

IAG COVER SHEET

FILE NAME: NavalAirDev.pdf

Title: Naval Air Development Center

Subject: Region 3, III

Author: Navy, DoD, Pennsylvania, PA

Keywords: 9/20/90, 1990, FY90

UNITED STATES DEPARTMENT OF THE NAVY
AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:)
)
The U.S. Department) Administrative
of the Navy) Docket Number
)
Naval Air Development Center) III-FCA-CERC-005
Warminster, Pennsylvania)
)

FEDERAL FACILITY AGREEMENT UNDER CERCLA SECTION 120

TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
I. PURPOSE	4
II. SCOPE OF AGREEMENT	6
III. DEFINITIONS	7
IV. JURISDICTION	9
V. FINDINGS OF FACT	10
VI. U.S. EPA DETERMINATIONS	12
VII. CONSULTATION WITH EPA	13
VIII. PROJECT MANAGERS	19
IX. QUALITY ASSURANCE	21
X. ACCESS	22
XI. DATA AND DOCUMENT AVAILABILITY	24
XII. PERMITS	25
XIII. REMOVAL AND EMERGENCY ACTIONS	26
XIV. DISPUTE RESOLUTION	28
XV. DEADLINES	31
XVI. EXTENSIONS	33
XVII. FORCE MAJEURE	35
XVIII. RECORDS OF DECISION AND PLANS FOR REMEDIAL ACTIONS	36
XIX. EXEMPTIONS	38
XX. EPA CERTIFICATION	39
XXI. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION	40
XXII. ENFORCEABILITY	41

XXIII.	STIPULATED PENALTIES	42
XXIV.	OTHER CLAIMS	44
XXV.	COVENANT NOT TO SUE AND RESERVATION OF RIGHTS	45
XXVI.	TERMINATION AND SATISFACTION	46
XXVII.	FUNDING	47
XXVIII.	COMMUNITY RELATIONS	48
XXIX.	PUBLIC COMMENT ON THIS AGREEMENT	49
XXX.	PRESERVATION OF RECORDS	51
XXXI.	AMENDMENT OR MODIFICATION OF AGREEMENT	52
XXXII.	PROGRESS REPORTS	53
XXXIII.	EFFECTIVE DATE	54
XXXIV.	PERIODIC REVIEW	55
XXXV.	RECOVERY OF EXPENSES	56
SIGNATURE PAGE		57

UNITED STATES DEPARTMENT OF THE NAVY
AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

-----)	Federal Facility Agreement
IN THE MATTER OF:)	
)	
The U.S. Department)	Administrative
of the Navy)	Docket Number
)	
Naval Air Development Center)	III-FCA-CERC-005
Warminster, Pennsylvania)	
)	

Based on the information available to the Parties on the effective date of this Federal Facility Agreement (Agreement), and without trial or adjudication of any issues of fact or law, the Parties agree as follows:

I. PURPOSE

1.1 The general purposes of this Agreement are to:

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

(b) Establish a procedural framework and schedule for developing, implementing and monitoring appropriate response actions at the Site in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act as amended by the Superfund Amendments and Reauthorization Act (CERCLA), the National Contingency Plan (NCP), Superfund guidance and policy, the Resource Conservation And Recovery Act (RCRA), RCRA guidance and policy, and applicable state law;

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

1.2 Specifically, the purposes of this Agreement are to:

(a) Identify remedial alternatives for operable units which are

appropriate at the Site prior to the implementation of final remedial action(s) for the Site. The remedial alternatives shall be identified and proposed to the Parties as early as possible prior to formal proposal of remedial action(s) for operable units to EPA pursuant to CERCLA and applicable state law. This process is designed to promote cooperation among the Parties in identifying remedial alternatives for operable units prior to selection of final remedial actions.

(b) Establish requirements for the performance of a Remedial Investigation (RI) to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release and threatened release of hazardous substances, pollutants or contaminants at the Site and to establish requirements for the performance of a Feasibility Study (FS) for the Site to identify, evaluate and select alternatives for the appropriate remedial action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants or contaminants at the Site in accordance with CERCLA and applicable state law.

(c) Identify the nature, objective and schedule of response actions to be taken at the Site. Response actions at the Site shall attain that degree of cleanup of hazardous substances, pollutants or contaminants mandated by CERCLA and applicable state law.

(d) Implement the selected interim remedial and final remedial action(s) in accordance with CERCLA and applicable state law and meet the requirements of CERCLA Section 120(e)(2) for an interagency agreement among the Parties.

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

(f) Coordinate response actions at the Site with the mission and support activities at Naval Air Development Center (NADC) Warminster.

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

(h) Provide the Commonwealth of Pennsylvania Department of Environmental Resources (PADER) an opportunity to participate in the process in accordance with CERCLA.

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

II. SCOPE OF AGREEMENT

- 2.1 This Agreement is entered into by the Parties to enable the Navy to meet the provisions of CERCLA, 42 U.S.C. Section 9601 et. seq., and Sections 3004(u) and (v) of the Resource Conservation and Recovery Act (RCRA) as amended, 42 U.S.C. Sections 6924(u) and (v).
- 2.2 This Agreement shall apply to and be binding upon the Navy, EPA, their officers, successors in office, agents and employees. This Agreement shall also apply to subsequent owners and operators of NADC Warminster. The Navy agrees to include notice of this Agreement in any document transferring ownership to any subsequent owners and operators of any portion of NADC Warminster in accordance with Section 120(h) of CERCLA and 40 C.F.R. Sections 264.119 and 264.120 and shall notify EPA and PADER of any such change or transfer at least 90 days prior to such transfer.
- 2.3 The Navy agrees it shall develop, implement and report upon a Remedial Investigation at the Site. The Remedial Investigation documents shall be subject to the review and comment procedures described in Section VII, Consultation with EPA, of this Agreement. The Remedial Investigation shall be conducted in accordance with the requirements and time schedules to be adopted in accordance with Section XV, Deadlines, of this Agreement. The Remedial Investigation shall meet the purposes set forth in Section I, Purpose, of this Agreement.
- 2.4 The Navy agrees it shall develop, implement and report upon a Feasibility Study at the Site. The Feasibility Study documents shall be subject to the review and comment procedures described in Section VII, Consultation with EPA, of this Agreement. The Feasibility Study shall be conducted in accordance with the requirements and time schedules to be adopted in accordance with Section XV, Deadlines, of this Agreement. The Feasibility Study shall meet the purposes set forth in Section I, Purpose, of this Agreement.
- 2.5 The Navy agrees it shall perform a Remedial Design, Remedial Action and Operation and Maintenance of the selected remedial action to maintain the effectiveness of response actions at the Site in accordance with CERCLA Section 120(e)(2) and Section XVIII, Records of Decision and Plans for Remedial Action, of this Agreement and CERCLA, RCRA and applicable regulations thereof.
- 2.5 The PADER is presently using its delegated authority under RCRA to oversee closure of two waste impoundments on the Site. This Agreement shall cover any groundwater contamination emanating from these impoundments, while all surface contamination from these impoundments will continue to be handled under PADER's RCRA authorities.

III. DEFINITIONS

3.1 The terms used in this Agreement shall have the same definition as the terms defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et. seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, and the National Contingency Plan. Additionally, the following terms used in this Agreement are defined as follows:

(a) 'Agreement' shall refer to this document and shall include all Attachments to this document. All such Attachments shall be appended to and made part of this Agreement.

(b) 'Applicable state law' shall mean all laws determined to be applicable under this Agreement. The term shall include but not be limited to all laws determined to be Applicable or Relevant and Appropriate Requirements (ARARs). It is recognized that in some instances where this phrase is used, there may be no applicable State laws.

