

# IAG COVER SHEET

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

AND THE

UNITED STATES DEPARTMENT OF THE NAVY

IN THE MATTER OF:

U.S. Department of the Navy  
Naval Base Norfolk  
Norfolk, Virginia

)  
)  
) FEDERAL FACILITY AGREEMENT  
) Under CERCLA Section 120  
)  
) Administrative  
) Docket Number:  
) III-FCA-CERC-015

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. JURISDICTION**

1.1 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, and the Defense Environmental Restoration Program (DERP), 10 U.S.C. Section 2701 et. seq.;

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.

## II. DEFINITIONS

2.1 Except as noted below or otherwise explicitly stated, the definitions provided in CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) shall control the meaning of terms used in this Agreement.

A. "Accelerated Operable Unit" or "AOU" shall mean a remedial action which prevents, controls, or responds to a release or threatened release of hazardous substances, pollutants, and contaminants where prompt action is necessary but a response under removal authorities is not appropriate or desirable. The purpose of an AOU is to allow the Parties to proceed with a remedial action for that Operable Unit prior to completion of the final Record of Decision (ROD) for the total remedial action. AOU's are particularly appropriate where the size and complexity of the total remedial action would seriously delay implementation of independent parts of the action. AOU's will only proceed after complying with applicable procedures in the NCP, and the Parties shall make every effort to expedite these procedures. It is not intended that AOU's diminish the requirements for or delay the conduct of a total remedial action.

B. "Agreement" shall refer to this document and shall include all Attachments to this document. All such Attachments are integral parts of this Agreement and shall be enforceable to the extent provided herein.

C. "Applicable State law" shall mean all Commonwealth of Virginia 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).

D. "ARARs" shall mean "legally applicable" or "relevant and appropriate" requirements, standards, criteria or limitations, as those terms are used in Section 121 of CERCLA, 42 U.S.C. Section 9621, and as defined in the NCP.

E. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, (SARA) Public Law No. 99-499, and any amendments thereto.

F. "Community Relations" shall mean the program to inform and involve the public in the installation restoration, Superfund, and RCRA processes and to respond to community concerns.

G. "Corrective Action Permit" shall mean the corrective action portion of any RCRA Permit issued to the Naval Base Norfolk pursuant to Hazardous and Solid Waste Amendments of 1984 (HSWA).

H. "Days" shall mean 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 Federal or State holiday shall be due on the following business day.

I. "Deadline" or "Milestone" shall mean a time limitation specifically established or provided for under the terms of the Agreement or the Site Management Plan for performance of Work and submittal of Primary Documents and shall not include Target Dates. Deadlines shall include "Near Term Milestones," "Out Year Milestones" and "Project End Dates," as such terms are defined below.

J. "Deliverable Document" shall mean those required documents listed as Primary and Secondary Documents under this Agreement.

K. "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.

L. "EPA" or "U.S. EPA" shall mean the United States Environmental Protection Agency, its employees, agents, authorized representatives, successors and assigns.

M. "Facility" shall mean that property owned by the United States and operated by the U.S. Department of the Navy, including that portion known as Naval Base Norfolk ("NBN") located in Norfolk, Virginia and including all areas identified in Appendices A, B and C. This definition is for the purpose of describing a geographical area and not a governmental entity.

N. "Focused Feasibility Study" or "FFS" shall mean a comparison of alternatives which concentrates on a particular contaminated medium or a discrete portion of the Site which does not need added investigation in order to progress forward in the remedial process.

O. "Guidance" shall mean any requirements or policy directives issued by EPA or which may be issued by the State which are of general application to environmental matters and which are otherwise applicable to the Navy's work under this Agreement.

P. "Interim remedial action" shall mean all discrete remedial actions, including, but not limited to, Accelerated Operable Units, implemented prior to a final remedial action which are taken to prevent or minimize the release of hazardous substances, pollutants, or contaminants.

Q. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, and any amendment thereto.

R. "Navy" shall mean the United States Department of the Navy, including the Naval Facilities Engineering Command, Atlantic Division (LANTDIV), NBN, their employees, members, successors and authorized representatives, and assigns. The Navy shall also include the United States Department of Defense (DoD) to the extent necessary to effectuate the terms of the Agreement, including, but not limited to, appropriations and Congressional reporting requirements.

S. "NBN" shall mean the Naval Base Norfolk located in Norfolk, Virginia.

T. "Near Term Milestones" shall mean the dates established by the Parties in the Site Management Plan, in consultation with public stakeholders, for the submittal of Primary Documents and performance of Work within the current fiscal year (FY), the next fiscal year or "budget year" (FY+1) and the year for which the budget is being developed or "planning year" (FY+2). The Parties recognize that milestones in the current fiscal year are enforceable.

U. "Onsite" shall have the meaning as defined in the NCP.

V. "Operable Unit" or "OU" shall mean a discrete action that comprises an incremental step toward comprehensively remediating the Site. This discrete portion of a remedial response manages migration, or eliminates or mitigates a release, threat of release, or pathway of exposure related to the Site. Operable Units may address geographical portions of the Site, specific Site problems, or initial phases of an action, or may consist of any set of actions performed over time or any actions that are concurrent but located in different parts of the Site. The cleanup of the Site can be divided into a number of Operable Units, depending on the complexity of the problems associated with the Site. The term "Operable Unit" is not intended to refer to the term "operating unit" as used in RCRA. All Operable Units shall be addressed in accordance with the NCP, EPA Guidance and the requirements of CERCLA.

W. "Out Year Milestones" shall mean the dates established by the Parties in the Site Management Plan, in consultation with public stakeholders, for the submittal of Primary Documents within those years occurring after the "planning year" until the completion of the cleanup or phase of the cleanup (FY+3 through Project End Date, as defined below).

X. "Parties" shall mean the Navy and EPA.

Y. "Project End Dates" shall mean the dates established by the Parties in the Site Management Plan, in consultation with public stakeholders, for the completion of major portions of the cleanup or completion of the cleanup of the entire Facility.

Z. "Project Manager" shall mean each person designated by the Parties to represent that Parties' interests and manage all response actions undertaken at the Site.

AA. "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 (HSWA), Pub. L. No. 98-616, and any amendments thereto.

BB. "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 the Site, 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.

CC. "Risk-Based Concentration" or "RBC" is a chemical concentration calculated to correspond to a fixed level of risk, either a hazard quotient of 1 or a lifetime cancer risk of  $1 \times 10^{-6}$  in water, air, fish tissue, and soil. Standard exposure assumptions used in the calculations are taken from EPA's "Risk Assessment Guidance for Superfund (RAGS)". Region III primarily uses RBC values for chemical screening during baseline risk assessment in accordance with EPA Regional Guidance EPA/903/R-93-001, "Selecting Exposure Routes and Contaminants of Concern by Risk-Based Screening." The EPA Region III Risk-Based Concentration Table is updated and distributed semi-annually through the internet at address <http://www.epa.gov/reg3hwmd/risk/riskmenu.htm>. The most recent update was October 1, 1998.

DD. "Schedule" shall mean a timetable or plan that indicates the time and sequence of events.

EE. "Site" shall include the Facility and any other areas where a hazardous substance, hazardous waste, hazardous constituent, pollutant, or contaminant from the Facility has been deposited, stored, disposed of, or placed, or has migrated or otherwise come to be located. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9). This definition is not intended to include hazardous substances or wastes intentionally transported from the Facility by motor vehicle.

FF. "Site Management Plan" or "SMP" shall mean a planning document, prepared specifically under Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN, that contains a timetable, plan, or Schedule which indicates the time and sequence of events. The Site Management Plan will be used as a management tool in planning, reviewing and setting priorities for all response activities at the Facility. Deadlines and Target Dates developed under the terms of this Agreement are listed in the SMP. Final Deadlines listed in the SMP are subject to stipulated penalties.

GG. "Site-Screening Areas" or "SSAs" shall mean those geographical areas listed in Appendix B and any additional areas agreed to by the Parties in the future. SSAs may be either RCRA SWMUs or Areas of Concern or CERCLA Areas of Concern (AOCs). When the Parties agree, SSAs may expand or contract in size as information becomes available indicating the extent of contamination and the geographical area needed to be studied.

HH. "Site-Screening Process" or "SSP" refers to the mechanism described in Subsection 9.3 for evaluating whether identified SSAs should proceed with a Remedial

Investigation/Feasibility Study. The Site-Screening Process encompasses both the Facility's RCRA AOCs and SWMU areas and newly discovered CERCLA Areas of Concern within the Facility boundaries as defined in the NPL listing.

II. "Solid Waste Management Unit" or "SWMU", as defined pursuant to RCRA, shall mean any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid and/or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released.

JJ. "State" or "Commonwealth" shall mean the Commonwealth of Virginia, including all departments, offices and agencies thereof, as represented by the Virginia Department of Environmental Quality.

