

## IAG COVER SHEET

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3008(h) and 3004(u) and (v) of RCRA, Executive Order 12580, the National Environmental Policy Act, 42 U.S.C. Section 4321, and the Defense Environmental Restoration Program (DERP), 10 U.S.C. Section 2701 et seq.;

D. The Army enters into those portions of this Agreement that relate to accelerated remedial actions and final remedial actions pursuant to Section 120(e)(2) of CERCLA/SARA, Sections 6001, 3004(u) and (v) and 3008(h) of RCRA, Executive Order 12580 and the DERP.

E. The Pennsylvania Department of Environmental Resources (PADER) enters into this Agreement pursuant to CERCLA/SARA, RCRA, the Clean Streams Law, (CSL) 35 P.S. Section 691.1 et seq.; the Solid Waste Management Act, (SWMA) 35 P.S. Section 6018.101 et seq.; Section 1917-A of the the Administrative Code, 71 P.S. Section 510-17; and the rules and regulations promulgated thereunder.

## II. Parties

The Parties to this Agreement are the U.S. EPA, PADER and the Army. The terms of this Agreement shall apply to and be binding upon the U.S. EPA, the PADER, their agents, employees and response contractors for the Site and the Army, its agents, employees, response action contractors for the Site and all subsequent owners, operators and lessees of LEAD. When hiring contractors to perform work pursuant to this Agreement, the Army agrees to conduct a preaward survey prior to making a determination of responsibility and to solicit input from EPA and PADER as part of that preaward survey. The Army will notify U.S. EPA and PADER of the identity, qualifications and assigned tasks of each of its contractors performing work under this Agreement upon their selection. Release of potentially confidential information will be subject to Federal Regulations for handling confidential business information. This Agreement shall be enforceable against all of the foregoing via the Parties to this Agreement. This Section shall not be construed as an agreement to indemnify any person. The Army shall notify its agents, employees, response action contractors for the Site, and all subsequent owners, operators and lessees of LEAD of the existence of this Agreement. Each undersigned representative of a Party certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement.

## III. Definitions

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

In addition:

A. "Accelerated Remedial Actions" or "ARA" shall mean Remedial Actions which prevent, control, or respond to a release or threatened release of hazardous substances where prompt action is necessary but a response under removal authorities is not appropriate or desirable.

B. "Agreement" shall mean this document and shall include all Attachments to this document referred to herein. All such Attachments shall be appended to and made an integral and enforceable part of this document.

C. "Closure Requirements" or "RCRA Closure" shall mean the requirements under RCRA, 40 C.F.R. Part 264, and the EPA authorized Pennsylvania program, 25 Pa. Code Section 75.259 et seq., pursuant to Section 3006 of RCRA, 42 U.S.C. Section 6926. These requirements include assessment, abatement, closure, and a post-closure permit.

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

E. "LEAD" shall mean the Letterkenny Army Depot, located in Chambersburg, Pennsylvania including all areas identified in Attachment 1.

F. "NPL Area" shall mean those areas of the Site included in the Hazard Ranking Packages which were the basis of published Proposals for inclusion on the National Priorities list.

G. "Non NPL Area" shall mean those areas of the site not included in Hazard Ranking Packages which were the basis of published Proposals for inclusion on the National Priorities List.

H. "PADER" shall mean the Commonwealth of Pennsylvania Department of Environmental Resources.

I. "Site" shall include LEAD and any other areas contaminated by the migration of a hazardous substance, pollutant or contaminant from LEAD as discussed in Section IV of this Agreement.

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

K. "U.S. Army" or "Army" shall mean the U.S. Department of the Army.

L. "U.S. EPA" or "EPA" shall mean the United States Environmental Protection Agency.

#### IV. Site

For the purposes of this Agreement, the approximately twenty thousand (20,000) acre area comprising the LEAD and the off-post area contaminated by the migration of hazardous substances, pollutants, or contaminants, from LEAD shall constitute the Letterkenny Army Depot Site (hereafter referred to as the Site). Present information is inadequate to map the exact geographic extent of the Site. The necessary information will be developed during the LEAD RI/FS'S. The Parties may change the Site description on the basis of additional investigations including the Site Remedial Investigation performed by the Army, as described in Section IX below to more accurately reflect the areas contaminated by Volatile Organic Compounds (VOCs), other hazardous substances, pollutants or contaminants related in whole or in any part to the LEAD. The work to be performed under this Agreement will conform to the definition of the Site established by the Parties. LEAD lies within the boundaries of the current Site definition.

#### V. PURPOSE

A. The general purposes of this Agreement are to:

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

2. establish a procedural framework and schedule for developing, implementing and monitoring appropriate response actions at the Site in accordance with CERCLA/SARA, the National Contingency Plan ("NCP"), Superfund guidance and policy, RCRA, RCRA guidance and policy; and, State statutes, regulations, and publicly available written guidance and policy.

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

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

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

2. Establish requirements for the performance of RI's to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release

and threatened release of hazardous substances, pollutants or contaminants at the Site and to establish requirements for the performance of FS's for the Site to identify, evaluate, and select alternatives for the appropriate remedial actions(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants or contaminants at the Site in accordance with CERCLA/SARA.

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

4. Implement the selected remedial action(s) in accordance with CERCLA and meet the requirements of Section 120(e)(2) of CERCLA for an interagency Agreement between U.S. EPA and the Army.

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

6. Coordinate response actions at the Site with the mission and support activities at the Letterkenny Army Depot.

7. Expedite the cleanup process consistent with protection of human health and the environment.

8. Preserve PADER's independent authority, as set forth in this Agreement and to the extent authorized by law, against the Army to address contamination and other pollution problems related to LEAD, including closure requirements for the Industrial Waste Treatment Plant (IWTP) Lagoons.

#### VI STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

A. 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 or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will achieve compliance with CERCLA, 42 U.S.C. Section 9601 et seq.; to satisfy the corrective action requirements of Sections 3004(u) and (v) of RCRA, 42 U.S.C. Section 6924(u) and (v), for a RCRA permit, and Section 3008(h), 42 U.S.C. Section 6928(h), for interim status facilities; and to meet or exceed all applicable or relevant and appropriate Federal and State Laws and requirements to the extent required by Section 121 of CERCLA, 42 U.S.C. Section 9621.

B. Based upon the foregoing, the Parties intend that any remedial action selected, implemented and completed under this Agreement shall also constitute corrective action under RCRA, and therefore, provided that the requirements of CERCLA and

RCRA are to be satisfied in the work performed under this Agreement, no further corrective action shall be required. The Parties agree that with respect to releases of hazardous waste covered by this Agreement, RCRA shall be considered an applicable or relevant and appropriate requirement pursuant to Section 121 of CERCLA.

C. The Parties recognize that the requirement to obtain permits for removal or remedial actions undertaken pursuant to this Agreement at the NPL Areas of the Site shall be as provided for in CERCLA and applicable regulations including the NCP pursuant to SARA. The Parties further recognize that other activities conducted on the non NPL areas of the site, including closure of the IWTP lagoons at LEAD require the issuance of permits under Federal and State laws. This Agreement does not affect any such permit requirements, nor shall it be construed to waive permit requirements for activities at the Site unrelated to the work conducted pursuant to CERCLA at the NPL areas.

D. In the event that a corrective action permit is issued to the Army for any portion of the Site, U.S. EPA shall reference and incorporate any appropriate provisions, including appropriate schedules (and the provision for extension of such schedules) of this Agreement into such permit. The parties intend that the judicial review of any portion of a corrective action permit issued by EPA which so references this Agreement shall, to the extent authorized by law, only be reviewed under the provisions of CERCLA. Provisions of any RCRA permit for the Site which are outside the scope of the CERCLA remediation as provided in this Agreement shall be reviewable as provided by law for RCRA permits and shall not be affected by this Section. Where RCRA permit conditions in any RCRA permits are based on requirement of State Law and are outside the scope of the CERCLA remediation as provided in this Agreement, such conditions shall be reviewed under Pennsylvania Law.

E. Nothing in this Section shall alter the Army's or EPA's authority with respect to removal actions conducted pursuant to Section 104 of CERCLA. Nothing in this Section shall alter PADER's rights with respect to such removal actions.

## VII. Findings

For purposes of this Agreement, the following constitutes a summary of the findings upon which this Agreement is based.

1. The United States acquired approximately 20,000 acres of land in Chambersburg, Franklin County, Pennsylvania and began construction of LEAD in 1942. LEAD has operated consistently since 1942. Initially an ammunition depot, operations at LEAD evolved to include overhauling, rebuilding and testing of wheeled and tracked vehicles; issue and shipment of

Class III chemicals and petroleum; and storage, maintenance, demilitarization, and modification of non-nuclear munitions. Industrial operations associated with current or previous activities include stripping, plating, lubrication, demolition, washout/deactivation of munitions, electroplating, chemical conversion coating of aluminum, paint removal, and vehicular parts cleaning.

2. Some of the production, storage and disposal activities have caused or are contributing to the releases and threatened releases of hazardous substances, pollutants, contaminants and hazardous wastes and/or hazardous waste constituents at the Site.