(c) 'Days' means calendar days, unless business days are specified. Any submittal, written statement of position, or written statement of dispute which under the terms of this Agreement would be due on a Saturday, Sunday, or holiday shall be due on the following business day.

(d) 'Deadlines' shall be the time limitation applicable to a discrete and significant portion of the Remedial Investigation/Feasibility Study and Remedial Design/Remedial Action which has been specifically established under the terms of this Agreement.

(e) 'Documents' or 'records' shall mean any documents, writings, correspondence and all other tangible things on which information has been stored which relates to this Agreement or to any activities to be undertaken relating to this Agreement.

(f) 'EPA' or 'U.S. EPA' shall mean the United States Environmental Protection Agency, its employees, agents, authorized representatives, successors and assigns.

(g) 'Interim Remedial Action' or 'IRA' shall mean all discrete remedial actions or operable units (OU), other than removal actions, implemented prior to a final remedial action which are consistent with the final remedial action and which are taken to prevent or minimize the release of hazardous substances, pollutants or contaminants to protect the public health and welfare or the environment. All Interim Remedial Actions shall be undertaken in accordance with the NCP and the requirements of CERCLA, and applicable state laws.

(h) 'NAFC Warminster' or 'NADC' shall mean the Naval Air Development Center, located in Warminster, Pennsylvania.

(i) 'National Contingency Plan' or 'NCP' shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300.

(j) 'Navy' shall include the Department of the Navy, Naval Facilities Engineering Command Northern Division, and the Naval Air Development Center at Warminster, Pennsylvania, their employees, successors and assigns.

(k) 'Operable Unit' shall mean a discrete action that comprises an incremental step toward comprehensively remediating NADC Warminster. Operable units may address geographic portions of the Site, specific Site problems, or initial phases of an action such as an 'interim remedial measure,' or may consist of any set of actions performed over time or any actions that are concurrent but located in different parts of NADC Warminster. An operable unit as an interim remedial measure will not impede implementation of subsequent actions, including final remedial actions at the Site. All operable units shall be addressed in accordance with the NCP and with the requirements of CERCLA.

(l) 'PADER' shall mean the Commonwealth of Pennsylvania acting by and through its Department of Environmental Resources.

(m) 'Parties' shall mean the Navy and EPA.

(n) 'RCRA' shall mean the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et. seq., as amended by the Hazardous and Solid Waste Amendments of 1984, Pub. L. No. 98-616.

(o) 'Record(s) of Decision' or 'ROD(s)' shall be the public document(s) that select(s) and explain(s) which cleanup alternative(s) will be implemented at NADC Warminster, and includes the bases for the selection of such remedy(ies). The bases include, but are not limited to, information and technical analyses generated during the RI/FS and consideration of public comments and community concerns.

(p) 'Schedule' shall mean the Deadlines established under the terms of this Agreement for the completion of remedial design and remedial actions (RD/RA) at the Site.

(q) 'Site' shall include NADC Warminster and, for the purpose of this Agreement only, it shall also include other areas outside of NADC Warminster contaminated by the migration of a hazardous substance, pollutant or contaminant from the property currently known as NADC Warminster. The Site is a 'facility' within the meaning of Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).

(r) 'Timetable' shall mean 'Deadlines' specifically established for the completion of the RI/FS at the Site.

IV. JURISDICTION

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

(a) The U.S. Environmental Protection Agency (EPA), Region III, enters into those portions of this Agreement that relate to the Remedial Investigation/Feasibility Study (RI/FS) pursuant to Section 120(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. No. 99-499 (hereinafter jointly referred to as CERCLA), 42 U.S.C. Section 9620(e)(1), and Sections 6001, 3008(h) and 3004(u) and (v) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v) as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) (hereinafter jointly referred to as RCRA), and Executive Order 12580;

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

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

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

V. FINDINGS OF FACT

5.1 For purposes of this Agreement, the following constitutes a summary of the findings upon which this Agreement is based. Nothing contained in this Agreement shall constitute an admission of any liability by the Navy for any matters contained herein nor shall anything in this Agreement constitute an admission by the Navy with respect to any finding of fact or any legal determination noted herein.

(a) On September 1, 1979 the U.S. Environmental Protection Agency recognized the NADC as a site needing investigation because of regional groundwater contamination.

(b) On November 1, 1979 the U.S. EPA officially completed a preliminary assessment of the NADC.

(c) In 1980, in response to the discovery of regional groundwater contamination, the U.S. Department of Navy began an investigation of past disposal sites on NADC under the previous department-wide Naval Assessment and Control of Installation Pollutants (NACIP) Program. These investigations are ongoing under the Navy's Installation Restoration Program (IRP).

(d) In 1980, the NADC completed the first phase of the NACIP Program with the Clay/Law report entitled Navy Shore Activity Disposal Site Fact Form, which outlined waste disposal activities at NADC.

(e) On February 6, 1980, the U.S. EPA filed a 'tentative disposition form' for NADC, concluding that there was insufficient evidence available to determine if the NADC was a contributing source for the regional trichloroethylene (TCE) groundwater contamination. U.S. EPA proposed that the NADC perform an investigation of the Site including the drilling of test borings.

(f) On March 14, 1980 (Revised May 28, 1980), NADC contractor (SMC Martin) completed a report entitled Investigation of TCE Concentrations in Soils at the U.S. Naval Air Development Center, Warminster, Pennsylvania. The maximum concentrations of TCE detected in soil were 78 parts per billion (ppb).

(g) On December 10, 1980, NADC contractor (SMC Martin) completed a report entitled Investigation of TCE Contamination of Groundwater at the Naval Air Development Center, Warminster, PA. The maximum TCE concentration for the shallow groundwater well was 130 ppb, while the maximum concentration for the deep groundwater well was 7 ppb.

(h) On December 21, 1981, NADC contractor (JRB Associates) completed a report entitled Hydrogeologic Investigation of the Naval Air Development Center Waste Disposal Sites, Warminster, Pennsylvania. Task 1 - Records Search, Preliminary Site Investigation and Recommendations for Task 2. This report

identified nine potential contamination sites at NADC.

(i) On March 17, 1983, NADC contractor (JRB Associates) completed a report entitled Hydrogeologic Investigation of the Naval Air Development Center Waste Disposal Sites, Warminster, Pennsylvania, Task 2-Monitoring Well Installation, Sampling, Analysis of Samples and Groundwater Hydrology.

(j) In May of 1984, NADC contractor (Walter B. Satterthwaite Associates) completed a report entitled Final Report on the Groundwater Monitoring Hydrogeologic Investigation for the Naval Air Development Center, Warminster, Pennsylvania.

(k) On June 7, 1985, U.S. EPA contractor (NUS Corporation) completed a Preliminary Assessment and Site Inspection (PA/SI) of the Naval Air Development Center.

(l) On October 10, 1985, U.S. EPA completed a National Priorities List (NPL) ranking for suspected contamination at NADC.

(m) On June 1, 1986, the U.S. EPA proposed that the NADC be included on the NPL.

(n) On September 30, 1988, the U.S. Navy (Northern Division Naval Facilities Engineering Command, Philadelphia, PA) awarded a contract to SMC Martin of Valley Forge, PA to provide professional services in performing comprehensive Remedial Investigations and Feasibility Studies (RI/FS) at suspected contamination sites at NADC. All services are to be performed in accordance and compliance with CERCLA and the NCP.

(o) On January 23, 1989, the Navy held the initial Technical Review Committee (TRC) meeting at NADC with U.S. EPA, PADER, Bucks County Health Dept., Northampton Twp. and Warminster Twp. in attendance. The TRC shall meet periodically at NADC Warminster to review progress of the RI/FS and RD/RA.