KK. "Target Dates" shall mean proposed time limitations specifically established or provided for under the terms of this Agreement for submittal of Secondary Documents. Target Dates shall not be subject to stipulated penalties.

LL. "Transmit" shall mean the following: any document or notice to be transmitted by a certain date will be considered as transmitted on time if: (1) it is provided to the carrier on a next day mail basis no later than the day before it is due to be delivered according to the requirements of this Agreement; (2) it is hand-delivered by the due date; or (3) it is sent by certified mail return receipt requested no later than two days before it is due to be delivered according to the requirements of this Agreement. Any other means of transmission must arrive on the due date to be considered as timely delivered.

MM. "VDEQ" shall mean the Virginia Department of Environmental Quality, its authorized employees, and authorized representatives.

NN. "Work" shall mean all activities the Navy is required to perform under this Agreement, except those required by Section XXXI - RECORD PRESERVATION.

### III. PARTIES BOUND

3.1 This Agreement shall apply to and be binding upon EPA and the Navy. The Navy agrees to include the notices required by Section 120(h) of CERCLA in any contract for the sale or transfer of real property affected by this Agreement. Transfer (sale or lease) of property affected by this Paragraph shall not relieve the Navy of its applicable obligations under this Agreement.

3.2 The Navy shall notify EPA of the identity and assigned tasks of each of its contractors performing Work under this Agreement upon their selection. The Navy shall provide copies of this Agreement to all contractors performing any Work called for by this Agreement. Each Party shall be responsible for ensuring that its contractors comply with the terms and conditions of this Agreement.

3.3 This Section shall not be construed as an agreement to indemnify any person.

#### IV. PURPOSE

4.1 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 the appropriate remedial action is 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 CERCLA as amended by SARA, the NCP, Superfund Guidance and policy, RCRA, RCRA Guidance and policy, and applicable State law; and

C. Facilitate cooperation, exchange of information and participation of the Parties in such actions.

4.2 Specifically, the purposes of this Agreement are to:

A. Identify interim and final remedial action alternatives which are appropriate at the Site. The interim remedial action alternatives shall be identified and proposed to the Parties as early as possible prior to formal proposal of interim remedial action(s) 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 Remedial Investigations (RIs) to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release and threatened release of hazardous substances, pollutants or contaminants at the Site and to establish requirements for the performance of Feasibility Studies (FSs) for the Site to identify, evaluate and select alternatives for the appropriate remedial action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants or contaminants at the Site in accordance with CERCLA, the NCP, 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, the NCP, and applicable State law.

D. Implement the selected interim remedial and final remedial action(s) at the Site in accordance with CERCLA, the NCP, 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 RCRA and other federal and State hazardous waste laws and regulations for matters covered herein.

F. Coordinate response actions at the Site with the mission and support activities at NBN.

G. Expedite the cleanup process to the extent consistent with protection of human health and the environment.

H. Provide, in accordance with CERCLA and the NCP, for State involvement in the initiation, development, selection, and enforcement of remedial actions to be undertaken at NBN, including the review of all applicable data as it becomes available, and the development of studies, reports, and action plans; and to identify and integrate State ARARs into the remedial action process.

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

## V. SCOPE OF AGREEMENT

5.1 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) and 3008(h) of the Resource Conservation and Recovery Act (RCRA) as amended, 42 U.S.C. Sections 6924(u) and (v) and 6928(h).

5.2 This Agreement is intended to cover the investigation, development, selection, and implementation of Response Actions response actions for all releases or threatened releases of hazardous substances, contaminants, hazardous wastes, hazardous constituents, or pollutants at or from the Site. This Agreement covers all phases of remediation for these releases, bringing together into one agreement the requirements for remediation as well as the system the Parties will use to determine and accomplish remediation, ensuring the necessary and proper level of participation by each Party. Although all such releases at the Site are not currently known, the Agreement establishes the system for dealing with those undiscovered releases. To accomplish remediation of those undiscovered releases, the Parties will establish Schedules and Deadlines as necessary and as information becomes available and, if required, amend this Agreement as needed.

5.3 This Agreement is intended to address and satisfy NBN's RCRA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes, hazardous constituents, pollutants, or contaminants at or from all areas addressed under future Corrective Action Permits. This Agreement is not intended to limit any requirements under RCRA or any other law or regulation to obtain permits, and is not intended to affect the treatment, storage, or disposal by NBN of hazardous wastes. This Agreement is not intended to encompass response to spills of hazardous substances from ongoing operations unless those spills occur in conjunction with CERCLA removal actions or remedial actions pursuant to this Agreement.

5.4 The scope of this Agreement extends to the entire Site, as listed in Federal Register proposing the Site for the National Priority List (NPL). The Site cannot be removed from the NPL unless it is determined, in accordance with CERCLA/SARA, the NCP, and this Agreement, that the Navy has implemented all appropriate response actions and the Site no longer poses a threat to human health or the environment. All response actions at the Site shall occur in discrete locations called Site-Screening Areas, or Operable Units (OU) identified at the Site pursuant to this Agreement.

5.5 Any Response Action in progress on the Effective Date of this Agreement shall be subject to the obligations and procedures of this Agreement.

5.6 The Parties agree to use their best efforts to expedite the initiation of response actions at the Site, including Accelerated Operable Units and interim response actions, and to carry out all activities under this Agreement so as to protect the public health, welfare and the environment. Upon request, the Parties agree to provide applicable Guidance or reasonable assistance in obtaining such Guidance relevant to the implementation of this Agreement.

## VI. FINDINGS OF FACT

6.1 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. Naval Base, Norfolk (NBN) is the largest naval base in the United States and is located in the northwest portion of the City of Norfolk, Virginia on 4,631 acres of land. NBN is bounded on the north by Willoughby Bay, on the west by the confluence of the Elizabeth and James Rivers, and on the south and east by the City of Norfolk. NBN began operations in 1917 and expanded significantly during and after World War II. The base currently operates in various capacities to provide support to vessels, aircraft, and other activities of the U.S. Atlantic Fleet. The United States is the current owner and operator.

B. NBN submitted the EPA Notification of Hazardous Waste Activity form on August 18, 1980 and a Part A permit application on November 13, 1980. The application included hazardous waste management units for the Naval Air Rework Facility, the Defense Property Disposal Office, the Public Works Center, and the Naval Base, Norfolk. On December 17, 1981 EPA granted the facility interim status.

C. NBN submitted Notification of Hazardous Waste Site forms to EPA in May and June, 1981. NBN notified EPA of two solid and hazardous waste management units. These were the Camp Allen Salvage Yard and the Camp Allen Landfill.

D. NBN submitted a Part B application on November 8, 1988. A Part B permit was issued September 20, 1994, covering three storage units located in buildings SDA-215, LP-159

and LF-38. The building SDA-215 unit is operated by Naval Public Works Center, Norfolk. The building LP-159 and LF-38 units were operated by Naval Aviation Depot (NAVAVNDEP), Norfolk. Due to the Base Realignment and Closure (BRAC) action at NAVAVNDEP Norfolk in 1995, NBN is currently in the process of negotiating with the State for closure of the LP-159 and LF-38 units.

E. The State issued an Enforcement Order dated November 26, 1988 requiring RCRA closure of the interim storage site located at LF-68. Closure was completed April 23, 1997 and the Enforcement Order terminated December 11, 1997.

F. The State issued an Enforcement Order dated December 20, 1990 requiring RCRA closure of plating shops located in buildings V-28 and LP-20 and RCRA closure of a hazardous waste storage area located adjacent to building LP-179. Clean closures of the V-28 and LP-20 sites were unsuccessfully attempted. NBN is currently in the process of negotiating with the State for risk-based closure of these sites.

G. The State issued an Enforcement Order dated May 18, 1995 requiring RCRA closure of a former preservation shop located in building Z-105. The closure plan was approved November 12, 1997. Pending changes necessitated by analytical limitations, closure of the shop began in FY 1998.

H. In February, 1983 an Initial Assessment Study (IAS) of NBN was completed pursuant to the Department of Defense Installation Restoration Program (IRP). The IAS identified eighteen sites, and recommended six for further evaluation. These six sites are the Camp Allen Landfill (IRP Site 1), NM Area Slag Pile (IRP Site 2), Q-Area Drum Storage Yard (IRP Site 3), Transformer Storage Area P-71 (IRP Site 4), Pesticide Disposal Site (IRP Site 5), and CD Landfill (IRP Site 6). Subsequent to the IAS, four additional sites were identified and recommended for additional study in the IRP. The four additional sites are Buildings V-60/V-90 (IRP Site 19), LP-20 site (IRP Site 20), Building W-316 (IRP Site 21), and Camp Allen Salvage Yard (IRP Site 22), bringing the total number of IRP sites warranting investigation to 10. Appendix A provides a summary of these 10 IRP sites relative to the CERCLA process.