3. In 1979, as part of the DOD's Installation Restoration Assessment Program, the U.S. Army Toxic Hazardous Materials Agency prepared a report entitled Installation Assessment of Letterkenny Army Depot, Report No. 161 (hereinafter "Report 161"). The report identified potential environmental contaminants at LEAD as trichloroethylene, other chlorinated organic compounds, hydrocarbons, solvents, heavy metals, pesticides, explosives, phenolics, and phosphorus. The Report recommended a survey be initiated and that LEAD expand its water quality program to include analysis of heavy metals, pesticides, and explosives at all stream exits.

4. Sampling and analysis of residential wells adjacent to LEAD detected the presence of contaminants, and in October of 1982 LEAD began providing bottled water to off-post residents with contaminated wells.

5. The environmental studies listed below were performed by the U.S. Army Toxic and Hazardous Materials Agency ("USATHMA") at the Site:

June 1983: "Geophysical Survey of the Southeast Area of LEAD" A geophysical survey consisting of magnetometer, metal detection, electromagnetic induction and ground-penetrating radar was performed over approximately 80 acres primarily in the Disposal Area ("DA"). Large amounts of buried metallic masses were identified in the DA.

September 1983: "Environmental Contamination Survey of LEAD: Southeast Industrial Area" Eight shallow and nine deep wells were installed in this initial RI-type investigation. Groundwater contamination in the Southeast Industrial Area ("SIA") by volatile organic hydrocarbons was confirmed, but no sources could be clearly defined, although it was determined that the most likely source was in the vicinity of building 350. A groundwater divide around Gate 6 was postulated.

October 1983: "Environmental Contamination Survey of LEAD: Property Disposal Office Drainage Area" A parallel effort with the September 1983 study at the SIA, this effort involved four monitoring wells in the PDO Area. In addition, 9



groundwater samples, 2 surface water samples, 5 sediment samples and 8 soil samples were taken.

December 1983: "Environmental Contamination Survey of LEAD: Exploratory and Confirmatory Phases" Fifteen additional wells were installed under the Exploratory Phase. The sampling effort encompassed 50 groundwater, 14 surface water, 14 sediment and 1 background soil samples. This study concluded that the source areas in the PDO included the revetted area, the Fire Training Oil Burn Pit and the Security Landfill.

February 1984: "LEAD Remedial Investigation and Feasibility Study" This study report represents an attempt to evaluate potential remedial actions that could be applied to the contamination source areas at LEAD. The alternatives assessed included Site Containment, Off-Site Disposal, Waste Decontamination and Soil Removal. Field investigations aimed at source definition included waste borings, soil borings, exploratory trench excavations, shallow trench pits and well points.

May 1984: "Environmental Contamination Survey of LEAD: Multi-Phase Investigation Summary" This report was generated as an integrated summary of the project efforts, major findings, conclusions and recommendations of the 1983 studies.

January 1986: "Environmental Contamination Survey of LEAD" This effort involved a year of quarterly sampling and analysis. Time-equivalent data on groundwater contamination levels were obtained from 13 monitoring wells in the PDO Area, and 22 wells in the SIA. Three new wells were installed at the southern end of Rocky Spring Lake.

February 1986: "Pilot Investigation of Low Temperature Thermal Stripping of Volatile Organic Compounds (VOC's) from Soil"

August 1986: "Remedial Investigation of the Disposal Area at LEAD" This report was generated in an attempt to provide EPA with a document acceptable in format and content with the newly-published "Guidance for Remedial Investigations under CERCLA." The report incorporated all previous studies.

October 1986: "Records Search of the Southeast Industrial Area at LEAD" A second, intensive record search of previous activities in the SIA was performed. A reassessment of Report 161 was conducted including an intensive records search of previous activities of the SIA.

March 1987: "Fracture Trace Analysis of Letterkenny Army Depot" The U.S. EPA EPIC laboratory performed a fracture trace analysis for USATHMA. The study included both on and off-post areas.

May 1987: "Geophysical Investigation of the Eastern

Boundary at LEAD" As part of the current RI/FS contract, further geophysical investigations were done to better define the fracture system and bedrock juxtapositioning along the eastern boundary of the Depot.

6. Funds were provided in 1984 by the Army to Guilford Water Authority for the installation of an alternative water supply for affected households.

7. In September 1987, the alternative water supply via the Guilford Water Authority was completed. Two additional residences are presently being supplied with bottled water, and permanent water supplies are planned.

8. The Southeast Industrial Area of LEAD was proposed for inclusion on the National Priorities List in Update Number 2, 49 Fed. Reg. 40320 (October 15, 1984). The listing was finalized in 52 Fed. Reg. 27620 (July 22, 1987).

9. The Property Disposal Area of LEAD was proposed for listing on the National Priorities List in Update Number 3, 50 Fed. Reg. 14115 (April 10, 1985).

10. On October 17, 1986, the Superfund Amendments and Reauthorization Act of 1986 (SARA) was signed into law by President Reagan. Section 120 of SARA specifically applies to federal facilities.

#### VIII. U.S. EPA AND PADER DETERMINATIONS

The Army specifically reserves its rights to challenge these determinations if and when it becomes appropriate.

1. There has been a release or substantial threat of release of hazardous substances in the vicinity of LEAD.

2. The actions provided for in this Agreement are consistent with the NCP.

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

4. This Agreement provides for the expeditious completion of all necessary remedial actions.

5. LEAD is a Facility as defined by Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).

6. The United States is a person as defined by Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21). The United States is the owner and operator of LEAD as defined in Sections 101(20) and 107(a)(1) of CERCLA, 42 U.S.C. Sections 9601(20) and 9607(a)(1). The Army is the department of the United States

charged with fulfilling the obligations of the owner/operator under CERCLA at LEAD.

7. From approximately 1960 until January 1988, the Army accepted wastes at the IWTP Lagoons. From at least January 1982 to January 1988, the Army accepted wastes which were listed hazardous wastes pursuant to Section 103 of the SWMA, 35 P.S. Section 6018.103 and 25 Pa. Code Section 261, as well as Section 3001 of RCRA, 42 U.S.C. Section 6921, and 40 C.F.R. Parts 260 and 261, at the IWTP Lagoons.

8. The IWTP Lagoons are hazardous waste surface impoundments as defined in 40 C.F.R. Part 260 and 25 Pa. Code Section 75.260, and are subject to, inter alia, the SWMA, and 25 Pa. Code Sections 75.259 et seq., as well as RCRA and 40 C.F.R. Parts 264 et seq.

9. The Army is subject to, inter alia, the assessment, abatement, and closure requirements of 25 Pa. Code Sections 75.264 - 75.265 and 75.270 - 75.282, including the permit and planning requirements for closure and post-closure in 25 Pa. Code Sections 75.265 - 75.282, pursuant to 25 Pa. Code Section 75.264(a) (1).

#### IX. Work to be Performed

##### A. Integration With Ongoing Work

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

The Parties acknowledge that the Army is in the process of conducting some of the work to be performed pursuant to this Agreement. The Army need not halt currently ongoing work but shall be obligated to modify or supplement work previously done to produce a final product which passes the EPA and PADER review as set forth herein.

##### B. Initial Review of Existing Documents by EPA/PADER

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

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

Within 120 days following receipt of the studies and reports, EPA and PADER will each provide comments to the Army

identifying data gaps and quality control problems in the existing studies and reports. The Army shall utilize the EPA and PADER comments when preparing the Scope(s) of Work called for by this Agreement.

During the 120 day period, the project managers shall make themselves available to meet and confer as necessary to facilitate this process. The 120 day period may be extended for good cause as provided in Section XXX, Extensions, of this Agreement.

#### C. REMOVALS

Removal activities will be taken at LEAD if:

1. The Army determines that a removal is appropriate; or
2. EPA or PADER requests that a removal be conducted and
  - a. The Army agrees to perform such removal; or
  - b. It is determined through dispute resolution that a removal is appropriate.

Except as otherwise provided by this Section, prior to initiating removal activities, the Army shall notify EPA and PADER in writing by return receipt mail or hand delivery of its proposed removal action; and allow EPA and PADER an adequate opportunity for timely review and comment. The Army notification shall contain adequate specificity to permit meaningful review and comment. If EPA or PADER propose an overlapping or inconsistent Accelerated Remedial Action, the review and comment period on the removal activities shall last at least until any disputes over the need for the overlapping or inconsistent ARA are resolved in accordance with Section XI, (Resolution of Disputes) of this Agreement. An Emergency removal action taken because of imminent and substantial endangerment to human health or the environment may be taken by the Army without following the notice and comment procedures of this paragraph only if consultation would be impractical. The Army agrees to only exercise its removal authority in a manner which is consistent with the purposes of this Agreement, including the review and consultation provisions set forth herein.

#### D. ACCELERATED REMEDIAL ACTIONS

1) Accelerated Remedial Actions (ARAs) are Remedial Actions which prevent, control, or respond to a release or threatened release of hazardous substances where prompt action is necessary but a response under removal authorities is not appropriate or desirable. ARA's will follow a stream-lined remedial process as set forth below. Areas of the Site which are the subject of ARAs ordinarily will need to be evaluated in a subsequent ROD to determine whether or not the ARA meets final clean up standards. For ARAs performed in the non-NPL areas of

the Site, the Army will be required to obtain all appropriate State and local permits.