(p) On October 4, 1989 NADC Warminster was finalized on the NPL at 54 Fed. Reg. 41015, 41021.

VI. U.S. EPA DETERMINATIONS

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

(a) There is a release or a threat of release of hazardous substances, pollutants, or contaminants within the meaning of Sections 101(14) and 101(33) of CERCLA, respectively, 42 U.S.C. Sections 9601(14) and 9601(33), at the NADC Warminster.

(b) The actions provided for in this Agreement are consistent with the NCF.

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

(d) This Agreement provides for the expeditious completion of all necessary response actions.

(e) NADC is a 'facility' as defined by Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).

(f) 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 NADC as defined in Sections 101(20) and 107(a)(1) of CERCLA, 42 U.S.C. Sections 9601(20) and 9607(a)(1). The Navy is the department of the United States charged with fulfilling the obligations of the owner/operator under CERCLA at NADC.

VII. CONSULTATION WITH EPA

Review and Comment Process for Draft and Final Documents

7.1 Applicability: The provisions of this Section establish the procedures that shall be used by the Navy and EPA to provide each other with appropriate notice, review, comment, and response to comments regarding RI/FS and RD/RA documents, specified herein as either primary or secondary documents. In accordance with CERCLA Section 120, 42 U.S.C. Section 9620, and 10 U.S.C. Section 2705, the Navy will normally be responsible for issuing primary and secondary documents to EPA, unless otherwise agreed to by the Parties in writing. As of the effective date of this Agreement, all draft and final reports for any deliverable document identified herein shall be prepared, distributed and subject to dispute in accordance with Paragraphs 7.2 through 7.10 below. The designation of a document as 'draft' or 'final' is solely for purposes of consultation with EPA in accordance with this Section. Such designation does not affect the obligation of the Parties to issue documents, which may be referred to herein as 'final', to the public for review and comment as appropriate and as required by law.

7.2 General Process for RI/FS and RD/RA Documents:

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

(b) Secondary documents include those reports that are discrete portions of the primary documents and are typically input or feeder documents. Secondary documents are issued by the Navy in draft subject to review and comment by EPA. Although the Navy 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 report is issued.

7.3 Primary Reports:

(a) The Navy has completed and transmitted draft reports for the following primary document to EPA for review and comment:

- (1) RI/FS Work Plan (which included Sampling & Analysis Plans, Quality Assurance Plans, and Health & Safety Plans...)

(b) The Navy shall complete and transmit draft reports for the following primary documents to EPA for review and comment in accordance with the provisions of this Section:

- (1) Risk Assessment
- (2) Initial Screening of Alternatives Report(s)
- (3) RI Report(s)
- (4) FS Report(s)
- (5) Proposed Plan(s)
- (6) Remedial Design(s)
- (7) Remedial Action Work Plan(s)

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

7.4 Secondary Documents:

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

- (1) Post Screening Investigation Work Plan
- (2) Detailed Analysis of Alternatives
- (3) Results of Treatability Study(ies)
- (4) Sampling and Data Results

(b) Although the EPA may comment on the draft reports for the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by Paragraph 7.2 hereof. Target dates shall be established for the completion and transmission of draft secondary reports pursuant to Section XV, Deadlines, of this Agreement.

7.5 Meetings of the Project Managers on Development of Reports: The Project Managers shall meet approximately every 45 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 7.3 and 7.4 above, the Project Managers shall meet to discuss the report results in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft reports.

7.6 Identification and Determination of Potential ARARs:

(a) For those primary reports or secondary documents that consist of, or include ARAR determinations, prior to the issuance of a draft report, the Project Managers shall meet to identify and propose, to the best of their ability, all potential ARARs pertinent to the report being addressed. The Parties shall request PADER to identify all potential ARARs as early in the remedial process as possible consistent with the requirements of CERCLA Section 121 and the NCP. The Navy shall consider any written interpretations of ARARs provided by the PADER. Draft ARAR determinations shall be prepared by the Navy in accordance with CERCLA Section 121(d)(2), 42 U.S.C. Section 9621(d)(2), the NCP and pertinent guidance issued by EPA, that is consistent with CERCLA and the NCP.

(b) In identifying potential ARARs, the Parties recognize that actual ARARs can be identified only on a site-specific basis and that ARARs depend on the specific hazardous substances, pollutants and contaminants at a site, the particular actions proposed as a remedy and the characteristics of a site. The Parties recognize that ARAR identification is necessarily an iterative process and that potential ARARs must be reexamined throughout the RI/FS process until a ROD is issued.

7.7 Review and Comment on Draft Reports:

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

(b) Unless the Parties mutually agree to another time period, all draft reports shall be subject to a 30-day period for review and comment. Review of any document by the EPA may concern all aspects of the report (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP, applicable state law and any pertinent guidance or policy promulgated by the EPA. Comments by the EPA shall be provided with adequate specificity so that the Navy 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 Navy, the EPA shall provide a copy of the cited authority or reference. EPA may extend the 30-day comment period for an additional 20 days by written notice to the Navy prior to the end of the 30-day period. On or before the close of the comment period, EPA shall transmit by next day mail its written comments to the Navy.

(c) Representatives of the Navy shall make themselves readily available to EPA during the comment period for purposes of informally responding to questions and comments on draft reports. Oral comments made during such discussions need not be the subject of a written response by the Navy at the close of the comment period.

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

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

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

7.8 Availability of Dispute Resolution for Draft Final Primary Documents:

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

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

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

7.10 Subsequent Modifications of Final Reports: Following finalization of any primary report pursuant to Paragraph 7.9 above, EPA or the Navy may seek to modify the report, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in Subparagraphs (a) and (b) below.

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

(b) In the event that a consensus is not reached by the Project Managers on the need for a modification, either EPA or the Navy may invoke the Section XIV, Dispute Resolution, process to determine if such modification shall be conducted. Modification of a report shall be required only upon a showing that:

(1) The requested modification is based on significant new information; and

(2) The requested modification could be of significant assistance in evaluating impacts on the public health or the environment, in evaluating the selection of remedial alternatives, or in protecting human health and the environment.

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

VIII. PROJECT MANAGERS

8.1 Upon the effective date of this Agreement, the Navy and EPA shall each designate a Project Manager. The Parties' Project Managers shall be responsible for assuring implementation of the RI/FS and RD/RA in accordance with the terms of this Agreement. Communications between the Navy and EPA on all documents, including reports, comments, and other correspondence concerning the activities performed pursuant to this Agreement, shall be directed through the Parties' Project Managers. The EPA Project Manager may designate an Alternate Project Manager who shall be authorized to exercise the power of the Project Manager in the Project Manager's absence.

8.2 The Parties may change their respective Project Managers. Such change shall be accomplished by notifying the other Party in writing within 5 days of the change.

8.3 The Parties' Project Managers shall meet or confer informally as necessary as provided in Section VII, Consultation with EPA, of this Agreement. Although the Navy has ultimate responsibility for meeting its respective timetable and deadlines or schedule, the EPA Project Manager shall endeavor to assist in this effort by scheduling meetings to review documents and reports, overseeing the performance of environmental monitoring at the Site, reviewing RI/FS or RD/RA progress, and attempting to resolve disputes informally.

8.4 Necessary and appropriate adjustments to deadlines or schedules may be proposed by any Party and must be approved orally by both of the Parties' Project Managers to be effective. Within five (5) working days following a modification, the Party which requested the modification shall prepare a memorandum detailing the modification and the reasons therefor and shall provide a copy of the memorandum to the other Party for signature and return.