I. Camp Allen Landfill (IRP Site 1) is composed of two areas: Area A, the 45-acre landfill, and Area B, the two-acre fire disposal area. Area A, which operated from the mid 1940's until approximately 1974, was used for the disposal of general trash, miscellaneous debris, metal plating and parts cleaning sludge, various organic solvent-related residues, and fly ash from the power plant. Wastes from a fire at the Camp Allen Salvage Yard (IRP Site 22) were buried in trenches at Area B in 1971. NBN implemented a non-time-critical removal action at Area B in May 1994 and completed it in January 1995. The RI and FS Reports were submitted for the Camp Allen Landfill on July 14, 1994 and November 17, 1994, respectively. The RI/FS identified both soil and groundwater contamination in the area of the landfill. A Decision Document signed on July 17, 1995 requires localized treatment of contaminated soils using vacuum extraction and extraction and treatment of contaminated ground water with discharge to Bousch Creek. The Camp Allen groundwater treatment system began operations in July 1997.

J. The NM Slag Pile Site (IRP Site 2), a former disposal area for slag from an

aluminum smelting operations conducted during the 1960s, is in the RI/FS stage. Results of the RI are under review by EPA and VDEQ prior to submittal of a final report.

K. The Q-Area Drum Storage Yard (IRP Site 3) consists of a 5-acre area used from the 1950s until the late 1980s to store drums containing new petroleum products, various chlorinated organic solvents, paint thinners, and pesticides. In May, 1996 the final RI/FS report for the Q-Area Drum Storage Yard was submitted. A final Decision Document was signed November 19, 1996. The selected remedial alternative is an air sparge/soil vapor extraction (AS/SVE) system for treatment of contaminated groundwater. Construction of this treatment system was completed in FY-1998.

L. The Transformer Storage Area (IRP Site 4, RFA M-5) was used to store new and out-of-service transformers from the 1940's to 1978. The RI/FS conducted at the site was completed in July 1991. A ROD for groundwater treatment and PCB contaminated soil excavation was signed December 12, 1991. The remediation of the site was completed in 1992.

M. The Pesticide Drain (IRP Site 5) was a French drain used in the 1960s for disposal of pesticide application rinse water. A Site Inspection and an Engineering Evaluation/Cost Analysis were completed for this site in February 1998. A soil removal action is proposed for FY 1999.

N. CD Landfill (IRP Site 6), a construction debris landfill, operated from 1974 to 1978. Landfill wastes included construction and demolition waste, power plant ash, and sandblasting grit. The RI and FS were submitted for the CD Landfill on December 21, 1995 and July 24, 1996, respectively. Comments on the June 5, 1996 Draft Final Proposed Plan resulted in operable units (OUs) being identified to address the media of concern. A final Decision Document for OU #1 requiring excavation and off-site disposal of contaminated sediment along the perimeter of the CD Landfill was signed November 1, 1996. The sediment removal project at the site will be completed in FY-1998. The ROD for OU #2, soil and groundwater, requiring landfill closure and post-closure monitoring in accordance with State solid waste regulations, will be issued in 1998. The construction of the solid waste landfill cap is funded for FY 1999.

O. Buildings V60/V90 (IRP Site 19, RFA M-34) were contaminated with PCBs released during a fire in April 1986. The RI/FS conducted at the site was drafted in May 1989. A ROD for selective cleaning followed by building demolition was signed December 19, 1989. The demolition of the buildings and site remediation was completed in 1991.

P. Building LP-20 (IRP Site 20) was constructed in the early 1940's and formerly used for aircraft engine rework and repair. Numerous spills or releases of wastewater, petroleum products, and other chemicals have occurred at the site. The September 13, 1996 RI/FS documented elevated levels of volatile organic contaminants in the underlying groundwater. A final Decision Document was signed on November 19, 1996. The selected remedial alternative is a AS/SVE treatment system; this treatment system began operating in April 1998.

Q. Building W-316 (IRP Site 21, RFA M-9/M-10) was formerly the Navy Public Works Center (PWC) PCB storage facility. Soil sampling at the site indicated PCB

contamination in the storage yard adjacent to the building. A removal action under the authority of TSCA was conducted in February 1998 for the excavation and off-site disposal of the PCB contaminated soil.

R. The Camp Allen Salvage Yard (IRP Site 22, RFA C-14) is a 27-acre site located near the Camp Allen Landfill which was used from 1940 to 1995 for salvaging and disposing of scrap materials. In May, 1994 a Preliminary Assessment/Site Inspection (PA/SI) Report was completed. A Work Plan was completed in March 1996 to conduct a Remedial Investigation at the site. A non-time-critical removal action is being performed and will be completed in 1998 to remove approximately 2,000 cubic yards of PCB contaminated soil. An RI/FS is underway that will address the remaining contaminated soil at the site.

S. The remaining 12 IAS sites, IRP Sites 7 through 18, were determined to require no further action (NFA) at the time of the IAS. Additional NFA documentation for these 12 sites is on file with EPA Region III and addressed in the following site descriptions.

T. The Inert Chemical Landfill (IRP Site 7, RFA L-3) was assessed as a no further action site during the 1983 IAS. The land use for this site, current and future, is vehicle parking in a zone designated by the NBN Master Land Use Plan for "Air Operations"; therefore, the industrial soil ingestion Risk-Based Concentration (RBC) values were utilized in assessing the potential future actions. Contaminants did not exceed the industrial RBC values. The site information and data reviewed by the Project Management Team to determine that no further action is required for the Inert Chemical Landfill is contained in the December 1997 Close-out Report for the site. This close-out report is part of a Consensus Agreement developed by the Naval Base Partnering Team to streamline the cleanup process.

U. The Asbestos Landfill (IRP Site 8, RFA L-4) was assessed as a no further action site during the 1983 IAS. The land use for this site, current and future, is vehicle parking in a zone designated by the NBN Master Land Use Plan for "Air Operations"; therefore, the industrial soil ingestion RBC values were utilized in assessing the potential future actions. Contaminants in soil did not exceed the industrial RBC values. The site information and data reviewed by the Project Management Team to determine that no further action is required for Asbestos Landfill is contained in the December 1997 Close-out Report for the site. This close-out report is part of a Consensus Agreement developed by the Naval Base Partnering Team to streamline the cleanup process.

V. The Q Area Landfill (IRP Site 9, RFA L-5) was assessed as a no further action site during the 1983 IAS. This site is located in an area of NBN designated for "Morale, Welfare, and Recreation (MWR) and Open Space" in the NBN Master Land Use Plan; therefore, both industrial and residential soil ingestion RBC values were utilized in assessing the potential future actions. The contaminants detected did not exceed either the residential or industrial RBC values. The site information and data reviewed by the Project Management Team to determine that no further action is required for the Q Area Landfill is contained in the December 1997 Close-out Report for the site. This close-out report is part of a Consensus Agreement developed by the Naval Base Partnering Team to streamline the cleanup process.



W. The Apollo Fuel Disposal Site (IRP Site 10, RFA M-23) was assessed as a no further action site during the 1983 IAS. This site is located in an area of NBN designated for "Morale, Welfare, and Recreation (MWR) and Open Space" in the NBN Master Land Use Plan; therefore, both industrial and residential soil ingestion RBC values were utilized in assessing the potential future actions. The site information and data reviewed by the Project Management Team to determine that no further action is required for the Inert Apollo Fuel Disposal Site is contained in the December 1997 Close-out Report for the site. This close-out report is part of a Consensus Agreement developed by the Naval Base Partnering Team to streamline the cleanup process.

X. The Instrument Repair Shop Drain (IRP Site 11) was used for disposal of radium wastes from ship dials from the late 1940s until 1956. An unknown quantity of radium paint waste was poured down the sink drains in the instrument repair shop that was located in Building V-60. In 1991, the remediation of this site was completed as part of the V-60/V-90 demolition project (IRP Site 19).

Y. The Mercury Disposal Site (IRP Site 12, RFA M-35) was assessed as a no further action site during the 1983 IAS. This site is located in an area of NBN designated for "Logistics and Industrial" operations the NBN Master Land Use Plan; therefore, the industrial soil ingestion RBC values were utilized in assessing the potential future actions. The contaminants detected did not exceed the industrial RBC values. Site information and data reviewed by the Project Management Team to determine that no further action is required for the Mercury Disposal Site is contained in the December 1997 Close-out Report the site. This close-out report is part of a Consensus Agreement developed by the Naval Base Partnering Team to streamline the cleanup process.

Z. The Past Industrial Wastewater Outfalls (IRP Site 13, RFA TP-10/M-45) was assessed as a no further action site during the 1983 IAS. The Project Management Team reviewed historical documentation and the NBN VPDES permit information. The industrial wastewater lines were routed to the NBN Industrial Wastewater Treatment Plant (IWTP) which began operations in 1976. The former wastewater outfalls have been continually monitored under the NBN VPDES permit for greater than 15 years. Based on this information, the management team determined that no further action for this site is required under CERCLA.