2) Within 60 days following the effective date of this Agreement, the Army shall complete a draft Focused Feasibility Study (FFS) and draft operable unit ROD for each of the following ARAs:

a. Contaminant source treatment/removal of volatile organic compounds (VOC's) at sites K-1, and K-2, the PDO drum storage revetments, and the clay lined burn pit (see Attachment 2 map).

b. Contaminant source treatment/removal of the fire training pit and surrounding contaminated soil (see Attachment 2 map).

3) The Army may evaluate the following proposed ARA's:

a. Groundwater treatment of VOC's at Rowe Spring.

b. Groundwater treatment of VOC's at Rocky Spring.

4) Additional ARA's may be proposed by any Party during the course of this Agreement as technical data becomes available. The Army shall evaluate all proposed ARAs unless it is decided, by agreement of the parties or through dispute resolution as provided by Section XI, that the proposed ARA should not be considered. Within 30 days following proposal of an ARA by any Party, or following resolution of any dispute regarding the need to evaluate a proposed ARA, the Army shall propose a deadline for completion of the draft FFS and draft Operable Unit ROD. The Parties shall consider and approve or modify the proposed deadlines. Once approved or modified by agreement of the Parties or through dispute resolution, the deadlines shall become requirements of this Agreement.

5) For each ARA to be evaluated the Army shall develop a draft FFS and Operable Unit ROD. The FFS shall be a primary document as defined in Section X. Following finalization of the FFS as provided in Section X, Consultation with EPA and PADER, the FFS and draft ROD shall be published for public review and comment. The Parties shall review the alternative remedial actions in the draft ROD and jointly select a remedial action(s). At a minimum, the parties shall have 15 days to attempt to jointly select a remedy. If, within this time, the Parties are unable to jointly select a remedy, the Administrator of EPA shall select a remedial action(s). Such selection shall not be subject to dispute by the Army. PADER reserves its rights, to the extent provided by law, to seek appropriate relief with respect to EPA's selection of a remedial action(s). Within 30 days after final selection of the ARA, the Army shall revise the draft ROD to conform to the selected remedial alternative and the Army shall submit a Work Plan for implementing the selected ARA. The ARA

Work Plan shall be a primary document as described in Section X and shall contain a schedule for completion of the ARA. The Army shall implement finalized ARA Work Plans.

6) Nothing in this Section shall be construed to affect the RCRA closure of the IWTP Lagoons.

#### E. Scope of Work

The Army shall develop and submit to EPA and PADER a Scope of Work (SOW) for the completion of an RI/FS for each operable unit other than ARA's within 45 days of receipt of EPA and PADER comments on existing reports and studies as described in this section. Each SOW shall describe an RI/FS which meets the requirements of all relevant laws and requirements and contains enough specificity for EPA and PADER to determine that all major elements of an RI/FS are provided for. Each SOW shall be a Primary Document as described in Section X (Consultation with EPA and PADER) of this Agreement.

#### F. Work Plans

The Army shall develop and submit to EPA and PADER a Work Plan (WP) for the completion of an RI/FS for each operable unit. Each WP shall provide for the performance of an RI/FS which meets the requirements of all relevant laws and requirements including EPA RI/FS guidance documents and contain enough specificity for EPA and PADER to determine that the subject RI/FS will be adequate. Each WP shall contain a schedule for the completion of the RI/FS. Each WP shall be a Primary Document as described in Section X (Consultation with EPA and PADER) of this Agreement. Each WP shall be delivered within 180 days following approval by EPA and PADER of the corresponding SOW.

#### G. Remedial Investigation

For each Operable Unit at the Site, the Army shall develop, implement and report upon an RI which shall be finalized as provided for by Section X (Consultation with EPA and PADER) of this Agreement, and which is in accordance with the requirements and time schedules set forth in the approved Work Plan. The RI shall meet the purposes set forth in Section IX (Remedial Action Selection) of this Agreement.

The Parties specifically agree that all criteria contained in the approved Work Plans relate solely to the scope of the RI's and do not reflect a predetermination of the Site cleanup level criteria. The parties further agree that final Site clean-up level criteria will only be determined following completion of the Endangerment Assessment, except as provided in Section IX (Remedial Action Selection) of this Agreement. The Army need not perform an RI for the IWTP Lagoons which will undergo RCRA closure.

#### H. Feasibility Study

For each operable unit at the Site, the Army shall design, propose, undertake and report upon an FS which shall be finalized as set forth in Section X (Consultation with EPA and PADER) and which is in accordance with the requirements and time schedules set forth in the approved Work Plan. The FS shall meet the purposes set forth in Section IX (Remedial Action Selection) of this Agreement. The Army need not perform an FS for the IWTP Lagoons which will undergo RCRA closure.

#### I. Remedial Action Selection and Implementation

Following completion of the RI and the FS for each operable unit, and review of those documents as defined in Section X of this Agreement by U.S. EPA and PADER, the Army shall, after consultation with U.S. EPA and PADER, publish its proposed plan for public review and comment. The Army shall submit its draft ROD to U.S. EPA and PADER within 30 days following the close of the public comment period. The Parties shall review the alternative remedial actions in the draft ROD and jointly select a remedial action(s). At a minimum, the parties shall have 15 days to attempt to jointly select a remedy. If the Parties are unable to jointly select a remedy within this time period, the Administrator of EPA shall select a remedial action(s). EPA shall provide PADER and the Army with a final draft copy of EPA's final selection of a remedial action, including attachments, by return receipt mail or hand delivery, at least five (5) days in advance of the effective date of such final selection. Within 30 days following selection of the Remedial Action(s), the draft ROD shall be revised to be consistent with the selected remedy (if necessary). The selection of remedial action(s) by the U.S. EPA Administrator shall be final and not subject to dispute by the Army. Within 21 days following the final selection of a remedial action, the Army will propose a remedial design due date. If EPA or PADER disagrees with this date, the date will be established through dispute resolution. Following final selection by U.S. EPA, the Army shall design, propose and submit a plan for implementation of the selected remedial action, including appropriate timetables and schedules, to U.S. EPA and PADER for review. Following the review, the Army shall implement the remedial action(s) as approved and in accordance with the requirements and time schedules set forth in the remedial design. A dispute arising under this Section, on any matter other than U.S. EPA's final selection of a remedial action, shall be resolved pursuant to Section XI (Resolution of Disputes), provided however, that PADER reserves its rights to the extent provided by law, to seek appropriate relief with respect to EPA's final selection of a remedial action.

The purpose of the plan for remedial action is to establish procedures for implementation of selected response actions.

#### J. Site Investigation

The RCRA Facility Assessment (RFA) of LEAD identified seventy one grouped Solid Waste Management Units (SWMU's). Two additional areas of concern were identified during the EPA/Army/PADER field verification of the RFA.

Of the seventy one SWMU's, fifty seven are included in the ongoing CERCLA RI/FS activities. The Army will initiate a site investigation to determine if there have been releases of hazardous wastes or hazardous materials to the environment from the SWMU's which are not included in the current RI/FS's.

The Army will conduct a Site Investigation for the fourteen remaining SWMU's and the areas of concern associated with the Strategic Materials Storage areas in accordance with current CERCLA/SARA guidance for conducting Extended Site Investigations (SI). The SWMU's to be studied are identified in Attachment 3 to this Agreement.

Within 14 days of the effective date of this Agreement the Army shall submit to the other Parties a proposed schedule for completion of the Site Investigation including the submission of a work plan which will be subject to review as a primary document. The Parties shall consider and approve or modify the proposed deadlines. Once approved the deadlines shall become requirements of this Agreement. Any disputes shall be subject to the provisions of Section XI (Resolution of Disputes).

Based on the review of the SI, the Parties will determine which (if any) of the SWMU's will move into the RI/FS process. If a new RI/FS is required, the Army shall submit to EPA and PADER a Scope of Work which will contain a schedule for completion of the RI/FS within 45 days of notification by EPA and PADER of the requirement. The Scope of Work shall be a primary document. If the Parties cannot agree on the need for additional RI/FS work, the Dispute Resolution provisions of this Agreement shall be invoked.

#### K. Closure Requirements

A. LEAD shall perform closure, including assessment and abatement, at the Industrial Waste Treatment Plant Lagoons (IWTP Lagoons) as required by PADER and described in Attachment 4. Nothing in this Agreement shall be construed to affect in any way the requirements for RCRA closure of the IWTP Lagoons required by PADER.

B. The closure requirements for the IWTP Lagoons shall be performed such that remedial action under CERCLA will not be necessary. The Lagoons shall not be the basis of an RI/FS or ROD unless, following completion of the RCRA closure, the following conditions are met:

- 1) A determination is made that:



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

b. there is or has been a release of hazardous waste into the environment and corrective action is necessary to protect human health or the environment.

2) The determination is based on significant new information which was not considered in scoping and designing the RCRA Closure.

C. Any dispute arising under Section IX Subsection K (Closure) shall be resolved following the process set forth in Section XI (Resolution of Disputes) except that following resolution attempts by the SEC, the Secretary of PADER shall make the final decision. The Army and EPA each reserve the right, to the extent provided by law, to seek appropriate relief of the Secretary's final decision.