8.5 A Project Manager may also recommend and request minor field modifications to the work performed pursuant to this Agreement, or in techniques, procedures or designs utilized in carrying out this Agreement, which are necessary to the completion of the project. The minor field modifications proposed under this Part must be approved orally by both the Navy and EPA Project Managers to be effective. No such work modifications can be so implemented if an increase in contract cost will result without the authorization of the Navy Contracting Officer. If agreement cannot be reached on the proposed additional work or modification to work, dispute resolution as set forth in Section XIV, Dispute Resolution, shall 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 therefor and shall provide or mail a copy of the memorandum to the other Project Manager.

8.6 Modifications of work not provided for in Paragraph 8.5 of this Section

must be approved by the Parties' Project Managers to be effective. If agreement cannot be reached on the proposed modification to work, dispute resolution as set forth in Section XIV, Dispute Resolution, shall be used. Within five (5) business days following a modification made pursuant to this Section, one of the Parties shall prepare a memorandum detailing the modification and the reasons therefor and shall provide or mail a copy of the memorandum to the other Party.

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

8.8 The Parties shall transmit primary and secondary documents and all notices required herein by next day mail, hand delivery or certified letter. Time limitations shall commence upon receipt.

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

(a) For the Navy:

Scott R. Palmer (CODE 1421)
Northern Division, Naval Facilities Engineering Command
Philadelphia Naval Shipyard
Philadelphia, PA 19112-5094

(b) For the EPA:

U.S. Environmental Protection Agency, Region III
Attn: NADC Prog. Mngr (3HW26)
841 Chestnut Building
Philadelphia, PA. 19107

8.10 Nothing in this Section shall be construed to interfere with or alter the internal organization or procedures of a Party, including, without limitation, signature authority.

8.11 The Parties agree that the PADER may designate a Project Manager for NADC Warminster. Such Project Manager will be invited to attend and participate in the meetings of the Parties' Project Managers. The Navy will provide to the PADER two (2) copies of all primary and secondary documents as specified in Section VII, Consultation with EPA.

8.12 The Navy Project Manager shall have all the authority vested in the On-Scene Coordinator (OSC) and Remedial Project Manager by the NCP.

IX. QUALITY ASSURANCE

9.1 The Navy shall use quality assurance, quality control, and chain of custody procedures throughout all field investigation, sample collection and laboratory analysis activities. A Quality Assurance Project Plan (QAPP) shall be submitted as a component of each RI/FS Work Plan or RD/RA Work Plan as appropriate. QAPPs shall be prepared in accordance with applicable EPA guidance.

9.2 In order to demonstrate quality assurance and maintain quality control regarding all samples collected pursuant to this Agreement, the Navy has submitted and will continue to submit all protocols to be used for sampling and analysis to EPA and PADER for review and comment. The Navy also ensures that any laboratory used for analysis is a participant in a quality assurance/quality control program that is consistent with EPA guidance.

9.3 The Navy shall ensure that lab audits are conducted as appropriate and are made available to EPA upon request.

X. ACCESS

10.1 EPA and PADER will be permitted to enter the Site at reasonable times previously arranged and coordinated for the purpose of inspecting records, logs, and other documents relevant to implementation of this Agreement; reviewing the progress of the Navy, its contractors, and lessees in carrying out the activities under this Agreement; conducting, with prior notice to the Navy, tests which EPA or PADER deem necessary; and verifying data submitted to EPA and PADER. The Navy shall honor all reasonable requests for access to the Site made by EPA or PADER. The Navy shall provide an escort to EPA and PADER. EPA and PADER access shall be subject to requirements which are necessary to protect national security, mission essential activities and health and safety requirements.

10.2 Upon denying any aspect of access, the Navy shall provide an explanation within 72 hours of the reason for the denial and, to the extent possible, provide a recommendation for accommodating the requested access in an alternate manner.

10.3 The Parties agree that this Agreement is subject to CERCLA Section 120(j), 42 U.S.C. Section 9620(j), regarding the issuance of Site Specific Presidential Orders as may be necessary to protect the national security.

10.4 If EPA obtains any samples before leaving the Site it shall give the Navy's Project Manager, or his or her designated representative, a receipt describing the sample obtained, and, if requested, a portion of each such sample. A copy of the results of any analysis made of such samples shall be provided to all Parties.

10.5 To the extent that access is required to areas presently owned by or leased to parties other than the Navy, including other branches of the Department of Defense, the Navy agrees to exercise its best efforts and authorities to obtain access pursuant to Section 104(e) of CERCLA from the present owners and/or lessees within 60 calendar days after identification of the need for such access. The Navy shall use its best efforts to obtain access agreements which shall provide reasonable access to EPA and PADER and/or their authorized representatives. 'Best efforts' for the purposes of this Paragraph shall include, without limitation, identifying and locating the owner(s) and lessees of areas, offering consideration to the owner(s) and/or lessees for access to areas, making attempts to obtain access agreements from the owner(s) and/or lessees of all areas onto which access is needed under this Agreement.

10.6 In the event that such access is not obtained within the 60 day time period set forth above, within 15 days after the expiration of the 60 day period the Navy shall notify the EPA and DER regarding the lack of and efforts to obtain such access agreements. Within 15 days of such notice, the Navy shall submit appropriate modifications in response to the inability to obtain access.

10.7 The Navy shall ensure that all response measures, ground water rehabilitation measures and remedial actions of any kind which are undertaken pursuant to this Agreement on any areas which a) are presently owned by the United States and which are occupied by the Navy or leased by the Navy to any other entity or b) are in any manner under the control of the Navy or any lessees or agents of the Navy, shall not be impeded or impaired in any manner by any transfer of title or change in occupancy or any other change in circumstances of such areas.

10.8 The Navy shall provide the EPA and PADER with at least ninety (90) days prior notice of any conveyance of title to or any transfer of an interest in real property which may affect this Agreement or any activities to be taken pursuant to it. The Navy shall ensure that all activities or remedial measures to be undertaken pursuant to this Agreement will not be impeded or impaired by any transfer of title or any transfer of any other interest in real property relating to NADC Warminster or any structures located thereon.

10.9 Nothing herein shall be construed as limiting EPA's statutory authority for access or information gathering.

XI. DATA AND DOCUMENT AVAILABILITY

11.1 The Navy shall make all sampling results, test results or other data generated through the implementation of this Agreement available to EPA and PADER. If data validation is not completed within 60 days after the last sample of a group of samples is taken (where the time to take that group of samples does not exceed two weeks), if so requested by EPA or PADER, the Navy shall request raw data or results and shall forward such raw data or results to EPA and PADER within five (5) days after receipt of such raw data or results by the Navy Project Manager. EPA will similarly make available to the Navy the results of sampling, tests or other data generated by EPA.

11.2 At the request of EPA, the Navy shall allow, to the extent practicable, split or duplicate samples to be taken by EPA or PADER or their authorized representatives of any samples collected by the Navy pursuant to the implementation of this Agreement. The Navy shall notify EPA and PADER not less than 14 days in advance of any scheduled sample collection activity.

11.3 At the request of the Navy, EPA shall allow, to the extent practicable, split or duplicate samples to be taken by the Navy or their authorized representatives, of any samples collected by the EPA pursuant to the implementation of this Agreement. The EPA shall notify the Navy and PADER not less than 14 days in advance of any scheduled sample collection activity.

XII. PERMITS

12.1 The Navy shall be responsible for obtaining all Federal, State and local permits which are necessary for the performance of all work under this Agreement.