AA. The Underground Oil Spill - Piers 4,5,7 (IRP Site 14, RFA M-24) was assessed as a no further action site during the 1983 IAS. Any further work regarding this site will be performed under the underground storage tank (UST) program.

BB. The Underground Oil Spill - Piers 20,21,22 (IRP Site 15) was assessed as a no further action site during the 1983 IAS. Any further work regarding this site will be performed under the underground storage tank (UST) program.

CC. The Chemical Fire Building X-136 (IRP Site 16) was assessed as a no further action site during the 1983 IAS. This site is located in an area of NBN designated for "Logistics and Industrial" operations the NBN Master Land Use Plan; therefore, the industrial soil ingestion

RBC values were utilized in assessing the potential future actions. Contaminants in soil did not exceed the industrial RBC values. Site information and data reviewed by the Project Management Team to determine that no further action is required for Building X-136 is contained in the December 1997 Close-out Report for the site. This close-out report is part of a Consensus Agreement developed by the Naval Base Partnering Team to streamline the cleanup process.

DD. The Chemical Fire Building SDA-215 (IRP Site 17, RFA C-25/AOC E) was assessed as a no further action site during the 1983 IAS. This site is located in an area of NBN designated for "Logistics and Industrial" operations the NBN Master Land Use Plan; therefore, the industrial soil ingestion RBC values were utilized in assessing the potential future actions. Contaminants in soil did not exceed the industrial RBC values. Site information and data reviewed by the Project Management Team to determine that no further action is required for Building SDA-215 is contained in the December 1997 Close-out Report for the site. This close-out report is part of a Consensus Agreement developed by the Naval Base Partnering Team to streamline the cleanup process.

EE. The Former NM Hazardous Waste Storage Area (IRP Site 18, RFA M-26) was assessed as a no further action site during the 1983 IAS. This site is located in an area of NBN designated for "Morale, Welfare, and Recreation (MWR) and Open Space" in the NBN Master Land Use Plan; therefore, both industrial and residential soil ingestion RBC values were utilized in assessing the potential future actions. Contaminant concentrations were below residential and industrial RBC values except for arsenic, which was within the background range for the Site. Site information and data reviewed by the Project Management Team to determine that no further action is required for the Former NM Hazardous Waste Storage Area is contained in the December 1997 Close-out Report for the site. This close-out report is part of a Consensus Agreement developed by the Naval Base Partnering Team to streamline the cleanup process.

FF. A total of 148 potential contaminated site areas at NBN were identified by the Project Management Team in 1996 based on an EPA RCRA Facility Assessment (RFA) Report dated March 1992, EPIC aerial photography, and on-site field inspection.

GG. The Project Management Team conducted site visits and reviewed existing documentation and operational procedures at the following 16 of the 148 sites and determined no further action under CERCLA is warranted.

RFA C-4:	Building CA-483 (A) Satellite Accumulation Area
RFA C-5:	Building CA-483 (B) Satellite Accumulation Area
RFA C-6:	Building CA-483 (C) Satellite Accumulation Area
RFA C-7:	Building CA-483 (D) Satellite Accumulation Area
RFA C-18:	Building Z-309 Satellite Accumulation Area
RFA C-26:	Building CA-501 Satellite Accumulation Area
RFA C-61:	Building LP-20 (A) Satellite Accumulation Area
RFA C-79:	LP Fuel Farm Satellite Accumulation Area

RFA M-18: Sanitary Sewers  
RFA M-22: Sewage Waste Oil Barges  
RFA M-46: P-1 Pond  
RFA R-3: LF-68 Former Hazardous Waste Storage Area  
EPIC WDA-14: Building U-40  
EPIC WDA-24: Building LP-3  
EPIC WDA-25: Building SP-367  
EPIC WDA-26: Building SP-86

The eight satellite accumulation areas (SAAs) are container storage areas used to manage various types of wastes generated from operations in the buildings. These units are usually located outside of a building on paved areas (asphalt or concrete) and are (or were) inspected on a regular basis.

NBN has implemented a program to inspect and monitor sources discharging to the Hampton Roads Sanitation District (HRSD). The scope and policy establishing the requirements of this program are contained in the NBN Industrial Wastewater Management Plan (IWMP) which was established to meet conditions of the NBN HRSD permit. Based on conditions and requirements of the NBN HRSD permit, the Project Management Team determined no further action for the sanitary sewers (M-18) is required under CERCLA.

The NFA recommendation for the Sewage Waste Oil Barges is based on operating data.

The P-1 pond receives wastewater from PWC's steam generation plant, specifically the steam plant's continuous blow-down and bottom boiler blow-down wastewater. The wastewater is held in the P-1 pond prior to discharge to HRSD. Prior to February 1995, the NBN HRSD permit required sampling and analysis prior to discharge to the sanitary sewer; however, this requirement was suspended by HRSD based on historical sampling data. PWC still maintains a sampling and analysis program for the P-1 pond for internal recordkeeping. The Project Management Team determined no further action for the P-1 Pond is required under CERCLA.

The clean closure of the LF-68 Former Hazardous Waste Storage Area was verified by the Virginia Department of Environmental Quality (VDEQ) correspondence of April 23, 1997, and the Enforcement Order executed in October 1988 regarding LF-68 was terminated per the VDEQ letter of December 11, 1997.

In April, 1996 the Project Management Team conducted a visual inspection of four additional possible waste disposal areas identified in aerial photography: Building U-40 (WDA 14), Building LP-3 (WDA 24), Building SP-367 (WDA 25), and the area west of Building SP-86 (WDA 26). Based on this inspection no further action is recommended for these areas.

HH. A Relative Risk Ranking (RRR) Data Collection Sampling and Analysis Report submitted January 9, 1996 provided the Project Management Team sampling results for 45 of the 148 identified sites. Of the sites sampled as part of the RRR report, the Navy identified twenty-five (25) as SWMUs for additional evaluation and possible investigation in the Site Management Plan (March, 1997). To provide additional site specific data, a Phase II RRR event was

conducted, and a report was submitted December 9, 1996. The RRR phase II report provided supplemental data for thirteen sites previously sampled during the initial RRR event, and data for four additional sites. The Project Management Team evaluated sampling data from the two RRR reports (December 1996 and January 1996), reviewed historical operating data, and conducted site field visits. Based on this analysis, it is recommended that no further action be required under CERCLA for the following 22 sites:

RFA C-9: Building W-7 (Pier 7) Satellite Accumulation Area  
RFA C-27: Building W-130 Satellite Accumulation Area  
RFA C-33: Building V-88 Satellite Accumulation Area  
RFA C-36: Building LF-53 Satellite Accumulation Area  
RFA C-71: Building SP-10 Satellite Accumulation Area  
RFA C-80: Building LP-100 Satellite Accumulation Area  
RFA C-81: Building LF-59 Satellite Accumulation Area  
RFA C-82: Building LF-60 Satellite Accumulation Area  
RFA M-36: Building LF-61 Waste Tank Area (SWMU 5)  
RFA M-39: Building LF-53 Trenches (SWMU 24)  
EPIC WDA-3: Building LF-18 Aircraft Ramp (SWMU 7)  
EPIC WDA-4: Building V-82 Area  
EPIC WDA-12: Building CD-2/CD-3  
EPIC WDA-15/16/17: Marshy Area south of Runway (SWMU 30)  
EPIC WDA-21: Northeast of Building NH-140/141 (SWMU 26)  
EPIC WDA-27: Building SP-85 Area  
EPIC WDA-30: Mason Creek Embankment (SWMU 27)  
EPIC WDA-33/34: NM-43 Old Weapons Station Entrance (SWMU 11)  
EPIC WDA-37: Building NM-71

The satellite accumulation areas (SAAs) are container storage areas used to manage various types of wastes generated from operations in the building. All eight SAAs are in areas of NBN designated for "Logistics and Industrial" or "Operations" in the NBN Master Land Use Plan; therefore, the Project Management Team compared the available analytical data to industrial soil ingestion RBC values. No semi-volatile organic compounds (SVOCs) or other organic compounds were detected at levels exceeding the industrial RBC values at any of these SAA locations. In addition, no inorganics above the industrial soil RBC values were found at four of the SAAs (C-33, C-36, C-81, and C-82). Arsenic exceeded the industrial RBC values at three of the SAAs (C-9, C-71, and C-80); the arsenic at these locations ranges from 1.1 to 8.6 mg/kg in the surface soils and 1.7 to 2.4 mg/kg in the subsurface soils. These arsenic concentrations, however, are within background concentrations at NBN.