#### X. CONSULTATION WITH EPA and PADER

##### Review and Comment Process for Draft and Final Documents

###### A. Applicability:

The provisions of this Section establish the procedures that shall be used by the Army, PADER and U.S. EPA to provide the Parties with appropriate notice, review, comment, and responses regarding RI/FS and RD/RA documents, specified herein as either primary or secondary documents. In accordance with Section 120 of CERCLA and 10 U.S.C. Section 2705, the Army will normally be responsible for issuing primary and secondary documents to U.S. EPA and PADER. As of the effective date of this Agreement, all draft and final reports for any document identified herein shall be prepared, distributed and subject to dispute in accordance with Paragraphs B through J below.

The designation of a document as "draft" or "final" is solely for purposes of consultation with U.S. EPA and PADER in accordance with this Section. Such designation does not affect the obligation of the Parties to issue documents, which may be referred to herein as "final", to the public for review and comment as appropriate and as required by law. All documents identified below shall be considered "reports" pursuant to Section XVI (Notification).

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

1. Primary documents include those reports that are major, discrete portions of RI/FS or RD/RA activities. Primary documents are initially issued by the Army in draft subject to review and comment by U.S. EPA and PADER. Following receipt of comments on a particular draft primary document, the Army will respond to the comments received and issue a draft final primary document subject to dispute resolution. The draft final primary

document will become the final primary document either 45 days after receipt of a draft final document if dispute resolution is not invoked or as modified by decision of the dispute resolution process. The 45 day period for review of a draft final document may be extended for good cause using the procedures and standards set forth in paragraph G of this Section.

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

#### C. Primary Reports:

1. The Army shall complete and transmit draft reports for the following primary documents for each study area to U.S. EPA and PADER for review and comment in accordance with the provisions of this Section:

1. Scope of Work
2. RI/FS Work Plan, including Sampling and Analysis Plan and QAPP
3. Endangerment Assessment
4. RI Reports
5. Initial Screening of Alternatives
6. FS Reports (including Focused FS's)
7. Proposed Plans
8. Remedial Designs
9. Remedial Action Work Plans
10. Community Relations Plan
11. Site Investigation Work Plan

2. Only the draft final reports for the primary documents identified above shall be subject to dispute resolution. The Army shall complete and transmit draft primary documents in accordance with the timetable and deadlines established in Section XXIX, Deadlines, of this Agreement.

D. Secondary Documents:

1. The Army shall complete and transmit draft reports for the following secondary documents to U.S. EPA and PADER for review and comment in accordance with the provisions of this Section:

1. Detailed Analysis of Alternatives
2. Post-screening Investigation Work Plan
3. Treatability Studies
4. Sampling and Data Results

2. Although U.S. EPA and PADER may comment on the draft reports for the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by Paragraph B hereof. Target dates shall be established for the completion and transmission of draft secondary reports pursuant to Section XXIX (Deadlines) of this Agreement.

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

The Project Managers shall meet approximately every thirty (30) days, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the Site on the primary and secondary documents. Prior to preparing any draft report specified in paragraphs C and D above, the Project Managers shall meet to discuss the report results in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft report.

F. Identification and Determination of Potential ARARs:

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

2. In identifying potential ARARs, the Parties recognize that actual ARARs can be identified only on a site-specific basis and that ARARs depend on the specific hazardous substances, pollutants and contaminants at a site, the particular actions proposed as a remedy and the characteristics of a site. The Parties recognize that ARAR identification is necessarily an iterative process and that potential ARARs must be identified throughout the response process.

G. Review and Comment on Draft Reports:

1. The Army shall complete and transmit each draft primary report to U.S. EPA and PADER on or before the corresponding deadline established for the issuance of the report. The Army shall complete and transmit the draft secondary document in accordance with the target dates established for the issuance of such reports established pursuant to Section XXIX, Deadlines, of this Agreement.

2. Unless the Parties mutually agree to another time period, all draft reports shall be subject to a 45 day period for review and comment. Review of any document by the EPA or PADER may concern all aspects of the report (including completeness) and should include, but not be limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP and any pertinent requirements. Comments shall be provided with adequate specificity so that the Army may respond to the comment, and if appropriate, make changes to the draft report. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and upon request of the Army, the EPA or PADER shall provide a copy of the cited authority or reference. In cases of complex, or unusually lengthy reports, EPA or PADER may extend the 45 day comment period for an additional 20 days by written notice to the other Parties prior to the end of the 45 day period. The time for review of any submittal by EPA or PADER may be further extended for good cause. Good cause shall include force majeure events as defined in this Agreement, and any other situation which the Parties agree justify an extension of time. The extension provided for in this Section shall be for only the duration of the force majeure event, or for such other period as the Parties agree is justified. An environmental emergency of a magnitude that requires a major and unexpected reallocation of resources shall constitute good cause for an extension. On or before the close of the comment period, the EPA and PADER shall transmit by next day mail their written comments to the other Parties.

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

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

5. 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. Within 30 days of the close of the comment period on a draft secondary report, the Army shall transmit to U.S. EPA and PADER its written response to comments received within the comment period. Within 30 days of the close of the comment period on a draft primary report, the Army shall either transmit to U.S. EPA and PADER a draft final primary report, which incorporates all comments received from EPA and PADER within the comment period, or dispute any comment provided by EPA or PADER to which the Army objects. While the resulting draft final report shall be the responsibility of the Army, it shall be the product of consensus to the maximum extent possible.

6. The Army may extend the 30-day period for either responding to comments on a draft report or for issuing the draft final primary report for an additional 20 days by providing notice to U.S. EPA and PADER. In appropriate circumstances, this time period may be further extended in accordance with Section XXX (Extensions) of this Agreement.

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

1. Dispute resolution shall be available to the Parties for draft final primary reports as set forth in Section XI (Resolution of Disputes) of this Agreement.

2. When dispute resolution is invoked on a draft primary report, work may be stopped in accordance with the procedures set forth in Section XI (Resolution of Disputes).

#### I. Finalization of Report:

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

#### J. Subsequent Modifications of Final Reports:

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

1. PADER, U.S. EPA or the Army may seek to modify a

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

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

3. Nothing in this Subpart shall alter PADER or U.S. EPA's ability to request 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.

#### XI. Resolution of Disputes

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.

A. Within thirty (30) days after: (1) receipt of a draft final primary document pursuant to Section XXIX (Deadlines) of this Agreement, or (2) any action which leads to or generates a dispute, the disputing Party shall submit to the Dispute Resolution Committee (DRC) a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute, and the technical, legal or factual information the disputing Party is relying upon to support its position.

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

C. The DRC will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (SES or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The U.S. EPA representative on the DRC is the Hazardous Waste Management Division Director of U.S. EPA's Region III. The Army's designated member is the Letterkenny Army Depot Commander. PADER's representative on the DRC is the Regional Solid Waste Manager. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Section XVI, Notifications.

D. Following elevation of a dispute to the DRC, the DRC shall have twenty one (21) days to unanimously resolve the dispute and issue a written decision. If the DRC is unable to unanimously resolve the dispute within this twenty-one (21) day period the written statement of dispute shall be forwarded to the Senior Executive Committee (SEC) for resolution, within seven (7) days after the close of the twenty-one (21) day resolution period.

E. The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The U.S. EPA representative on the SEC is the Regional Administrator of U.S. EPA's Region III. The Army's representative on the SEC is the Assistant Secretary of the Army. PADER's representative on the SEC is the Regional Environmental Protection Director. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision. If unanimous resolution of the dispute is not reached within twenty-one (21) days, U.S. EPA's Regional Administrator shall issue a written position on the dispute. The Army or PADER may, within fourteen (14) days of the Regional Administrator's issuance of U.S. EPA's position, issue a written notice elevating the dispute to the Administrator of U.S. EPA for resolution in accordance with all applicable laws and procedures. In the event that the Army and PADER elect not to elevate the dispute to the Administrator within the designated fourteen (14) day escalation period, the Army and PADER shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.

F. Upon escalation of a dispute to the Administrator of U.S. EPA pursuant to Subpart E, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the U.S. EPA Administrator shall meet and confer with the Army's Secretariat Representative and the Secretary of PADER or his representative to discuss the issues(s) under dispute. Upon resolution, the Administrator shall provide the Army and PADER with a written

final decision by the U.S. EPA setting forth resolution of the dispute. The duties of the Administrator set for in this Section shall not be delegated.

G. 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 in paragraph H below. All elements of the work required by this Agreement which are not affected by the dispute shall continue and be completed in accordance with the applicable schedule.

H. When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Hazardous Waste Division Director for U.S. EPA's Region III or the Regional Solid Waste Manager for PADER requests in writing, that work related to the dispute be stopped because, in U.S. EPA's or PADER's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or welfare or the environment, or is likely to have a substantial adverse affect on the remedy selection or implementation process. To the extent possible, U.S. EPA and PADER shall consult with the other parties prior to initiating a work stoppage request. After stoppage of work, if the other parties believe that the work stoppage is inappropriate or may have potential significant adverse impacts, the other parties may meet with the Hazardous Waste Division Director or Solid Waste Manager to discuss the work stoppage. Following this meeting, and further consideration of the issues, the Hazardous Waste Division Director or Solid Waste Manager will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the Hazardous Waste Division Director or Solid Waste Manager 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 disputing party. The Army shall comply with any work stoppage request pending resolution of the dispute.

I. 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, schedule or procedures and proceed to implement this Agreement according to the amended plan, schedule or procedures.