12.2 The Parties recognize that under Sections 121(d) and 121(e)(1) of CERCLA, 42 U.S.C. Sections 9621(d) and 9621(e)(1), and the NCP, the response actions called for by this Agreement and conducted entirely on the Site are exempt from the procedural requirement to obtain Federal, State, or local permits. All activities must, however, comply with all the applicable or relevant and appropriate federal and state standards, requirements, criteria, or limitations which would have been included in any such permit..

12.3 Section 12.2 above is not intended to relieve the Navy from the requirement(s) of obtaining a permit whenever it proposes a response action involving the shipment or movement of a hazardous substance or hazardous waste off NADC Warminster.

12.4 The Navy shall notify EPA in writing of any permits required for any activities it plans to undertake outside NADC Warminster as soon as it becomes aware of the requirement. The Navy shall apply for all such permits and provide EPA with copies of all such permits.

12.5 During any appeal by any Party of any permit required to implement this Agreement or during review of any proposed modification(s), the Navy shall continue to implement those portions of this Agreement which can be reasonably implemented independent of final resolution of the permit issue(s) under appeal. However, as to work that cannot be so implemented, any corresponding timetable, deadlines, and schedule will be subject to Part XVI, Extensions, of this Agreement.

XIII. REMOVAL AND EMERGENCY ACTIONS

13.1 The Navy shall provide EPA with timely notice of any proposed removal action.

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

13.3 If during the course of performing the activities required under this Agreement, the Navy identifies an actual or a substantial threat of a release of any hazardous substance, pollutant, or contaminant at or from the Site, the Navy may propose that it undertake actions to abate the danger and threat which may be posed by such actual or threatened release. All removal actions conducted on NADC Warminster shall be conducted in a manner consistent with this Agreement, CERCLA, and the NCP and shall, to the extent practicable, contribute to the efficient performance of any long term remedial action with respect to the release(s) or threatened release(s) concerned. Actions may include, but are not limited to, a removal or treatment or both. Such a proposal to undertake such actions by the Navy shall be submitted to EPA and shall include:

- a. documentation of the actual or threatened release at or from the Site;
- b. documentation that the actions posed will abate the danger and threat which may be posed by release of hazardous substances, pollutants, or contaminants at or from the Site;
- c. documentation that the action is consistent with the NCP and, to the extent practicable, contributes to the efficient performance of any long-term remedial action with respect to the release or threatened release concerned;
- d. A screening and evaluation of several action alternatives which address the actual or threatened release at or from the Site, which screening shall be based on criteria as provided in CERCLA and the NCP to evaluate the alternative actions; and
- e. A work plan and schedule for the proposed action.

13.4 The opportunity for review and comment for proposed removal actions, as stated in Section 13.3 above, may not apply if the action is in the nature of an emergency removal taken because of an immediate, imminent and substantial endangerment to human health or the environment. The Navy may determine that review and comment, as stated in Section 13.3 above, is impractical. However, in the case of an emergency removal action, the Navy shall provide EPA with oral notice as soon as possible and written notice within 48 hours after the Navy determines that an emergency removal is necessary. Promptly after

initiating an emergency removal action, the Navy shall provide EPA with the written basis (factual, technical and scientific) for such action and any available documents supporting such action. Upon completion of an emergency removal action, the Navy shall state whether, and to what extent, the emergency removal action varied from the description of the action in the written notice provided pursuant to this Section. Such actions may be conducted at any time, either before or after the issuance of a ROD.

13.5 If an imminent health hazard (e.g. a drinking water well containing any contaminant at concentrations greater than any Federal or State drinking water action level) or an activity conducted pursuant to this Agreement which is creating a danger to the public health or welfare or the environment is discovered by any Party during the efforts covered by this Agreement, the discovering Party will notify the Navy and the Navy will take immediate action to notify all parties, potentially affected persons and officials. The Navy will expeditiously take appropriate measures to protect all persons affected.

13.6 All activities pursuant to this Agreement will be conducted under the Health and Safety Plan and will be conducted so as to minimize the threat to the surrounding public.

XIV. DISPUTE RESOLUTION

14.1 Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Section shall apply. All Parties to this Agreement shall make reasonable efforts to informally resolve disputes at the Project Manager or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this Section shall be implemented to resolve a dispute.

14.2 Within 30 days after: (1) the issuance of a draft final primary document pursuant to Section VII, Consultation, 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.

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

14.4 The DRC will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (Senior Executive Service (SES) or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The EPA representative on the DRC is the Hazardous Waste Management Division Director of EPA Region III. The Navy's designated member is the Commanding Officer, Northern Division, Naval Facilities Engineering Command. Written notice of any delegation of authority from the Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Section VIII, Project Managers.

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

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

14.7 Upon escalation of a dispute to the Administrator of EPA pursuant to Paragraph 14.6 above, the Administrator will review and resolve the dispute within 21 days. Upon request, and prior to resolving the dispute, the EPA Administrator shall meet and confer with the Navy's Secretariat Representative to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the other Parties with a written final decision setting forth resolution of the dispute. The duties of the Administrator set forth in this Section shall not be delegated.

14.8 The pendency of any dispute under this Section shall not affect the Navy's responsibility for timely performance of the work required by this Agreement, except that the time period for completion of work affected by such dispute shall be extended for a period of time usually not to exceed the actual time taken to resolve any good faith dispute in accordance with the procedures specified herein. All elements of the work required by this Agreement, which are not affected by the dispute, shall continue to be completed in accordance with the applicable schedule.

14.9 When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Hazardous Waste Management Division Director for EPA's Region III requests, in writing, that work related to the dispute be stopped because, in EPA's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. To the extent possible, the Party seeking a work stoppage shall consult with the other Party prior to initiating a work stoppage request. After stoppage of work, if a Party believes that the work stoppage is inappropriate or may have potential significant adverse impacts, the Party may meet with the Party ordering the work stoppage to discuss the work stoppage. Following this meeting, and further consideration of the issues, the U.S. EPA Hazardous Waste Management Division Director will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the U.S. EPA Hazardous Waste Management Division Director may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the Party requesting dispute resolution.

14.10 Within 21 days of resolution of a dispute pursuant to the procedures specified in this Section, the Navy shall incorporate the resolution and final determination into the appropriate plan, schedule or procedures and proceed to implement this Agreement according to the amended plan, schedule or procedures.

14.11 Resolution of a dispute pursuant to this Section of the Agreement constitutes a final resolution to 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.

XV. DEADLINES

15.1 Within twenty-one (21) days of the effective date of this Agreement, the Navy shall propose deadlines for completion of the following draft primary documents:

- (a) Draft RI/FS Work Plan
- (b) Preliminary Risk Assessment
- (c) Draft Initial Screening of Alternatives
- (d) Draft RI Report
- (e) Draft FS Report

15.2 Within fifteen (15) days of receipt, U.S. EPA shall review and provide comments to the Navy regarding the proposed deadlines. Within fifteen (15) days following receipt of the comments the Navy shall, as appropriate, make revisions and reissue the proposal. The Parties shall meet as necessary to agree on proposed deadlines. If the Parties agree on proposed deadlines, the finalized deadlines shall be incorporated into the appropriate Work Plans. If the Parties fail to agree within thirty (30) days on the proposed deadlines, the matter shall immediately be submitted for dispute resolution pursuant to Section XIV of this Agreement. The final deadlines established pursuant to this Paragraph shall be published by U.S. EPA.