F-61 (M-36, SWMU 5), an aboveground liquid waste storage tank surrounded by a three-foot concrete wall, was demolished in 1996. Building LF-53 trench (M-39, SWMU 24) is a concrete hanger door trench drain located in Building LF-53. The trench was historically used to collect waste streams from paint stripping activities; however, paint stripping operations are no longer performed at the location as a result of a BRAC action, and the trenches were cleaned and filled with concrete in 1997. The former location of LF-61 and building LF-53 are in an area of NBN designated for "Logistics and Industrial" in the NBN Master Land Use Plan; therefore, the

Project Management Team compared the available analytical data to industrial soil ingestion RBC values. No contaminants detected in subsurface soil samples at either LF-61 or LF-53 exceeded industrial RBC values. The concentration of arsenic at LF-61, 9.9 mg/kg, is the only contaminant exceeding the industrial soil RBC values in the surface soil samples and is considered representative of background concentrations.

Aerial photography identified many waste disposal areas in locations of NBN designated for "Logistics and Industrial" in the NBN Master Land Use Plan. Therefore, the Project Management Team compared the available analytical data for these areas to industrial soil ingestion RBC values. These areas are identified as LF-18 Aircraft Ramp (WDA-3, SWMU 7), Building V-82 (WDA-4), the marshy area south of the west end of Runway 28 (WDA-15/16/17, SWMU 30), Building SP-85 area (WDA-27), the Mason Creek embankment (WDA-30, SWMU 27), and the MN-43 Old Weapons Station Entrance (WDA-33/34, SWMU 11). None of the contaminants detected at two locations (WDA-4 and WDA-30) exceeded any industrial RBC values. The only organic compound found to exceed the industrial soil RBC values is benzo(a)pyrene, with concentrations ranging from 62 to 1900 ug/kg, at WDA-15/16/17 and WDA-27. Arsenic, ranging from 1.2 to 22.4 mg/kg, at WDA-15/16/17, WDA-27, and WDA-33/34 exceeded the industrial soil RBC values. Benzo(a)pyrene and other PAH compounds are derived from the asphalt in these areas and are frequently detected at NBN as a background contaminant. Based on these low levels of contaminants detected in these areas, the Project Management Team recommends no further action.

In addition, the aerial photography identified waste disposal areas in locations of NBN designated for "Administration" or "Morale, Welfare, and Recreation (MWR) and Open Space" in the NBN Master Land Use Plan. Therefore, the Project Management Team compared the available analytical data for these areas to industrial and residential soil ingestion RBC values. These areas are identified as Building CD-2/CD-3 (WDA-12), the area northeast of NH-140/141 (WDA-21, SWMU 26), and near Building NM-71 (WDA-37). Several organics were detected at concentrations exceeding the RBC values. Benzo(a)pyrene, with concentrations ranging from 130 to 1600 ug/kg, exceeded the residential RBC value at WDA-12 and both RBC values at WDA-21. In addition, benzo(a)anthracene, 1800 ug/kg, and benzo(a)fluoranthene, 2400 ug/kg, exceed both RBC values, and dibenzo(a,h)anthracene, 170 ug/kg, exceeds the residential RBC value at WDA-21. Arsenic, ranging from 1.9 to 17.3 mg/kg, exceeded the residential RBC value at WDA-21 and WDA-37, and both RBC values at WDA-12.

II. The ongoing remediation of the Q-82/78 Former PWC Parking Area (SWMU 37, EPIC WDA-2) is being conducted in accordance with the Virginia Underground Storage Tank (UST) Regulations. The Commonwealth of Virginia Department of Environmental Quality (VDEQ) is providing oversight of the site remediation. The Project Management Team reviewed information pertaining to the Site Characterization and Corrective Action Plan. This information is on file with EPA Region III. No further action under CERCLA is required.

JJ. The results of a confirmatory investigation of Building SP-2B (C-83, SWMU 1), the Q-72 Sandblast Area (M-19/M-20/WDA-1, SWMU 4), the V-28 Waste Pit (M-31, SWMU 6) and the Fire-Fighting School (WDA-20, SWMU 8) were submitted November 18, 1996. This

investigation identified elevated lead in the soil at SWMU 1; a removal action was conducted at the site in October 1997 as part of the scope of work for CD Landfill (Site 6) sediment removal project. It is recommended that no further action be required under CERCLA at SWMU 1. SWMUs 4, 6, and 8 will be investigated as SSAs.

KK. The NBN storm water drainage system, (SWMU 36, RFA M-44), is undergoing a \$10 million dollar rehabilitation project. The project includes the inspection, assessment, and required repair/replacement of the entire storm water drainage system. The Project Management Team determined that no further action for this site is required under CERCLA.

LL. Thirty-eight of the sites are oil/water separators (O/WS) that are pre-treatment devices used to manage oily wastewater from various activities. No releases have been specifically identified for these units.

The following 10 O/WS are connected to the stormwater system. At the request of the EPA, documentation of integrity and functionality inspections of these units was provided; this documentation is on file with EPA Region III. The Project Management Team recommends no further action under CERCLA for these O/WS.

RFA O-2:	A-81 Building	(integrity inspection)
RFA O-4:	A-Area	(integrity inspection)
RFA O-11:	LF-60 Building	(integrity inspection)
RFA O-31:	LP-167 Area 1	(cleaned/inspected per BRAC action)
RFA O-34:	LP-167 Area 4	(cleaned/inspected per BRAC action)
RFA O-35:	LP-167 Area 5	(cleaned/inspected per BRAC action)
RFA O-46:	SP-313	(integrity inspection)
RFA O-50:	V-15 Building	(cleaned/inspected per BRAC action)
RFA O-60:	Firefighting School	(integrity inspection)
RFA W-4:	Q-50	(integrity inspection)

NBN has implemented a program to inspect and monitor sources discharging to the Hampton Roads Sanitation District (HRSD). The scope and policy establishing the requirements of this program are contained in the NBN Industrial Wastewater Management Plan (IWMP). The following 14 O/WS are managed under the IWMP program. Documentation of the IWMP is on file with EPA Region III. The Project Management Team recommends no further action under CERCLA for these O/WS.

RFA O-1:	A-80 Building
RFA O-3:	A-127 Building
RFA O-7:	CEP-188 Building
RFA O-10:	LF-59 Building
RFA O-23:	LP-20 Building
RFA O-32:	LP-167 Area 2
RFA O-33:	LP-167 Area 3

RFA O-36: LP-167 Area 6  
RFA O-43: SP-38 Building  
RFA O-45: SP-296 Hanger  
RFA O-55: V-49 S Area 5  
RFA O-56: V-49 W Area 6  
RFA O-59: W-6 Building  
RFA T-13: W-388

The demolition of the following ten O/WS has been completed, or is planned, in NBN's effort to eliminate excess structures to reduce infrastructure. Documentation of the O/WS demolition projects is on file with EPA Region III. The Project Management Team recommends no further action under CERCLA for these O/WS.

RFA O-8: LF-38 Building (demolition planned - FY99)  
RFA O-24: LP-22 Building (demolition complete - FY98)  
RFA O-27: LP-48 Building (demolition complete - FY98)  
RFA O-30: LP-78 Building (demolition complete - FY97)  
RFA O-37: LP-176 Building (demolition complete - FY98)  
RFA O-57: V-146 Building (demolition complete - FY97)  
RFA O-61: Firefighting School (demolition complete - FY92)  
RFA O-62: Firefighting School (demolition complete - FY92)  
RFA T-31: MCE-57-1 (demolition complete - FY97)  
RFA TP-6: Firefighting School  
Wastewater Pit (demolition planned - FY99)

The following four O/WS are inactive due to BRAC closures of NBN tenants. Cleaning of these devices was performed as a function of the facility closure process and verified by NBN personnel. Documentation of the facility closure procedures is on file with EPA Region III. The Project Management Team recommends no further action under CERCLA for these O/WS.

RFA O-9: LF-53 Building  
RFA O-25: LP-32 Building  
RFA O-51: V-27 Area 1  
RFA O-52: V-28 Area 2

MM: The following 34 underground storage tanks (USTs)/aboveground storage tanks (ASTs) have either been removed and certified as closed by the Commonwealth of Virginia, or are active tanks and will be regulated by the Commonwealth of Virginia Department of Environmental Quality. Records of removal and other pertinent information are on file with the EPA Region III. The Project Management Team recommends no further action at these sites.