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

K. In the event that PADER continues to dispute the



position of the Administrator of EPA, PADER reserves its rights, to the extent provided by law including Sections 113(h), 121 and 310 of CERCLA, Section 7002 of RCRA, and Section XXXII (Enforceability) of this Agreement, to bring an action in federal court to seek relief regarding such dispute and to seek injunctive relief to preserve the dispute pending resolution.

#### XII. Additional Work Or Modification To Work

A. In the event that the U.S. EPA or PADER determine that additional work, or modification to work, including but not limited to remedial investigatory work and/or engineering evaluation, is necessary to accomplish the objectives of this Agreement, notification of such additional work or modification to work shall be provided to the Army. The Army agrees, subject to the dispute resolution procedures set forth in Section XI (Resolution of Disputes), to implement any such work.

B. Any additional work or modification to work determined to be necessary by the Army shall be proposed in writing by the Army and will be subject to review as a primary document in accordance with Section X (Consultation with EPA and PADER) of this Agreement prior to initiating any work or modification to work.

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

#### XIII. Permits

A. The Parties recognize that under Sections 121(d) and 121(e)(1) of CERCLA/SARA, 42 U.S.C. Sections 9621(d) and 9621(e)(1), and the NCP, portions of the response actions called for by this Agreement and conducted entirely on the NPL areas of the Site are exempted from the procedural requirement to obtain a federal, state, or local permit but must satisfy all the applicable or relevant and appropriate federal and state standards, requirements, criteria, or limitations which would have been included in any such permit. For the purpose of this subpart, "NPL Area" shall include any groundwater plume of contaminants migrating from the NPL area on LEAD, and the area vertically above and below such plume.

When the Army proposes a response action other than an emergency removal action to be conducted entirely on the NPL area, which in the absence of Section 121(e)(1) of CERCLA/SARA and the NCP would require a federal or state permit, the Army shall include in the Work Plan:

- (1) Identification of each permit which would otherwise be required;
- (2) Identification of the standards, requirements, criteria, or limitations which would have had to have been met to obtain each such permit;
- (3) Explanation of how the response action proposed will meet the standards, requirements, criteria or limitations identified in paragraph (2) immediately above.

Upon request of the Army, U.S. EPA and the PADER will provide their position with respect to (2) and (3) above in a timely manner.

B. Subpart A above is not intended to relieve the Army from the requirement(s) of obtaining a permit or other authorization whenever it proposes a response action involving the shipment or movement off the LEAD of a hazardous substance, or undertakes any activities not directly related to response actions at the NPL areas.

C. The Army shall notify PADER and U.S. EPA in writing of any permits or other authorizations required for non-NPL area activities as soon as it becomes aware of the requirement. Upon request, the Army shall provide the PADER and U.S. EPA copies of all such permit applications and other documents related to the permit or authorization process.

D. If a permit or other authorization which is necessary for implementation of this Agreement is not issued, or is issued or renewed in a manner which is materially inconsistent with the requirements of this Agreement, the Army agrees to notify the PADER and U.S. EPA of its intention to propose modifications to this Agreement to obtain conformance with the permit (or lack thereof). Notification by the Army of its intention to propose modifications shall be submitted within seven (7) calendar days of receipt by the Army of notification that: (1) a permit will not be issued; (2) a permit has been issued or reissued; or (3) a final determination with respect to any appeal related to the issuance of a permit has been entered. Within thirty (30) days from the date it submits its notice of intention to propose modifications, the Army shall submit to PADER and U.S. EPA its proposed modifications to this Agreement with an explanation of its reasons in support thereof.

E. The PADER and the U.S. EPA shall subject the Army's proposed modifications to this Agreement to review as a primary document in accordance with Section X (Consultation with EPA and PADER) of this Agreement. If the Army submits proposed modifications prior to a final determination of any appeal taken on a permit needed to implement this Agreement, PADER and the U.S. EPA may elect to delay review of the proposed modifications

until after such final determination is entered. If PADER or the U.S. EPA elect to delay review, the Army shall continue implementation of this Agreement as provided in subpart F of this Section.

F. During any appeal of any permit required to implement this Agreement or during review of any of the Army's proposed modifications as provided in subpart D above, the Army shall continue to implement those portions of this Agreement which can be reasonably implemented pending final resolution of the permit issue(s).

G. Except as otherwise provided in this Agreement, the Army shall comply with all state and federal laws and regulations which the Army is subject to at the Site. Nothing in this Agreement shall be construed to affect LEADs obligation to obtain a RCRA permit for its hazardous waste management units.

#### XIV. Imminent and Substantial Endangerments

In the event that PADER or the U.S. EPA determines that activities conducted pursuant to this Agreement, or any other circumstances or activities, are creating an imminent and substantial endangerment to the health or welfare of the people on the Site or in the surrounding area or to the environment, PADER or the U.S. EPA may order the Army to halt further implementation of this Agreement for such period of time as needed to take appropriate action, including abating the danger. The Army shall arrange to have an individual with Emergency Response Training, Hazardous Materials Handling Training, and Contract Officer's Powers present at any time that work pursuant to this Agreement is being carried out by Army contractors at the Site.

#### XV. Reporting

The Army shall submit to the PADER and the U.S. EPA quarterly written progress reports which describe the actions which the Army has taken during the previous quarter to implement the requirements of this Agreement. Progress reports shall also describe the activities scheduled to be taken during the upcoming quarter. Progress reports shall be submitted by the tenth (10) day of each quarter following the effective date of this Agreement. The progress reports shall include a detailed statement of the manner and extent to which the requirements and time schedules set out in this Agreement and approved Work Plans are being met. In addition, the progress reports shall identify any anticipated delays in meeting time schedules, the reason(s) for the delay and actions taken to prevent or mitigate the delay.

#### XVI. Notification

A. Unless otherwise specified, the following shall be sent by a method of mail or other delivery providing a return receipt:

1. Any report provided pursuant to a schedule or deadline identified in or developed under this Agreement.
2. Any remedial action, including ARAs, selected by EPA.
3. Any notice of dispute and response thereto submitted under Section XI (Resolution of Disputes).
4. Any request, and response thereto, for extensions under Section XXX (Extensions).
5. Any notice of force majeure.

B. The items listed in "A" above shall be addressed as shown below:

LEAD Project Manager  
Bureau of Waste Management  
Pennsylvania Department of Environmental Resources  
1 Ararat Blvd.  
Harrisburg, PA 17110

and

U.S. Environmental Protection Agency Region III  
Attn: LEAD Project Manager (3HW17)  
841 Chestnut Building  
Philadelphia, PA 19107

Documents sent to the Army shall be addressed as follows unless the Army specifies otherwise by written notice:

Commander  
Letterkenny Army Depot  
Attn: SDSLE-EN  
Chambersburg, PA 17201

Unless otherwise requested, all routine correspondences may be sent via regular mail to the above-named persons.

C. U.S. EPA shall provide the Secretary of the Army and the PADER with a forty-five (45) day advance notice of the U.S. EPA Administrator's intention to delegate the authority to select appropriate remedial actions pursuant to this Agreement.

#### XVII. Project Managers

The U.S. EPA, PADER and the Army shall each designate a Project Manager and Alternate (hereinafter jointly referred to as Project Manager) for the purpose of overseeing the implementation of this Agreement. Within ten (10) days of the effective date of this Agreement, each Party shall notify the other Parties of the name and address of their Project Manager. Any Party may change its designated Project Manager by notifying the other Parties, in

writing, within five days of the change. To the maximum extent possible, communications between the Parties concerning the terms and conditions of this Agreement shall be directed through the Project Managers as set forth in Section XVI (Notification) of this Agreement. Each Project Manager shall be responsible for assuring that all communications from the other Project Managers are appropriately disseminated and processed by the entities which the Project Managers represent.

The PADER and U.S. EPA Project Managers shall have the authority to: (1) take samples, request split samples of Army samples and ensure that work is performed properly and pursuant to U.S. EPA and PADER protocols as well as pursuant to the Attachments and plans incorporated into this Agreement; (2) observe all activities performed pursuant to this Agreement, take photographs and make such other reports on the progress of the work as the Project Managers deem appropriate; (3) review records, files and documents relevant to this Agreement; (4) recommend and request minor field modifications to the work to be performed pursuant to this Agreement, or in techniques, procedures or design utilized in carrying out this Agreement, which are necessary to the completion of the project; and (5) exercise the authorities granted to them in this Section.

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

Any field modifications proposed under this Section by any Party must be approved orally by all three (3) Project Managers to be effective. If agreement cannot be reached on the proposed additional work or modification to work, dispute resolution as set forth in Section XI may be used in addition to this Section. Within five (5) business days following a modification made pursuant to this Section, the Project Manager who requested the modification shall prepare a memorandum detailing the modification and the reasons therefore and shall provide or mail a copy of the memorandum to the other Project Managers.

The Army Project Manager or his designated representative shall be physically present on LEAD or reasonably available to supervise work performed at LEAD during implementation of the work performed pursuant to this Agreement and shall make himself available to U.S. EPA and PADER Project Managers for the pendency of this Agreement. The absence of the U.S. EPA or PADER Project Managers from the Site shall not be cause for work stoppage.

#### XVIII Technical Review Committee

Pursuant to 10 U.S.C. Section 2705(c), the Army shall

establish a Technical Review Committee ("TRC") and, in consultation with the Parties, shall provide for representatives from the following organizations to serve as members of the TRC:

- a. A representative of LEAD
- b. A representative of EPA;
- c. A representative of PADER;
- d. A representative from the local government;
- e. Public representatives of the local communities.