15.3 If the Parties agree that any supplemental work or any treatability studies are to be undertaken pursuant to this Agreement, the Navy shall provide target dates for submission of the secondary documents listed below within twenty-one (21) days of written request by U.S. EPA for such target dates:

- (a) Post Screening Investigation Work Plan
- (b) Detailed Analysis of Alternatives
- (c) Results of Treatability Study(ies)
- (d) Sampling and Data Results

15.4 Within 60 days of the submission of the draft FS Report, the Navy will propose deadlines for the following primary document:

- (a) Proposed Plan

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

- (a) Remedial Design
- (b) Remedial Action Work Plan

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

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

XVI. EXTENSIONS

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

- (a) The timetable and deadline or the schedule that is sought to be extended;
- (b) The length of the extension sought;
- (c) The good cause(s) for the extension; and
- (d) Any related timetable and deadlines or schedule that would be affected if the extension were granted.

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

- (a) An event of force majeure;
- (b) A delay caused by another Party's failure to meet any requirement of this Agreement;
- (c) A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;
- (d) A delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and deadlines or schedule; and
- (e) Any other event or series of events mutually agreed to by the Parties as constituting good cause.

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

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

16.5 If there is a consensus among the Parties that the requested extension is warranted, the Navy shall extend the affected timetable and deadlines 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 deadlines or schedule shall not be extended except in accordance with a determination resulting from the dispute resolution process.

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

16.7 A timely and good faith request for an extension shall toll any assessment of stipulated penalties or application for judicial enforcement of the affected timetable and deadlines 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, deadlines or schedule. Following the grant of an extension, an assessment of stipulated penalties or an application for judicial enforcement may be sought only to compel compliance with the timetable and deadlines or schedule as most recently extended.

XVII. FORCE MAJEURE

17.1 A Force Majeure shall mean any event arising from causes beyond the control of the Party that causes a delay in or prevents the performance of any obligation under this Agreement, including but not limited to, acts of God; fire; war; insurrection; civil disturbance; explosion; unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance; adverse weather conditions that could not be reasonably anticipated; unusual delay in transportation; restraint by court order or order of public authority; inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority other than the Navy; 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 Navy shall have made a timely request for such funds as a part of the budgetary process as set forth in Section XXVII, Funding, of this Agreement. A Force Majeure shall also include any strike or other labor dispute, whether or not within control of the Parties affected thereby. Force Majeure shall not solely include increased costs or expenses of Response Actions, whether or not anticipated at the time such Response Actions were initiated.

XVIII. RECORDS OF DECISION AND PLANS FOR REMEDIAL ACTION

18.1 This Section shall apply to selection of remedial actions and any disputes relating thereto.

18.2 For each operable unit(s) or the entire Site, the Navy shall submit the final draft RI and FS to EPA for review and comment in accordance with Section VII, Consultation with EPA, of this Agreement and within the time frame to be adopted in accordance with Section XV, Deadlines, of this Agreement. After finalization of the RI and FS, the Navy shall prepare a draft Proposed Plan for submission to EPA as described in Section VII, Consultation with EPA, of this Agreement. The Navy will then announce a public comment period and the Navy shall make available to the public the RI and FS and distribute the Proposed Plan. The Navy will hold a public information meeting to discuss the preferred alternative for each operable unit. Copies of all written and oral public comments received will be provided to the Parties. Public review and comment shall be conducted in accordance with Section 117(a) of CERCLA, 42 U.S.C. Section 9617(a), and applicable EPA guidance. Following public comment, the Navy in consultation with EPA will determine if the Proposed Plan should be modified based on the comments received. These modifications will be made by the Navy and the modified documents will be reviewed by EPA and DER. The Parties may recommend additional public comment be solicited if modifications to the Proposed Plan substantially change the remedy originally proposed to the public.

18.3 Within 30 days of the close of the public comment period or after consultation with EPA and the determination is made that additional public comment is not needed, the Navy shall propose a target date for submission to EPA of the draft Record of Decision.

18.4 Based on comments received from EPA and the public, the Navy will draft and submit to EPA a draft Record of Decision for each operable unit or for the entire Site. The draft Record of Decision will include a Responsiveness Summary, in accordance with applicable EPA guidance. At a minimum, the Parties shall have 30 days to attempt to jointly select a remedy following the Navy's submission of a draft Record of Decision. If the Parties agree on the draft Record of Decision, U.S. EPA shall co-sign the Record of Decision and the draft Record of Decision shall be adopted by the U.S. EPA and the Navy. If the Parties are unable to reach agreement on the draft Record of Decision, selection of a remedial action shall be made by the EPA Administrator and EPA shall then prepare the final Record of Decision. The selection of Remedial Action(s) by the EPA Administrator shall be final and not subject to dispute by the Navy. If a Record of Decision prepared by the EPA departs substantially from the Proposed Plan which was subject to public comment, then EPA shall subject the new Proposed Plan to public comment.

052590

18.5 Notice of the final Record of Decision shall be published by the Party preparing it and shall be made available to the public prior to commencement of the remedial action, in accordance with Section 117(b) of CERCLA, 42 U.S.C. Section 9617(b).

18.6 Upon issuance of the ROD for the final Remedial Action(s) by EPA, the RI/FS will be deemed completed.

18.7 Within 21 days of issuance of each ROD, the Navy shall propose deadlines for the completion of the Remedial Design and Remedial Action Work Plan to EPA in accordance with Paragraph 15.5.

18.8 The Remedial Action Work Plan shall at a minimum contain a proposed schedule for the completion of the Remedial Action, a Health and Safety Plan, a Sampling and Analysis Plan, if necessary, and a Quality Assurance Project Plan if necessary. The Remedial Design shall provide the appropriate plans and specifications describing the intended remedial construction.

18.9 Upon the finalization of the Remedial Design, the Navy shall implement the Remedial Action in accordance with the requirements of this Agreement and the time schedules to be adopted pursuant to Section XV, Deadlines.

18.10 Upon the completion of each Remedial Action, the Navy shall submit a summary of the action taken during the Remedial Action and a detailed description of any action taken that was not included in the Remedial Design.

XIX. EXEMPTIONS

19.1 The Parties recognize that the President may issue an Executive Order, as needed to protect national security interests, regarding response actions at NADC Warminster (or at any areas therein), pursuant to Section 120(j) of CERCLA, 42 U.S.C. Section 9620(j). Such an Executive Order may exempt such area(s) from the requirements of CERCLA for a period of time not to exceed one (1) year after the issuance of that Order. The Navy shall obtain access to and perform all actions required by this Agreement within all areas inside NADC Warminster, which are not the subject of any such Executive Order issued by the President.

XX. EPA CERTIFICATION

20.1 When the Navy determines that any final remedial action, including any groundwater remediation, has been completed in accordance with the requirements of this Agreement, it shall so advise EPA and DER in writing, and shall request from EPA certification that the remedial action(s) have been completed in accordance with the requirements of this Agreement. Upon the completion of each Remedial Action, the Navy will submit a summary of the action taken during the remedial action, as well as a detailed description of any action taken that was not included in the Remedial Design. Within 90 days of the receipt of the request for EPA certification, EPA shall advise the Navy and PADER in writing that:

(a) EPA certifies that the remedial action has been completed in accordance with this Agreement, based on conditions known at the time of certification; or

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

20.2 If EPA denies the Navy's request for certification that a remedial action has been completed in accordance with this Agreement, the Navy may invoke Dispute Resolution, Section XIV, to review EPA's determination. If EPA's denial of certification is upheld in dispute resolution, EPA shall describe the additional work needed to bring the remedial action into compliance with the requirements of this Agreement. After performing such additional work, the Navy shall resubmit a request for certification to EPA pursuant to the process set forth in this Section.