RFA T-3: Wastewater Tank 3 Building CEP-200 (VDEQ regulated)  
RFA T-10: W-7 Building (VDEQ regulated)  
RFA T-12: W-388 Building high flashpoint tank (VDEQ regulated)

RFA T-28: NH-94-1W Building (VDEQ regulated)  
RFA T-29: NH-94-2W Building (VDEQ regulated)  
RFA T-14: A-81 Building (removed)  
RFA T-15: A-80 Building Tank No.1 (removed)  
RFA T-16: A-80 Building Tank No.2 (removed)  
RFA T-17: Fire Fighting School (removed)  
RFA T-20: CEP-188 Building (removed)  
RFA T-21: V-49 Building (removed)  
RFA T-22: U-132 calibration fluid (removed)  
RFA T-23: U-132 varsol (removed)  
RFA T-24: U-132 waste oil (removed)  
RFA T-26: NH-34 Building (removed)  
RFA T-27: NH-35 Building (removed)  
RFA T-30: MCE-225-4 Building (removed)  
RFA T-32: W-6-1 (removed)  
RFA T-33: W-6-2 (removed)  
RFA T-34: W-6-3 (removed)  
RFA T-35: W-6-4 (removed)  
RFA T-36: W-196 Building (removed)  
RFA T-37: LAFB Building (removed)  
RFA T-38: NM-59 Building (removed)  
RFA AOC C: Building V-93-1 (removed)  
RFA AOC C: Building V-93-2 (removed)  
RFA AOC C: Building V-93-3 (removed)  
RFA AOC C: Building V-112-1 (removed)  
RFA AOC C: Building V-112-2 (removed)  
RFA AOC C: Building V-112-3 (removed)  
RFA AOC C: Building NM-71-A (removed)  
RFA AOC C: Building NM-71-B (removed)  
RFA AOC C: Building U-117 (removed)  
RFA AOC C: Building CA-501-1 (removed)

NN. Four (4) sites will be investigated as Site Screening Areas under this Agreement (See Appendix B) and eight (8) Areas of Concern are included as Appendix C to this Agreement.

OO. The Parties agree that current and anticipated future land use are appropriate assumptions for the remedy selection process, relying on EPA's "Land Use in the CERCLA Remedy Selection Process" Guidance. The Parties also agree that when land use controls are necessary to assure the reliability of land use assumptions, it is essential that appropriate procedures be put in place to ensure that such controls will be maintained for as long as necessary to keep the chosen remedy fully protective of human health and the environment. Specifically, areas that contain contamination at levels which pose a risk for unlimited use and unrestricted exposure will require institutional controls that will be documented in accordance with the CERCLA process.



PP. In June 1996 EPA completed, pursuant to CERCLA, a final revised Hazard Ranking System evaluation of NBN that resulted in a score of 50.00.

QQ. On June 17, 1996 the U.S. EPA proposed that NBN be added to the National Priorities List (NPL) at 51 Federal Register 30575. On April 1, 1997, NBN was finalized on the NPL at 62 Federal Register 15572.

## VII. EPA DETERMINATIONS

7.1 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 these determinations shall be considered admissions to any person, related or unrelated to this Agreement, for purposes other than determining the basis of this Agreement or establishing the jurisdiction and authority of the Parties to enter into this Agreement.

A. The United States Department of the Navy is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).

B. The Naval Base Norfolk is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9), and 10 U.S.C. Section 2701 *et seq.*, and is subject to the Defense Environmental Restoration Program.

C. The United States is the owner and operator of NBN 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 DOD component charged with fulfilling the obligations of the owner and operator under CERCLA at NBN.

D. There has been a release or a substantial threat of a release of hazardous substances, pollutants, contaminants, hazardous wastes or constituents at or from the Facility.

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

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

G. This Agreement provides for the expeditious completion of all necessary response actions.

## VIII. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

8.1 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.

8.2 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, 42 U.S.C. Section 9621. Releases or other hazardous waste activities not covered by this Agreement remain subject to all applicable Commonwealth of Virginia and federal environmental requirements.

8.3 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 NBN may require the issuance of permits under federal and State laws. This Agreement does not affect the requirements, if any, to obtain such permits. However, if a permit is issued to the Navy for ongoing hazardous waste management activities at the Site, EPA and/or the State shall reference and incorporate any appropriate provisions, including appropriate Schedules (and the provisions 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.

8.4 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.

## **IX. WORK TO BE PERFORMED**

9.1 A. The Parties recognize that background information exists and must be reviewed prior to developing the Work Plans required by this Agreement. The Navy need not halt currently ongoing Work but may be obligated to modify or supplement Work previously done to meet the requirements of this Agreement. It is the intent of the Parties to this Agreement that Work done and data generated prior to the Effective Date of this Agreement be retained and utilized as elements of the RI/FS to the maximum extent feasible.

B. Any Party may propose that a portion of the Site be designated as a distinct Operable Unit. This proposal must be in writing to the other Party, and must stipulate the reasons for such

a proposal. The proposal should be discussed by all Project Managers within forty-five (45) days of the receipt of the written notice. Dispute resolution may be invoked if the Parties are not in agreement on the proposal of a specific Operable Unit. If dispute resolution is not invoked by the Parties within thirty (30) days after the Project Managers' discussion concerning the proposal or if the need for an Operable Unit is established through dispute resolution, the portion of the Site proposed shall be an Operable Unit as that term is defined in Section II - DEFINITIONS, of this Agreement.

C. Any Party may propose that an established Operable Unit be modified. The proposal must be in writing to the other Party, and must state the reasons for the modification. Dispute resolution may be invoked if the Parties are not in agreement on the proposal of modifying a specific Operable Unit. If dispute resolution is not invoked within thirty (30) days of the receipt of such a proposal by the Parties or if the need for modifying an Operable Unit is established through dispute resolution, the Operable Unit, as defined in Section II, shall be modified.

D. The Navy shall develop, implement and report upon the Site-Screening Areas (SSAs) as defined herein, and listed in Appendix B to this Agreement, in order to satisfy its obligations under RCRA/CERCLA integration. The Site-Screening Process (SSP), outlined in Subsection 9.3 of this Agreement, is intended to provide a simplified investigative method whereby identified RCRA units and CERCLA Areas of Concern can be evaluated to determine whether Remedial Investigations are required for these areas.

Additional SSP investigations may be initiated at areas later identified by the Parties. The SSP investigation(s) shall be conducted in accordance with an SSP Work Plan as agreed to by the Parties.

E. SSP Reports(s) shall be subject to the review and comment procedures described in Section X - CONSULTATION. The SSP investigation(s) shall be conducted in accordance with the requirements set forth in Subsection 9.3, and the Deadlines established therein and set forth in Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN.

### **Work Plan Development for Existing RI/FS Areas**

9.2 The Navy submitted a Work Plan for the completion of an RI/FS for the areas discussed in Paragraph 6.1.H of this Agreement. The Schedule and Deadlines included in the Final RI/FS Work Plan are incorporated into the Site Management Plan in accordance with Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement.

### **Site-Screening Areas**

9.3 A. Determination of Site-Screening Areas When a Party to this Agreement determines that an area on the Site which has not previously been identified as an area which may pose a

threat, or potential threat, to public health, welfare, or the environment, does pose such a threat, or potential threat, such Party shall notify in writing the other Party of such determination. Notification of the other Party under this Paragraph shall at a minimum include the location of such area on the Site and the reason(s) the Party believes such an area poses a threat, or potential threat, to public health, welfare, or the environment. The Parties shall have forty-five (45) days from the date of receipt of notification to discuss the proposal and to agree whether such area shall be addressed under this Agreement as an SSA. If an agreement on whether to address such an area under the Agreement cannot be reached within forty-five (45) days from the date of receipt of notification, any Party can initiate the dispute resolution process pursuant to Paragraph 20.4 of this Agreement. If dispute resolution is not invoked within 45 days from the date of receipt of notification or if an SSA is established through the dispute resolution process the proposed SSA will be addressed as an SSA in accordance with this Section.

B. Any area on the Site which is established as an SSA pursuant to the procedures described in this Section after the Effective Date of this Agreement shall be added to the list of SSAs found in Appendix B as an additional SSA to be investigated and possibly remediated pursuant to the requirements of this Agreement. For any SSAs established pursuant to this Section after the Effective Date of this Agreement, the Navy shall, in the next draft Amended Site Management Plan, propose Deadlines for the submittal of an SSP Work Plan(s). This Deadline(s) shall be approved in accordance with Section XI and adopted in the Site Management Plan.

C. Appendix B contains a list of four Site Screening Areas (SSAs) which the Parties agree may pose a threat, or potential threat to human health and the environment. The Navy shall submit to the EPA SSP Work Plan(s) which shall outline the activities necessary to determine if there have been releases of hazardous substances, pollutants, contaminants, hazardous wastes, or hazardous constituents to the environment from the SSAs. The scope of the SSPs shall be determined by the Parties. The SSP Work Plan(s) shall include a proposed Deadline for the submittal of an SSP Report(s). The Schedule and Deadlines included in the final SSP Work Plan will be incorporated into the Site Management Plan in accordance with Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement.

(1) In planning SSPs, the Navy shall consider current CERCLA and RCRA Guidance to determine if there have been releases of hazardous substances, pollutants, contaminants, hazardous wastes or hazardous constituents to the environment from the SSAs. Upon conclusion of an SSP, the Navy shall submit to the EPA a draft SSP Report which shall provide the basis for a determination that either: (1) an RI/FS be performed on the area addressed by the SSP or, (2) the area does not pose a threat, or potential threat to public health, welfare, or the environment and therefore the area should be removed from further study under this Agreement.