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

The LEAD Commander shall serve as the chairman of the TRC meetings. The chairman shall schedule regular meetings of the TRC approximately every three months. Regular meetings of the TRC shall be for the purpose of reviewing progress under the RI/FS or the RD/RA and discussing other matters of interest to the TRC. Special meetings of the TRC shall be held at the request of the members.

#### XIX. Sampling and Data/Document Availability

The Parties shall make available to each other quality assured results of sampling, tests or other data generated by such Party, or on their behalf, with respect to the implementation of this Agreement within forty five (45) days of their collection or performance. If quality assurance is not completed within forty-five (45) days, raw data or results shall be submitted within the forty-five (45) day period and quality assured data or results shall be submitted as soon as they become available.

At the request of either the PADER or U.S. EPA Project Manager, the Army shall allow split samples to be taken by PADER or U.S. EPA during sample collection conducted during the implementation of this Agreement. The Army's Project Manager shall endeavor to notify the U.S. EPA and PADER Project Managers not less than ten (10) business days in advance of any sample collection. If it is not possible to provide ten (10) business days prior notification, the Army shall notify the PADER and U.S. EPA Project Managers as soon as possible after becoming aware that samples will be collected.

#### XX. Retention of Records

Each Party to this Agreement shall preserve for a minimum of ten (10) years after termination of this Agreement all

records and documents in its possession or in the possession of its divisions, employees, agents, accountants, contractors or attorneys which relate in any way to the presence of hazardous substances, pollutants and contaminants at the Site or to the implementation of this Agreement, despite any document retention policy to the contrary. After this ten (10) year period, the Army shall notify the U.S. EPA and PADER at least forty-five (45) days prior to destruction or disposal of any such documents or records. Upon request by the U.S. EPA or PADER, the Army shall make available such records or documents to the U.S. EPA or PADER.

#### XXI. Access

A. Without limitation on any authority conferred on U.S. EPA or PADER by statute or regulation, the U.S. EPA, PADER and/or their authorized representatives, shall have authority to enter the Site at all reasonable times for the purposes of, among other things: (1) inspecting records, operating logs, contracts and other documents relevant to implementation of this Agreement; (2) reviewing the progress of the Army, its response action contractors or lessees in implementing this Agreement; (3) conducting such tests as the PADER and the U.S. EPA Project Managers deem necessary; and (4) verifying the data submitted to the U.S. EPA and PADER by the Army. The Army shall honor all reasonable requests for such access by the U.S. EPA and PADER conditioned only upon presentation of proper credentials. However, such access shall be obtained in conformance with Army security regulations and in a manner minimizing interference with any military operations at LEAD.

B. To the extent that access is required to areas of the Site presently owned by or leased to parties other than the Army, the Army agrees to exercise its authorities to obtain access pursuant to Section 104(e) of CERCLA/SARA from the present owners and/or lessees within thirty (30) calendar days after the execution by the Parties of this Agreement or, where appropriate, within thirty (30) days after the relevant Submittals which require access are finalized pursuant to Section X (Consultation with EPA and PADER) of this Agreement. The Army shall use its best efforts to obtain access agreements which shall provide reasonable access to U.S. EPA and PADER and/or their authorized representatives. With respect to non-Army property upon which monitoring wells, pumping wells, treatment facilities or other response actions are to be located, the access agreements shall also provide that no conveyance of title, easement, or other interest in the property shall be consummated without provisions for the continued operation of such wells, treatment facilities, or other response actions on the property. The access agreements shall also provide that the owners of LEAD or of any property where monitoring wells, pumping wells, treatment facilities or other response actions are located shall notify the Army, PADER, and U.S. EPA by certified mail, at least thirty (30) days prior to any conveyance, of the property owner's intent to convey any interest in the property and of the provisions made for the

continued operation of the monitoring wells, treatment facilities, or other response actions installed pursuant to this Agreement.

C. In the event that Site access is not obtained within the thirty (30) day time period set forth in subpart B above, within fifteen (15) days after the expiration of the thirty (30) day period the Army shall notify the PADER and U.S. EPA regarding the lack of, and efforts to obtain, such access agreements. Within fifteen (15) days of any such notice, the Army shall submit appropriate modification(s) in response to such inability to obtain access.

D. The Army may request the assistance of U.S. EPA and PADER where access problems arise. If requested, EPA will take reasonable steps to assist the Army in gaining access.

#### XXII. Five Year Review

Consistent with Section 121(c) of CERCLA/SARA, and in accordance with this Agreement, the Army agrees that U.S. EPA and PADER will review the remedial action no less often than each five years after the initiation of the final remedial action to assure that human health and the environment are being protected by the remedial action being implemented. If upon such review it is the judgment of U.S. EPA and PADER that additional action or modification of the remedial action is appropriate in accordance with Section 104 or 106 of CERCLA/SARA, the Army shall implement such additional or modified action.

Any dispute by the Army of the determination by U.S. EPA and PADER under this Section shall be resolved under Section XI (Resolution of Disputes) of this Agreement. If PADER disagrees with U.S. EPA on whether additional or modified action is appropriate under this Section, the dispute shall be resolved under Section XI (Resolution of Disputes) of this Agreement.

#### XXIII. Other Claims

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

The U.S. EPA and PADER shall not be held as a party to any contract entered into by the Army to implement the requirements of this Agreement.

This Agreement shall not restrict U.S. EPA or PADER from taking any legal or response action for any matter not



specifically part of the work covered by this Agreement.

#### XXIV. Confidential Information

The Army may assert a confidentiality claim as described in 40 C.F.R. Section 2.203(b) covering all or part of the information requested by any Party under this Agreement. Analytical data shall not be claimed as confidential by the Army. Information determined to be confidential by U.S. EPA pursuant to 40 C.F.R. Part 2 shall be afforded the protection specified therein and such information shall be treated by the PADER as confidential when so marked. The Army hereby waives any and all claims to confidentiality under Pennsylvania law for any information determined by U.S. EPA not to be confidential pursuant to 40 C.F.R. Part 2. If no claim of confidentiality accompanies the information when it is submitted to the U.S. EPA or PADER, the information may be made available to the public without further notice to the Army.

#### XXV. EPA'S Covenant Not to Sue And Reservation of Rights

In consideration for the Army's compliance with this Agreement, and based on the information known to the Parties on the effective date of this Agreement, U.S. EPA agrees that compliance with this Agreement shall stand in lieu of any administrative, legal and equitable remedies against the Army to address the currently known releases or threatened releases of hazardous substances including hazardous wastes, pollutants or contaminants at the Site which are the subject of the RI/FS's and which will be addressed by the remedial action provided for under this Agreement; except that nothing in this Agreement shall preclude the U.S. EPA from exercising any administrative, legal or equitable remedies available to them to require additional response actions by the Army in the event that: (1) conditions previously unknown to the parties or undisclosed to U.S. EPA arise or are discovered at the Site; or (2) U.S. EPA receives information which indicates that the requirements of this Agreement are not adequately protective of public health or welfare or the environment. This Covenant Not To Sue does not affect any claims for natural resource damage assessments or for damages to natural resources.

#### XXVI. PADER'S Covenant Not To Sue

A. Except as provided herein, the State covenants not to sue the Army concerning any liability to PADER under CERCLA resulting from any release or threatened release of a hazardous substance, which release or threatened release is addressed by this Agreement. This Section is not, and shall not be construed as, a covenant not to sue (1) the Army in the event that all of the requirements of this Agreement are not carried out, or (2) any other person or entity not a party to this Agreement. This covenant not to sue does not apply to any future removal or remedial actions taken at the Site beyond those actions specified

in this Agreement. The covenant not to sue shall take effect upon the certification by PADER that the remedial actions have been completed in accordance with the approved workplans and the remedial actions meet the standards set forth in Sections 121 and 122 of CERCLA.

B. The provisions of paragraph A of this Section shall not apply to the following claims:

1. Claims based on a failure by the Army to fulfill the requirements of this Agreement;
2. Claims for costs incurred by PADER as a result of the failure of the Army to fulfill the requirements of this Agreement;
3. Claims based on criminal liability;
4. Claims based on liability for damage to natural resources, past or future, as defined in CERCLA;
5. Claims based on liability for hazardous substances removed from the Site;
6. Claims based on liability for monitoring or oversight expenses incurred by PADER except as those expenses are reimbursed to PADER pursuant to this Agreement;
7. Claims based on failure to perform any remedial actions in accordance with state ARARs; or,
8. Claims for costs recoverable under CERCLA or other laws.

C. Notwithstanding any other provisions of this Agreement, PADER reserves the right to seek modification of this Agreement or to institute a new action to seek additional removal or remedial measures at the Site through an action to compel the Army to perform removal or remedial work or to institute an action to compel the Army to reimburse PADER for response costs if (1) conditions previously unknown to the parties or undisclosed to PADER arise or are discovered at the Site; or (2) PADER receives information which indicates that the requirements of this Agreement are not adequately protective of public health or welfare or the environment.