XXI. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

21.1 The Parties intend to integrate the Navy'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.; satisfy the corrective action requirements of RCRA Sections 3004(u) and (v), 42 U.S.C. Sections 6924(u) and (v), for a RCRA permit, and RCRA Section 3008(h), 42 U.S.C. Section 6928(h), for interim status facilities; and meet or exceed all applicable or relevant and appropriate Federal and State laws and regulations, to the extent required by CERCLA Section 121, 42 U.S.C. Section 9621, and applicable state law.

21.2 Based upon the foregoing, the Parties intend that any remedial action selected, implemented and completed under this Agreement will be protective of human health and the environment such that remediation of releases covered by this Agreement shall obviate the need for further corrective action under RCRA (i.e., no further corrective action shall be required). The Parties agree that, with respect to releases of hazardous waste covered by this Agreement that are associated with the NPL portions of the Site, RCRA shall be considered an applicable or relevant and appropriate requirement pursuant to CERCLA Section 121. Releases or other hazardous waste activities not covered by this Agreement remain subject to all applicable state and federal environmental requirements.

21.3 The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties further recognize that ongoing hazardous waste management activities at NADC Warminster may require the issuance of permits under Federal and State laws. This Agreement does not affect the requirements, if any, to obtain such permits. However, if a permit is issued to NADC Warminster for on-going hazardous waste management activities at 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. With respect to those portions of this Agreement incorporated by reference into permits, the Parties intend that judicial review of the incorporated portions shall, to the extent authorized by law, only be reviewed under the provisions of CERCLA.

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

XXII. ENFORCEABILITY

22.1 The Parties agree that:

(a) Upon the effective date of this Agreement, any standard, regulation, condition, requirement or order which has become effective under CERCLA and is incorporated into this Agreement is enforceable by any person pursuant to CERCLA Section 310, and any violation of such standard, regulation, condition, requirement or order will be subject to civil penalties under CERCLA Sections 310(c) and 109, 42 U.S.C. Sections 9659(c) and 9609.

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

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

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

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

22.3 Nothing in this Agreement shall be construed as a restriction or waiver of any rights the U.S. EPA may have under CERCLA, including but not limited to any rights under Sections 113 and 310, 42 U.S.C. Sections 9613 and 9659. The Navy does not waive any rights it may have under CERCLA Section 120, SARA Section 211, 10 U.S.C. Chapter 160, and Executive Order 12580.

22.4 The Parties agree to exhaust their rights under Section XIV, Dispute Resolution, prior to exercising any rights to judicial review that they may have.

22.5 The Parties agree that both Parties shall have the right to enforce the terms of this Agreement.

XXIII. STIPULATED PENALTIES

23.1 In the event that the Navy fails to submit a primary document set forth in this Agreement to EPA pursuant to the appropriate timetable or deadlines in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement which relates to an interim or final remedial action, EPA may assess a stipulated penalty against the Navy. A stipulated penalty may be assessed in an amount not to exceed \$5,000 for the first week (or part thereof), and \$10,000 for each additional week (or part thereof) for which a failure set forth in this Paragraph occurs.

23.2 Upon determining that the Navy has failed in a manner set forth in Paragraph 23.1, EPA shall so notify the Navy in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the Navy shall have 15 days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. The Navy shall not be liable for the stipulated penalty assessed by the EPA if the failure is determined, through the dispute resolution process, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.

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

- (a) The facility responsible for the failure;
- (b) A statement of the facts and circumstances giving rise to the failure;
- (c) A statement of any administrative or other corrective action taken at the relevant facility, or a statement of why such measures were determined to be inappropriate;
- (d) A statement of any additional action taken by or at the facility to prevent recurrence of the same type of failure; and
- (e) The total dollar amount of the stipulated penalty assessed for the particular failure.

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

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

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

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

XXIV. OTHER CLAIMS

24.1 Subject to Section XXI, Statutory Compliance, nothing in this Agreement shall restrict the Parties from taking any action under CERCLA, RCRA, state law, or other environmental statutes for any matter not specifically part of the work performed under CERCLA, which is the subject matter of this Agreement.

24.2 Nothing in this Agreement shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not a signatory to this Agreement for any liability it may have arising out of or relating 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 NADC Warminster.

24.3 This Agreement does not constitute any decision or preauthorization by EPA of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. Section 9611(a)(2) for any person, agent, contractor or consultant acting for the Navy.

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

24.5 The Navy shall notify the appropriate Federal and state natural resource trustees of potential damages to natural resources resulting from releases or threatened releases under investigation, as required by Section 104(b)(2) of CERCLA, 42 U.S.C. Section 9604(b)(2), and Section 2(e)(2) of Executive Order 12580. Except as provided herein, the Navy is not released from any liability which it may have pursuant to any provisions of state and Federal law, including any claim for damages for destruction of, or loss of, natural resources.

XXV. COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

25.1 In consideration for the Navy's compliance with this Agreement, and based on the information known to the Parties on the effective date of this Agreement, EPA agrees that compliance with this Agreement shall stand in lieu of any administrative, legal and equitable remedies against the Navy available to EPA regarding the currently known releases or threatened releases of hazardous substances including hazardous wastes, pollutants or contaminants at the Site which are within the scope of this Agreement, which are the subject of the RI/FS(s) to be conducted pursuant to this Agreement and which will be addressed by the remedial action(s) provided for under this Agreement.

25.2 Notwithstanding anything in this Agreement, EPA may initiate any administrative, legal or equitable remedies available to it, including requiring additional response actions by the Navy in the event that: (a) conditions previously unknown or undetected by EPA arise or are discovered at the Site; or (b) EPA receives additional information not previously available concerning the premises which they employed in reaching this Agreement; or (c) the implementation of the requirements of this Agreement are no longer protective of public health and the environment; or (d) EPA discovers the presence of conditions on the Site which may constitute an imminent and substantial danger to the public health, welfare, or the environment; or (e) the Navy fails to meet any of its obligations under this Agreement; or (f) the Navy fails or refuses to comply with any applicable requirement of CERCLA or RCRA or State laws or related regulations.

25.3 This Covenant Not To Sue does not affect any claims for natural resources damage assessments or for damage to natural resources.

25.4 The Navy reserves the right to raise or assert any defense, whether procedural or substantive, in law or equity, or to raise any issue to jurisdiction or standing of any Party, or any other matter in any proceeding related to this Agreement, which the Navy might otherwise be entitled to raise or assert.

XXVI. TERMINATION AND SATISFACTION

26.1 The provisions of this Agreement shall be deemed satisfied upon a consensus of the Parties that the Navy has completed its obligations under the terms of this Agreement. Following EPA Certification of the remedial actions at the Site pursuant to Paragraphs 20.1 and 20.2 of Section XX, EPA Certification, any Party may propose in writing the termination of this Agreement upon a showing that the objectives of this Agreement have been satisfied. A Party opposing termination of this Agreement shall serve its objections upon the proposing Party within 30 days of receipt of the proposal.

26.2 Any disputes arising from this Termination and Satisfaction process shall be resolved pursuant to the provisions of Section XIV, Dispute Resolution, of this Agreement.

XXVII. FUNDING

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

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

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

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

27.5 Funds authorized and appropriated annually by Congress under the 'Environmental Restoration, Defense' appropriation in the Department of Defense Appropriation Act and allocated by the Deputy Assistant Secretary of Defense(Environment) (DASD(E)) to the Navy 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 Navy CERCLA implementation requirements, the Department of Defense has agreed to employ, and the Navy shall follow, a standardized DOD prioritization process which allocates that year's appropriations in a manner which maximizes the protection of human health and the environment. A standardized DOD prioritization model shall be developed and utilized with the assistance of EPA and the states.