(2) Unless otherwise agreed to by the Parties, the Parties shall determine which (if any) of the SSAs listed in Appendix B or established pursuant to Subsection 9.3 will

require an RI/FS within sixty (60) days of receipt by the Parties of the final SSP Report(s).

(3) For those SSAs which the Parties agree do not warrant an RI/FS, the Navy shall prepare, with EPA assistance, a brief decision document reflecting that agreement. This agreement must be signed by all the Project Managers.

(4) The Parties shall designate Operable Units for those SSAs that are to proceed with an RI/FS. If the Parties cannot agree on the determination of whether an SSA(s) shall proceed to an RI/FS, dispute resolution may be invoked in accordance with Section XX - DISPUTE RESOLUTION. If an RI/FS is required, the Navy shall, within the next draft Amended Site Management Plan, propose to EPA a Deadline for the submission of the RI/FS Work Plan for each Operable Unit. The Schedule and Deadlines included in the final RI/FS Work Plan(s) will be incorporated into the next update of the Site Management Plan and will be the enforceable Schedule for the submittal of the draft RI/FS.

#### D. Areas of Concern

Eight (8) areas at NBN have been listed as Areas of Concern (AOC) in Appendix C to this Agreement. These areas will undergo a document evaluation, which involves a thorough review of all existing or easily obtainable documentation/information on the identified sites. If the Parties agree, in writing, the evaluation could also include obtaining discrete samples from the AOC area without the development of a work plan. If the Parties cannot agree on whether discrete sampling can be performed at an AOC without the development of a work plan, then the AOC document evaluation will continue without the performance of sampling. The document evaluation will also involve assessing information concerning the handling of hazardous wastes at each AOC, or actions taken at each AOC, or actions that will be occurring under other regulatory programs. Based on this evaluation, a decision will be made by the Project Managers which AOCs will proceed to the Site Screening Process (SSP) as SSAs, and which AOCs will require no further action and can be removed-out. For those AOCs which the Parties agree will not proceed to the Site Screening Process, the Navy shall prepare, with EPA assistance, a brief AOC Close-Out document.

EPA shall review all information submitted by the Navy in support of the AOC document evaluation and shall provide a response to the Navy as to whether the information provided is sufficient to close-out the AOC unit(s). The response shall be forwarded from EPA to the Navy within thirty (30) days of receipt of the supporting documentation.

In cases involving complex, numerous or unusually lengthy reports, EPA may extend the thirty (30) day comment period for an additional twenty (20) days by written notice to the Navy prior to the end of the thirty (30) day period. Within 120 days of the Effective Date of this Agreement, the final determination of which AOCs will become SSAs and which AOCs shall be closed-out. Those AOCs which are not agreed upon by the Parties to be closed-out will proceed to the SSP. If the Parties agree, in writing, the document evaluation for specific AOCs may be extended beyond the 120 day finalization Deadline. If the Navy submits supporting

documentation to EPA in such a manner that the 30 day review and response time for EPA extends beyond the 120 day finalization date, the finalization date will automatically be extended to allow for the full 30 days for review and discussion.

For those AOCs which all Parties agree should proceed to the SSP, the Navy shall include those AOCs in the draft amended Site Management Plan for Fiscal Years 2000-2001 as SSAs and propose Deadlines for submittal of SSP Work Plans as prescribed in Subsection 9.3.C.

#### **Remedial Investigation and Feasibility Study**

9.4 The Navy agrees it shall develop, implement and report upon a Remedial Investigation (RI) for areas identified in Subsections 9.2 and 9.3.C.(1),(2), and (4). RIs shall be conducted in accordance with the requirements and Schedules set forth in the approved Work Plan and Site Management Plan. RIs shall meet the purposes set forth in Section IV - PURPOSE, of this Agreement. A Baseline Risk Assessment shall be a component of the RIs. Final Site clean-up level criteria will only be determined following completion of the Baseline Risk Assessment.

9.5 The Navy agrees it shall develop, implement and report upon a Feasibility Study (FS) for areas subject to an RI. The FS shall be conducted in accordance with the requirements and Schedules set forth in the approved RI/FS Work Plan and Site Management Plan. The FS shall meet the purposes set forth in Section IV - PURPOSE, of this Agreement.

#### **Procedures for Interim Remedial Actions**

9.6 A. The Navy shall implement those Interim Remedial Actions (IRA) necessary to prevent, minimize, or eliminate risks to human health and the environment caused by the release of hazardous substances, pollutants, or contaminants. An IRA is identified, proposed, and implemented prior to a final remedial action. An IRA shall attain ARARs to the extent required by CERCLA or the NCP and be consistent with and contribute to the efficient performance of a final remedial action(s) taken at an area or Operable Unit. An IRA must be protective of human health and the environment, and comply with CERCLA, the NCP, and State laws to the extent that they are legally applicable, or relevant and appropriate requirements in accordance with Section 121 of CERCLA, 42 U.S.C. Section 9621 and this Agreement.

B. When a Party to this Agreement determines that an IRA is necessary for an area(s) within the Facility, such Party shall notify, in writing, the other Party, of the proposal. The Proposal Notification to the other Party under this Paragraph shall at a minimum include the location of such area(s) on the Facility and the reason(s) the Party believes an IRA is required. Any Party may propose an IRA for those Operable Unit(s) or SSAs most suitable for an IRA. Within thirty (30) days of notification, any Party may request a meeting of the Parties to assist in expediting the decision to proceed with an IRA. If a dispute(s) arises over whether to address such an area(s) under this Agreement which cannot be settled between the Parties within thirty (30) days from receipt of notification, the dispute(s) shall be immediately brought to the Dispute Resolution Committee (DRC) pursuant to Section XX - DISPUTE RESOLUTION of this Agreement.

C. After the determination that an IRA is required under this Agreement, the Navy shall, in the next draft Amended Site Management Plan, submit to EPA proposed Deadlines for the submission of Work Plan(s) for the performance of a Focused Feasibility Study (FFS) for the identified area(s). The Deadlines will be finalized in accordance with Section XI. Each FFS Work Plan shall contain a proposed Deadline for the submittal of the FFS. The Schedule and Deadlines included in the approved, final FFS Work Plan will immediately be incorporated in the Site Management Plan. The FFS shall include a limited number of proposed IRA alternatives. To the extent possible, the FFS shall provide an assessment of the degree to which these alternatives were analyzed during their development and screening. The Navy shall develop, implement and report upon each FFS in accordance with the requirements set forth in the final FFS Work Plan.

D. Within thirty (30) days of submission of a final FFS Report, the Navy shall prepare and submit a Proposed Plan for the IRA. The Navy shall make a Proposed Plan for the IRA available for public review and comment in accordance with Paragraph 9.7B. As required, the Navy shall follow the steps outlined in Paragraphs 9.7B through 9.14 below.

### Records of Decision and Plans for Remedial Action

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

B. Within thirty (30) days after finalization of an RI and FS or FFS, the Navy shall submit a draft Proposed Plan to EPA for review and comment as described in Section X - CONSULTATION, of this Agreement. Within seven (7) days after receiving EPA acceptance on the Proposed Plan, the Navy shall publish its Proposed Plan for forty-five (45) days of public review and comment. During the public comment period, the Navy shall make the Administrative Record available to the public and distribute the Proposed Plan. The Navy shall hold a public information meeting during the public comment period to discuss the preferred alternative for each ROD. 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 and State Guidance.

C. 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. The Parties may recommend that additional public comment be solicited if modifications to the Proposed Plan substantially change the remedy originally proposed to the public. The determination concerning whether a Proposed Plan should be modified or whether additional public comment is necessary is subject to the dispute resolution provisions of this Agreement Section XX - DISPUTE RESOLUTION.

D. The Navy shall submit its draft ROD to EPA within thirty (30) days following the close of the public comment period, including any extensions, on the Proposed Plan. The draft

ROD will include a Responsiveness Summary, in accordance with applicable EPA Guidance. Pursuant to CERCLA Section 120(e)(4)(A), 42 U.S.C. Section 9620(e)(4)(A), the EPA and the Navy in consultation with the State, shall make the final selection of the remedial action(s) for each ROD.

E. At a minimum, EPA and the Navy shall have thirty (30) days to attempt to select a remedy following the Navy's submission of a draft ROD.