#### XXVII. PADER's Reservation of Rights

Nothing herein shall be construed to affect PADER's rights to seek appropriate relief, to the extent authorized by law and this Agreement, against EPA, the Army, or any other party, to obtain compliance with the law at the Site including, but not limited to, state law governing hazardous or solid waste storage, treatment, or disposal, state law concerning removal or remedial actions, or liability or compliance with respect to the release of hazardous substances or other pollutants or

contaminants.

#### XXVIII Prior Drafts

This Agreement shall constitute the entire integrated agreement of the Parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.

#### XXIX. DEADLINES

A. The following deadlines have been established by the parties for the submittal of draft primary documents pursuant to this Agreement:

1. **Scope of Work:** Within 45 days of receipt from the other Parties of comments on existing documents as described in the Initial Review of Existing Documents Section the Army shall submit a Scope of Work.

2. **RI/FS Work Plans, including Sampling and Analysis Plan and QAPP:** Within 180 days of approval of the Scope of Work by the other Parties as described in the Scope of Work Section the Army shall submit a Work Plan for each Operable Unit.

B. In each Work Plan the Army shall propose deadlines for completion of the following draft primary documents:

1. Endangerment Assessment
2. RI Reports
3. Initial Screening of Alternatives
4. FS Reports
5. Proposed Plans
6. Community Relations Plan

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

C. Within twenty-one (21) days of issuance of each Record of Decision, the Army shall propose deadlines for completion of the following draft primary documents:

1. Remedial Design
2. Remedial Action Work Plan

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

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

#### XXX EXTENSION

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

1. The timetable and deadline or the schedule that is sought to be extended
2. The length of the extension sought;
3. The good cause(s) for the extension; and
4. Any related timetable and deadline or schedule that would be affected if the extension were granted.

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

1. An event of force majeure;
2. A delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and deadline or schedule; and
3. Any other event or series of events mutually agreed to by the Parties as constituting good cause.

C. Good cause may exist for an extension when sought in regard to:

1. A delay caused by another party's failure to meet any requirements of this Agreement;
2. A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;

D. Absent agreement of the Parties with respect to the existence of good cause, any party may seek and obtain a determination through the dispute resolution process that good

cause exists.

E. Within seven days of receipt of a request for an extension of a timetable and deadline or a schedule, the other parties shall each advise the requesting party in writing of its respective position on the request. Any failure by the other parties to respond within the 7-day period shall be deemed to constitute concurrence by that Party in the request for extension. If a party does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

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

G. Within seven days of receipt of a statement of nonconcurrence with the requested extension, any Party may invoke dispute resolution in accordance with Section XI of this Agreement. Failure of any Party to invoke dispute resolution within the seven day period shall be deemed to waive all objections by that Party to the statement of nonconcurrence.

H. A timely and good faith request for an extension shall toll any assessment of stipulated penalties, forfeiture of comment rights, or application for judicial enforcement of the affected timetable and deadline or schedule until a decision is reached on whether the requested extension will be approved. If dispute resolution is invoked and the requested extension is denied, stipulated penalties may be assessed and may accrue from the date of the original timetable, deadline or schedule. Following the granting of an extension, an assessment of stipulated penalties or an application for judicial enforcement may be sought only to compel compliance with the timetable and deadline or schedule as most recently extended.

#### XXXI. FORCE MAJEURE

A Force Majeure shall mean any event arising from causes beyond the control of a Party that causes a delay in or prevents the performance of any obligation under this Agreement, including, but not limited to, acts of God; fire; war; insurrection; civil disturbance; explosion; unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance; adverse weather conditions that could not be reasonably anticipated; unusual delay in transportation; restraint by court order or order of public authority; inability to obtain, at reasonable cost and after exercise of reasonable diligence, and compliance with Section XIII (Permits) of this Agreement any necessary

authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority other than the Party claiming the Force Majeure; inability to obtain Site access after giving advance notice of access problems to the other Parties and compliance with Section XXV (Site Access) of this Agreement; 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 timely request for such funds as part of the budgetary process as set forth in Section XXXIX (Funding) of this Agreement. A Force Majeure shall also include any strike or other labor dispute, whether or not within the control of the Parties affected thereby. Force Majeure shall not include increased costs or expenses of Response Actions, whether or not anticipated at the time such Response Actions were initiated, or nonattainment of the requirements set forth in this Agreement except as provided herein. An extension of time for compliance shall be granted if it is determined through the disputes resolution process that such an extension is justified to compensate for any unavoidable delay occasioned by a Force Majeure.

In order for any Party to take advantage of these Force Majeure provisions, the Party claiming the Force Majeure shall inform the other Parties of any delay incurred due to an alleged Force Majeure event within two days, by telephone, and within seven business days, in writing, of the date of discovery of the event causing the delay. Notification shall be made to appropriate project officers, and shall include all relevant documentation such as third party correspondence, and any other non-confidential or unprivileged records, papers or correspondence in the possession or reasonably available to the Party claiming Force Majeure. This notification should substantiate the cause for the delay and all steps taken by the Party claiming Force Majeure to mitigate, limit or remedy the delay. A Party who fails to provide the notice required by this paragraph forfeits their right to claim the benefits of this Force Majeure Section unless the failure to give notice is itself caused by a Force Majeure event.

Any Party who receives notice from another Party that a Force Majeure event has occurred and disagrees that the event constitutes a Force Majeure must notify the other Parties within fourteen days after receipt of the written notice of Force Majeure that a disagreement exists.

In any judicial action in which a Force Majeure is an issue, the Party claiming the existence of a Force Majeure event shall have the burden of proving that delays were unavoidable, the duration of the unavoidable delays, and that the required notices were given.

#### XXXII. ENFORCEABILITY

A. The Parties agree that:

1. Upon the effective date of this Agreement, any standard, regulation, condition, requirement or order which has become effective under CERCLA and is incorporated into this Agreement is enforceable by any person pursuant to Section 310 of CERCLA, and any violation of such standard, regulations, condition, requirement or order will be subject to civil penalties under Sections 310(c) and 109 of CERCLA; and Section 3008 of RCRA.

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

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

4. Any final resolution of a dispute pursuant to Section XI (Resolution of Disputes) of this Agreement which establishes a term, condition, timetable, deadline or schedule shall be enforceable by any person pursuant to Section 310 of CERCLA, and any violation of such term, condition, timetable, deadline or schedule will be subject to civil penalties under Sections 310(c) and 109 of CERCLA and Section 3008 of RCRA.

B. Nothing in this Agreement shall be construed as authorizing any person to seek judicial review of any action or work where review is barred by any provision of CERCLA, including Section 113(h) of CERCLA.

C. The Parties agree that all Parties shall have the right to enforce the terms of this Agreement in any manner provided by law.

D. With respect to the Army's obligations under Section XI K (Closure), PADER may seek any appropriate relief to enforce those requirements, or any other term of this Agreement relating to those requirements, by bringing any action authorized by law, including an action under Section 7002 of RCRA, 42 U.S.C. Section 6972 for any relief allowed by law.

XXXIII. STIPULATED PENALTIES

A. In the event that the Army fails to submit a primary document (i.e., Scope of Work, RI/FS Work Plan, Endangerment Assessment, RI Report, Initial Screening of Alternatives, FS Report, Proposed Plan, Community Relations Plan,

Remedial Design, Remedial Action Work Plan) to U.S. EPA and PADER pursuant to the appropriate timetable or deadline in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement which relates to a remedial action, U.S. EPA may assess and PADER may demand a stipulated penalty against the Army. In the case of a PADER demand for issuance of a stipulated penalty, the matter will be referred to the DRC for an assessment determination. A stipulated penalty may be assessed in an amount not to exceed \$5,000 for the first week (or part thereof), and \$10,000 for each additional week (or part thereof) for which a failure set forth in this Paragraph occurs. Such amount shall not be subject to dispute resolution.

B. In the event that the Army fails to submit the Closure Plan, or any other required report, plan, data or other document or notice as required by Section IX.K (Closure Requirements) to PADER pursuant to the appropriate timetable or deadline, or fails to comply with a term, condition or approved/finalized plan which relates to RCRA Closure under this Agreement, PADER may assess a stipulated penalty against the Army. The Stipulated Penalty shall be \$5,000 for the first week (or part thereof), and \$10,000 for each additional week (or part thereof) for which a failure set forth in this paragraph occurs. Such amount shall not be subject to dispute resolution. Any dispute raised by the Army regarding the grounds for such assessment by PADER shall be resolved using the process set forth in Section IX (Resolution of Disputes) except that following resolution attempts by the SEC, the Secretary of PADER shall make the final decision.

C. Upon determining that the Army has failed in a manner set forth in paragraph A or B, U.S. EPA or PADER shall so notify the Army in writing. If the failure 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 failure did in fact occur. The Army shall not be liable for the stipulated penalty assessed by U.S. EPA or PADER if the failure is determined, through the dispute resolution process, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.

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

1. The facility responsible for the failure;
2. A statement of the facts and circumstances giving rise to the failure;
3. A statement of any administrative or other corrective action taken at the relevant facility, or a statement



of why such measures were determined to be inappropriate;

4. A statement of any additional action taken by or at the facility to prevent recurrence of the same type of failure; and
5. The total dollar amount of the stipulated penalty assessed for the particular failure

E. Stipulated penalties assessed pursuant to this Section shall be payable to the Hazardous Substances Superfund only in the manner and to the extent Congress expressly appropriates and authorizes funds for that purpose.