XXVIII. COMMUNITY RELATIONS

28.1 The Navy is developing and will implement a Community Relations Plan in accordance with EPA guidance. This plan will respond to the need for an interactive relationship with all interested community elements, both on and off NADC Warminster, regarding environmental activities conducted pursuant to this Agreement by the Navy.

28.2 Except in case of an emergency requiring the release of necessary information, either Party issuing a press release to any publication with reference to any of the work required by this Agreement shall use its best efforts to advise the other Party of such press release and the contents thereof.

28.3 The Parties agree to comply with all relevant EPA policy and guidance on community relations programs and public participation requirements which are in accordance with CERCLA and consistent with the NCP and other applicable, relevant and appropriate requirements, laws and regulations.

28.4 Community relations activities will be conducted by the Navy for the selection of remedies for the sites as outlined in Section XVIII, Records of Decision and Plans for Remedial Action, of this Agreement.

28.5 The Parties agree that work conducted under this Agreement and any subsequent proposed remedial action alternatives and subsequent plans for remedial action at the Site arising out of this Agreement shall comply with public participation requirements of CERCLA, including Section 117, all applicable guidance developed and provided by EPA. This shall be achieved through implementation of the Community Relations Plan.

28.6 The Navy agrees it shall establish and maintain an Administrative Record at or near NADC Warminster available to the public, and another copy at a central location, in accordance with CERCLA Section 113(k), 42 U.S.C. Section 9613(k). The Administrative Record developed by the Navy shall be periodically updated and a copy of the Index will be provided to EPA and PADER.

XXIX. PUBLIC COMMENT ON THIS AGREEMENT

29.1 Within 15 days after the date the Regional Administrator of U.S. EPA Region III executes this Agreement, EPA shall announce the availability of this Agreement to the public for their review and comment. EPA shall accept comments from the public for 45 days after such announcement. After the 45 day public comment period expires, the Parties shall review all such comments. Within 30 days after the expiration of the public comment period the Parties shall decide that either:

(a) the Agreement shall be made effective without any modifications; or

(b) the Agreement shall be modified prior to being made effective.

29.2 If the Parties agree that the Agreement shall be made effective without any modifications, EPA shall transmit a copy of the signed Agreement to the Navy and shall notify the Navy in writing that the Agreement is effective. The effective date of the Agreement shall be the date of receipt of that letter from EPA to the Navy.

29.3 If the Parties agree that modifications are needed and agree upon the modifications and amend the Agreement by mutual consent within 60 days after the expiration of the public comment period, EPA will determine whether the modified Agreement requires additional public notice and comment pursuant to any provision of CERCLA. If EPA determines that no additional notice and comment are required, EPA shall transmit a copy of the modified Agreement to the Navy and shall notify the Navy in writing that the modified Agreement is effective. If the Parties amend the Agreement within the 60 day period and if EPA concludes that such modifications require that the public receive additional opportunity for notice and comment, such additional notice and comment shall be provided consistent with the provisions stated in Section 29.1 above. If the Parties agree, after such additional notice and comment has been provided, that the Agreement does not require any further modification, EPA shall send a copy of the mutually agreed upon Agreement to the Navy and shall notify the Navy that the Agreement is effective. The effective date of the Agreement shall be the date of that letter from EPA to the Navy.

29.4 If, 30 days after the expiration of the 45 day comment period has expired, the Parties have not reached agreement on either:

(a) whether modifications to the Agreement are needed; or

(b) what modifications to the Agreement should be made; or

(c) any language, any provisions, any deadlines, any work to be performed or any content of the Agreement or any Attachments to the Agreement. The matters which are in dispute shall be resolved by the dispute resolution

procedures of Section XIV, Dispute Resolution, above. For the purposes of this Section, the Agreement shall not be effective while the dispute resolution proceedings are underway. After these proceedings are completed, the Final Written Decision shall be provided to the Parties indicating the results of the dispute resolution proceedings. The Navy and EPA reserve the right to withdraw from the Agreement by providing written notice to the other Party within 20 days after receiving the Final Written Decision of the resolution of the matters in dispute. Failure by a Party to provide such a written notice of withdrawal within this 20 day period shall act as a waiver of the right of that Party to withdraw from the Agreement. If none of the Parties withdraw from the Agreement within this 20 day period, EPA shall thereafter send a copy of the final Agreement to the Navy and shall notify the Navy that the Agreement is effective. The effective date of the Agreement shall be the date of receipt of that letter from EPA to the Navy.

XXX. PRESERVATION OF RECORDS

30.1 Despite any document retention policy to the contrary, the Parties shall preserve, during the pendency of this Agreement, for a minimum of seven years after its termination or for a minimum of seven years after implementation of any additional action taken pursuant to Section XXXIV, Periodic Review, all records and documents in their possession which relate to the actions carried out pursuant to this Agreement. After this seven-year period, each Party shall notify the other Party at least 30 days prior to destruction or disposal of any such documents. Upon request by any Party, the requested Party shall make available such records or copies of such records.

30.2 All such records and documents shall be preserved for a period of seven years following the termination of any judicial action regarding the work performed under CERCLA, which is the subject of this Agreement.

XXXI. AMENDMENT OR MODIFICATION OF AGREEMENT

31.1 Except as provided in Section VIII, Project Managers, Paragraph 8.4, adjustments to deadlines and schedules, Paragraph 8.5, regarding minor field modifications, and Paragraph 8.6, this Agreement can be amended or modified solely upon written consent of the Parties. Such amendments or modifications shall have as the effective date that date on which they are signed by all Parties and notice thereof is provided to each signatory pursuant to Section VIII.

31.2 The Party initiating the amendment of this Agreement shall propose in writing the amendment for distribution and signature of the other Party.

XXXII. PROGRESS REPORTS

32.1 The Navy shall submit to EPA and PADER quarterly written progress reports which describe the actions which the Navy 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 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.

XXXIII. EFFECTIVE DATE

33.1 This Agreement shall become effective in accordance with Section XXIX, Public Comment.

33.2 Any timetable and deadlines, schedules, or Records of Decision (RODs) required by this Agreement are effective upon finalization and incorporation into this Agreement.

XXXIV. PERIODIC REVIEW

34.1 Consistent with Section 121(c) of CERCLA, 42 U.S.C. Section 9621(c), and in accordance with this Agreement, if the selected remedial action results in any hazardous substance, pollutants or contaminants remaining at the Site, the Parties shall review the remedial action program for each operable unit at least every five (5) 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. As part of this review, the Navy shall report the findings of the review to the EPA upon its completion.

34.2 If upon such review it is the conclusion of either of the Parties that additional action or modification of remedial action is appropriate at the Site in accordance with Sections 104 or 106 of CERCLA, 42 U.S.C. Sections 9604 or 9606, the Navy shall implement such additional or modified action in accordance with Section VII, Consultation with EPA, of this Agreement.

34.3 Any dispute by the Parties regarding need for or the scope of additional action or modification to a remedial action shall be resolved under Section XIV, Dispute Resolution, of this Agreement.

34.4 Any additional action or modification agreed upon pursuant to this Section XXXIV shall be made a part of this Agreement.

XXXV. RECOVERY OF EXPENSES

35.1 The Parties agree to amend this Agreement at a later date in accordance with any subsequent national resolution of the issues of cost reimbursement.

042590

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

UNITED STATES DEPARTMENT OF THE NAVY

BY: *Jacqueline Schaffer*
JACQUELINE SCHAFER
ASSISTANT SECRETARY OF THE NAVY
(INSTALLATIONS & ENVIRONMENT)

20 Sept. 1990
DATE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY: *Edwin B. Erickson*
EDWIN B. ERICKSON
REGIONAL ADMINISTRATOR OF REGION III

Sept. 20, 1990
DATE