(s);
9. Remedial Alternatives Development and screening;
10. Detailed Analysis of Alternatives; and,
11. FS Report(s).

The following Deliverables shall be required as part of the RI/FS process at Fort Devens:

1. RI/FS Work Plan (including a Health and Safety Plan, Quality Assurance Project Plan, Scope of Work, Standard Operating Procedures, and a Field Sampling and Analysis Plan;
2. Risk Assessment Work Plan;
3. Community Relations/Public Involvement Plan;
4. RI Report(s) (including Risk Assessment);
5. FS Report(s);
6. Initial Screening of Alternatives;
7. Detailed Analysis of Alternatives;
8. Sampling and Data results;
9. Treatability and Pilot Study Work Plans and Reports;
10. Proposed Plan(s);
11. Record(s) of Decision;
12. SA/AOC specific Ordnance Detection and Remediation Plan; and,
13. SA/AOC specific Hazardous Waste Minimization Plan.

H. EPA guidance for conducting Remedial Designs and Remedial Actions (RD/RA) under CERCLA (including the EPA Region I Scope of

Work previously submitted to the Army). Prior to the start of the RD/RA, the Army shall designate a Project Coordinator and submit the Project Coordinator's qualifications to the EPA for review. In addition, the Army shall submit the name and qualifications of a Remedial Design professional to EPA for review and approval. The following deliverables shall be required as part of the RD/RA process at Fort Devens:

1. Remedial Design/Remedial Action Work Plan(s);
2. Preliminary Design (30%);
3. Intermediate Design (60%);
4. Pre-Final Design (95%);
5. Construction QA/QC Plan;
6. Contingency Plan;
7. Final Remedial Design;
8. Operation and Maintenance Plan; and,
9. Project Closeout Report.

**APPENDIX II
FORT DEVENS
IRP AND OTHER DOCUMENTS REVIEWED BY EPA**

Review of Fort Devens PCB Transformer Warehouse Upgrade Project - Sampling Results. 5 November 1990.

Review of Fort Devens PCB Transformer Warehouse Upgrade Project - Sampling and Construction Plans. 19 October 1990.

Third Quarter - 1990 Cold Spring Brook Monitoring Well Sampling Results. con-test. 16 October 1990.

Third Quarter - 1990 Wastewater Treatment Plant Monitoring Well Sampling Results. con-test. 16 October 1990.

Second Quarter - 1990 Wastewater Treatment Plant Monitoring Well Sampling Results. con-test. 02 August 1990.

Second Quarter - 1990 Cold Spring Brook Monitoring Well Sampling Results. Con-Test. 01 June 1990.

USATHAMA Methods For Explosives Analyses. 30 April 1990.

USATHAMA SOW for Fort Devens Site Investigation and Remedial Investigation/Feasibility Study. 26 April 1990.

First Quarter - 1990 Wastewater Treatment Plant Monitoring Well Sampling Results. Con-Test. 26 March 1990.

Additional Installation Restoration Program (IRP) Sites at Fort Devens, MA . 14 March 1990.

Waste Treatment Sludge Beds Sampling Results. Con-Test. 07 March 1990.

Fort Huachuca, Fort Devens, Fort Monmouth Draft Environmental Impact Statement Under The Base Realignment and Closure Commission. USCOE. 02 March 1990.

Draft Environmental Impact Statement for the Fort Huachuca, Fort Devens, Fort Monmouth Base Realignment - Supplemental Information for Fort Devens Realignment. USCOE. 02 March 1990.

First Quarter - 1990 Cold Spring Brook Monitoring Well Sampling Results. Con-Test. 28 February 1990

USATHAMA Quality Assurance-Program. January 1990.

Fourth Quarter - 1989 Cold Spring Brook Monitoring Well Sampling Results. Con-Test. 19 December 1989.

Third quarter - 1989 Cold Spring Brook Monitoring Well Sampling Results. Toxikon Corporation. 02 October 1989.

Draft Final Master Environmental Plan for Fort Devens, Massachusetts. USATHAMA. October 1989.

Memorandum For Record. Additional Information on SWMU 15, Fort Devens, MA. 04 January 1989.

Geohydrologic Study No. 38-26-0326-89. Fort Devens, Massachusetts. USAEHA. July 1988.

Fort Devens Solid Waste Disposal and Landfill Closure Plan Ground and Surface Water Sampling Results for July 1987. Briggs Consultants. 28 January 1988.

EIS for On Going Mission Activities, Fort Devens, 30 June 1979, Revised May 1980, Revised October 1987.

Fort Devens Solid Waste Disposal and Landfill Closure Plan Ground and Surface Water Sampling Results for March 1987. Briggs Consultants. 23 July 1987.

Geotechnical Requirements for Drilling, Monitor Wells, Data Acquisition, and Reports. USATHAMA. March 1987.

Fort Devens Sanitary Landfill Bi-monthly Inspection Reports. 12 December, 02 October, 26 August, 16 April, 05 February, 1986. Environmental Management Office, Directorate of Engineering and Housing, Fort Devens.

Hydrogeologic Investigations for the Fort Devens Military Reservation Sanitary Landfill. Prepared for the Barsons Construction Company Inc.. S E A Consultants Inc.. November 1986.

Preliminary Hydrogeologic Investigations for the Fort Devens Sanitary Landfill. Prepared for Barsons Construction Company Inc.. S E A Consultants Inc.. April 1986.

Hazardous Waste Study No. 37-26-0581-86. Soils Contamination at The Explosive Ordnance Disposal Range, Fort Devens, Massachusetts. USAEHA. April 1986, October 1985.

Draft HSWA Part B TSD Permit with General and Special Permit Conditions (Corrective Action). EPA. 1985-6.

Solid Waste Management Unit Report 1985. Environmental Management Office, Directorate of Engineering and Housing, Fort Devens. 22 August 1985.

PCB Spill Report, Sylvania Building 4250, Fort Devens,

Massachusetts. Environmental Management Office, Directorate of Engineering and Housing, Fort Devens. January 1985.

Report on Groundwater Monitoring at the Fort Devens, Massachusetts Sanitary Landfill. Gale Engineering Company, Inc.. January 1985.

Design Report, Fort Devens Sanitary Landfill, Fort Devens, Massachusetts. Gale Engineering Company, Inc.. March 1984.

Installation Assessment of Headquarters Fort Devens, Report No. 326. Environmental Science and Engineering, Inc.. August 1982.

Draft Fort Devens, MA Sanitary Landfill Annex to Solid Waste Management Plan. Fort Devens. 09 May 1978.

Water Resources of the Nashua and Souhegan River Basins, Massachusetts. USGS, Commonwealth of Massachusetts, Water Resources Commission. 1977.