F. In no event shall this Section give rise to a stipulated penalty in excess of the amount set forth in Section 109 of CERCLA or Section 3008 of RCRA.

G. This Section shall not affect the Army's ability to obtain an extension of a timetable, deadline or schedule pursuant to sections XXIX and XXX of this Agreement.

H. 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.

I. 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 do the following:

1. Inform EPA and PADER of the specific basis for failure to pay; and

2. Request funding for such stipulated penalties by submitting requests for appropriation and authorization of funds for the payment of the penalties in the first annual budget request following the assessment through the Department of Defense budgetary process, and in all subsequent budget requests until the penalties are paid in full.

#### XXXIV. Conveyance of Title

No conveyance of title, easement, or other interest in the Army property in which any containment system, treatment system, monitoring system or other response action(s) is installed or implemented pursuant to this Agreement shall be consummated by the Army without provision for continued maintenance of any such system or other response action(s). At least thirty (30) days prior to any such conveyance, the Army shall notify U.S. EPA and PADER of the provisions made for the continued operation and maintenance of any response action(s) or systems installed or implemented pursuant to this Agreement.

### XXXV. Public Participation

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

B. The Army shall develop and implement a Community Relations Plan (CRP) which responds to the need for an interactive relationship with all interested community elements, both on LEAD and off, regarding activities and elements of work undertaken by the Army. The Army agrees to develop and implement the CRP in a manner consistent with Section 117 of SARA, the NCP, U.S. EPA guidelines set forth in U.S. EPA's Community Relations Handbook, and any modifications thereto.

The CRP is subject to review as a Primary Document as set forth in Section X (Consultation with EPA and PADER) of this Agreement.

C. The public participation requirements of this Agreement shall be implemented so as to meet the public participation requirements applicable to RCRA permits under 25 Pa Code Sections 75.280 - 75.283, 40 C.F.R. Part 124 and Section 7004 of RCRA.

D. To the extent practicable, any Party issuing a formal press release to the media or publishing a notice regarding any of the work required by this Agreement shall advise the other Parties of such press release or notice and the contents thereof at least forty-eight (48) hours before the issuance of such press release or notice and of any subsequent changes prior to release.

E. The Army shall establish and maintain an administrative record at or near LEAD in accordance with Section 113(k) of CERCLA/SARA. The administrative record shall be established and maintained in accordance with current and future U.S. EPA policy and guidelines. A copy of each document placed in the administrative record will be provided to the U.S. EPA and PADER. The administrative record developed by the U.S. Army shall be updated and supplied to U.S. EPA and PADER on at least a quarterly basis. An index of documents in the administrative record will accompany each update of the administrative record.

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

### XXXVI. Public Comment

A. Within fifteen (15) days of the date of the execution of this Agreement by all Parties, U.S. EPA shall announce the availability of this Agreement to the public for review and comment. U.S. EPA shall accept comments from the public for a period of forty-five (45) days after such announcement. At the end of the comment period, U.S. EPA shall review all such comments and shall either:

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

(2) Determine that modification of the Agreement is necessary, in which case the Army and PADER will be forwarded a revised Agreement which includes all required changes to the Agreement.

B. In the event of significant revision or public comment, notice procedures of Sections 117 and 211 of SARA shall be followed and a responsiveness summary shall be published by the U.S. EPA.

C. In the event that modification of the Agreement is determined by U.S. EPA to be necessary pursuant to Subpart A(2) above, within twenty (20) days of receipt of the revised Agreement the Army and PADER reserve the right to withdraw from the Agreement. If neither the Army or PADER provide U.S. EPA with written notice of withdrawal from the Agreement within such twenty (20) day period, the Agreement, as modified, shall automatically become effective on the twenty-first (21) day, and U.S. EPA shall issue a notice to the Parties to that effect.

D. All plans and activities related to Community Relations and Public Participation undertaken by the Army shall be subject to review as set forth in Section IX (Remedial Action Selection) of this Agreement.

#### XXXVII. Termination

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

#### XXXVIII. Effective Date

This Agreement is effective upon issuance of a notice to the Parties by U.S. EPA following implementation of Section XXXVI (Public Comment) Subparts A through C, of this Agreement.

#### XXXIX. FUNDING

It is the expectation of the Parties to this Agreement

that all obligations of the Army arising under this Agreement will be fully funded. The Army agrees to seek sufficient funding through the United States Department of Defense budgetary process to fulfill its obligations under this Agreement.

In accordance with Section 120(e)(5)(B) of CERCLA, 42 U.S.C. Section 6920(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.

Any requirement for the payment or obligation of funds, including stipulated penalties and technical assistance/oversight reimbursement, 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. Section 1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted.

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

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

Attachment 5 is LEAD's current budget planning document for work contemplated under this Agreement. It is recognized that this Attachment is subject to change. Any modifications of this attachment will be made available to PADER and U.S. EPA. To date, LEAD has received and obligated appropriated funds in an amount of 2.8 million dollars for RCRA closure of the IWTP Lagoons.

The Army shall submit copies of all such budget request documents to PADER and EPA by October 1 of each year after the execution of this Agreement, and shall notify PADER and EPA of the actual amounts budgeted by February 1 of each year. The

Budget documents shall clearly establish that LEAD has requested all necessary funds to carry out the Army's obligations under this Agreement for the applicable budget year. The Army shall honor all reasonable requests by PADER and/or EPA to obtain additional documentation or information regarding the budget, and shall respond to such requests within 15 days of the request.

In the event that the Army's obligations under this Agreement are not fulfilled for 12 consecutive months, PADER shall have the option of terminating all provisions in the Agreement affecting PADER's rights and responsibilities, and PADER may thereafter seek any appropriate relief. However, in no case would the State terminate the Agreement without providing ten (10) days notice of the intent to terminate to the other Parties.

#### XXXX REIMBURSEMENT OF PADER TECHNICAL ASSISTANCE/OTHER COSTS

1. The Army agrees to reimburse PADER for the costs related to the implementation of this Agreement, as provided in this Section, and subject to Section XXXIX (Funding).

2. The Army's agreement to reimburse PADER for its costs is limited as follows:

a. Seventy five-Thousand Dollars (\$75,000) Federal Fiscal Year ("FY") 1989, and

b. Seventy Five-Thousand Dollars (\$75,000) for the following Federal fiscal year after the effective date of this Agreement (FY 1990).

3. Reimbursement of costs to PADER under this Agreement shall be in accordance with this Section and the procedures in Attachment 6 to this Agreements.

4. The Army and PADER agree that this Section shall not obligate the Army to reimburse PADER for costs incurred after September 30, 1990, unless this Agreement is modified to provide for such reimbursement. The Army and PADER agree to conduct good faith negotiations for the purposes of determining future years oversight costs. In the event that the Army and PADER do not reach agreement on such costs, PADER may withdraw as a party to this Agreement, or this section of the Agreement, by providing written notice to each party. Such withdrawal by PADER will terminate all of the duties and responsibilities of PADER according to the withdrawal.

5. Nothing in this Section shall prevent PADER from seeking any appropriate relief against the Army to (1) recover response costs under CERCLA which are not reimbursed to PADER under this Agreement, (2) recover costs incurred in response to future releases of hazardous substances from the Site, and (3) recover costs incurred due to the Army's noncompliance with this

Agreement.

XXXXI NOTICE OF CITIZEN SUITS

a. Based upon the findings and determinations in this Agreement, and the work to be performed pursuant to this Agreement, including RCRA Closure, Site Investigations, and RI/FS, PADER hereby gives notice, as provided by CERCLA Sections 310(d) and 310(e) and RCRA Section 7002, that it intends to bring an action under CERCLA Section 310(a) or RCRA Section 7002 in the event that EPA or the Army fails to comply with any requirement of this Agreement. Such notice also applies to any failure by EPA or the Army to comply with CERCLA or RCRA, or in the event that EPA or the Army fails to perform any non-discretionary act or duty related to this Agreement.

b. In addition to the above, the Parties agree that any written statement of dispute submitted to the DRC by PADER or other statement or document in response to a written statement of dispute by another Party, as described in Section XI (Resolution of Disputes), or any request submitted by PADER as described in Section XI.H, and any statement of non-concurrence by PADER to a request for extension under the provisions of Section XXX (Extensions), shall be considered a notice of intent to file a citizen suit under CERCLA Section 310 and RCRA Section 7002 if it contains a statement indicating that it is to be considered a notice of intent.

IT IS SO AGREED:

By: Lewis D. Walker  
Lewis D. Walker  
Deputy for Environment, Safety  
and Health  
U.S. Department of the Army

2/3/89  
Date

By: Stephen L. Etzel  
Col. Stephen L. Etzel, Commander  
Letterkenny Army Depot

2/3/89  
Date

By: J. Winston Porter  
J. Winston Porter  
Assistant Administrator  
U.S. Environmental Protection Agency

2/3/89  
Date

By: Stanley L. Laskowski  
for Stanley L. Laskowski  
Acting Regional Administrator  
U.S. Environmental Protection Agency

2/3/89  
Date

By: Mark M. McClellan  
Mark M. McClellan  
Deputy Secretary, Environmental Protection  
Pennsylvania Department of Environmental Resources

2/3/89  
Date

By: Douglas Brennan  
Douglas Brennan  
Assistant Counsel  
Pennsylvania Department of Environmental Resources

2/3/89  
Date