F. The selection of a remedy that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria or limitation is one basis on which the State may determine not to concur with a final remedial action plan. In accordance with CERCLA Section 121(f)(3)(A), 42 U.S.C Section 9621(f)(3)(A), at least thirty (30) days prior to the publication of the Navy's final remedy, if the Navy proposes to select a remedial action that does not attain a legally applicable or relevant and appropriate standard, requirement, criterion or limitation, the Navy shall provide an opportunity for the State to concur or not concur in the selection of such plan. If the State concurs or does not act within thirty (30) days of notification by the Navy of pending publication of the final remedy, the remedial action may proceed. If the State does not concur, it may act pursuant to Section 121(f)(3)(B) of CERCLA, 42 U.S.C. Section 9621(f)(3)(B).

G. If the EPA and the Navy are unable to reach agreement on the selection of the remedy, the Administrator shall select the remedy in accordance with all applicable laws and procedures. EPA shall then prepare and issue the final ROD. EPA shall comply with the public participation requirements of the NCP. RODs shall not be subject to dispute resolution under this Agreement.

H. Notice of the final ROD 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). The final ROD shall include a statement that the State has concurred or not concurred with the selection of the remedy.

### **Remedial Design and Remedial Action**

9.8 A. The Site Management Plan shall include a Target Date for submission of a preliminary/conceptual Remedial Design; a Target Date for submission of a prefinal Remedial Design; and a Deadline for the final Remedial Design, which documents shall be prepared in accordance with this Agreement and applicable Guidance issued by EPA. The Remedial Design shall provide the appropriate plans and specifications describing the intended remedial construction and shall include provisions necessary to ensure that the remedial action will achieve ARARs and performance standards identified in the ROD.

B. The RA Work Plan(s) shall at a minimum contain a Schedule for the completion of



the Remedial Action, a Health and Safety Plan, a Sampling and Analysis Plan, and a Quality Assurance Project Plan, if necessary. The Schedule contained in the final RA Work Plan(s) will be immediately incorporated in the Site Management Plan.

C. After the final design document is approved, pursuant to Section X CONSULTATION, the Navy shall begin performance of the Remedial Action in accordance with the final Remedial Design and the RA Work Plan. The Remedial Action shall be completed in accordance with the approved final Remedial Design and RA Work Plan and all applicable EPA and State Guidance.

#### Finalization of Remedial Actions

9.9 The Navy agrees that it shall submit to EPA a Remedial Action Completion Report in accordance with the Schedule in the Site Management Plan following the completion of the Remedial Action for each Operable Unit. The Remedial Action Completion Report shall outline in specifics the Remedial Action(s) taken and shall detail, and provide an explanation for, any activities that were not conducted in accordance with the final RD and/or RA Work Plan(s). In addition, in accordance with the Schedule provided in the Site Management Plan after the completion of the Remedial Action for each Operable Unit, the Navy shall submit a draft Long-Term Remedial Action Monitoring Plan (if necessary), and a draft Operation and Maintenance Plan to the EPA for review. Both the Long-Term Remedial Action Monitoring Plan(s) and the Operation and Maintenance Plan(s) finalized under this Agreement shall contain Schedules for completion of the Work described therein, and these Schedules shall be incorporated and enforceable in the Site Management Plan.

#### Accelerated Operable Unit

9.10 Accelerated Operable Units (AOUs), as defined in Section II : DEFINITIONS, will follow a streamlined remedial process as set forth below. Any Party may propose in writing that an Operable Unit (OU) be conducted as an AOU. The Party proposing an AOU shall be responsible for drafting an AOU proposal which shall clearly define the purpose, scope and goals of the AOU. The Navy shall evaluate all proposed AOUs. Within thirty (30) days of notification, any Party may request a meeting of the Parties to assist in expediting selection of an AOU. If dispute resolution is not invoked within thirty (30) days following receipt of a proposal for an AOU by the Parties, or if the need for an AOU is established through Section XX : DISPUTE RESOLUTION, the proposed AOU shall be incorporated into the Site Management Plan as an AOU. The Navy agrees to pursue additional funding to initiate the AOU(s).

A. Within fifteen (15) days after the determination that an AOU is required under this Agreement, the Navy shall submit to EPA proposed Deadlines for the submission of Work Plan(s) for the performance of an AOU Focused Feasibility Study (FFS) for the identified AOU(s). Each AOU FFS Work Plan shall contain a proposed Deadline for submittal of the AOU FFS and Proposed Plan. The Schedule and Deadlines included in the final AOU FFS Work Plan will be incorporated in the next draft Amended Site Management Plan. The Navy shall develop, implement and report upon each AOU FFS in accordance with the requirements set forth in the final AOU FFS Work Plan. In accordance with Subsection 9.6.D, the Navy shall submit a

Proposed Plan within 30 days of finalization of the AOU FFS.

B. Following finalization of the FFS and the Proposed Plan for the AOU, the Proposed Plan shall be published for public review and comment. Accelerated Operable Units shall then follow the procedures described in Subsections 9.7 through 9.9. The Navy shall perform the Remedial Action in accordance with the approved Remedial Design.

### Supplemental Response Action

9.11 The Parties recognize that subsequent to finalization of a ROD, a need may arise for one or more supplemental response actions to remedy continuing or additional releases or threats of releases of hazardous substances, pollutants or contaminants at or from the Site. If such release or threat of release presents an immediate threat to public health or welfare or the environment, it shall be addressed pursuant to Section XVIII - REMOVAL AND EMERGENCY ACTIONS. If such release or threat of release does not present an immediate threat to public health or welfare or the environment, it shall be addressed pursuant to Subsections 9.12 through 9.15.

9.12 A supplemental response action shall be undertaken only when:

A. A determination is made that:

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

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

B. Either of the following conditions is met for any determination made pursuant to Subsection 9.12 A., above:

(1) For supplemental response actions proposed after finalization of the ROD, but prior to EPA Certification, the determination must be based upon conditions at the Site that were unknown at the time of finalization of the ROD or based upon new information received in whole or in part by EPA following finalization of the ROD; or

(2) For supplemental response actions proposed after EPA Certification, the determination must be based upon conditions at the Site that were unknown at the time of EPA Certification or based upon new information received in whole or in part by EPA following EPA Certification.

9.13 If, subsequent to ROD signature, any Party concludes that a supplemental response action is necessary, based on the criteria set forth in Subsection 9.12, such Party shall promptly notify the other of its conclusion in writing. The notification shall specify the nature of the

modification needed and the new information on which it is based.

The Project Managers shall confer and attempt to reach consensus on the need for such an action within a thirty (30) day period, if the Project Managers have failed to reach consensus, any Party may notify the other Party in writing within ten (10) days after the 30 day period that it intends to invoke dispute resolution. If the Project Managers are still unable to reach consensus within fourteen (14) days of the notice invoking dispute resolution, the question of the need for the supplemental response action shall be resolved through dispute resolution.

9.14 If the Project Managers agree, or if it is determined through dispute resolution, that a supplemental response action is needed based on the criteria set forth in Paragraph 9.12, the Navy shall propose a Deadline for submittal of the Supplemental Work Plan(s) and a Schedule for performance of the Work thereunder to the EPA in the next draft Amended Site Management Plan.

9.15 After finalization of a Supplemental Work Plan, the Navy shall conduct a Supplemental Response Action RI/FS. Following finalization of the Supplemental Response Action RI/FS, the procedures described in Sections 9.7 through 9.9 shall be followed.

#### EPA Certification

9.16 A. When the Navy determines that the final Remedial Action(s) for a given Operable Unit has been completed in accordance with the requirements of this Agreement, it shall so advise EPA, and shall Schedule and conduct a close-out inspection to be attended by the Navy and EPA. Within thirty (30) days of each close-out inspection, the Navy shall submit an Operable Unit Close-Out Inspection Report, signed by the Navy's signatory authority or designee, certifying that the Remedial Action(s) has been completed in full satisfaction of the requirements of this Agreement, and a request for EPA certification of the completion of the Remedial Action.

The Close-Out Inspection Report shall contain a brief summary of the Operable Unit, the Remedial Action(s) undertaken for this Operable Unit, the post-remedial activities planned for the Operable Unit, and any noteworthy observations made during the close-out inspection. Within ninety (90) days of EPA's receipt of the Navy's request for certification, EPA shall advise the Navy in writing that:

(1) EPA certifies that the Remedial Action has been completed in accordance with CERCLA, the NCP, and this Agreement, based on conditions known at the time of certification; or

(2) EPA denies the Navy's request for certification, stating the basis of its denial and detailing the additional work needed for Remedial Action completion and certification.

B. 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 within twenty (20) days of receipt of EPA's written denial to review EPA's determination on

certification or additional work needed. If EPA's denial of certification is upheld in dispute resolution, the Navy will perform the requested additional Work.

C. If dispute resolution is not invoked, or if EPA's denial of certification is upheld in dispute resolution, the Navy shall, in the next draft Amended Site Management Plan submitted after receipt of the written denial of certification, propose a Deadline for the submittal of a draft Supplemental Work Plan. The draft Supplemental Work Plan shall contain a Schedule for completion of the additional Work required which will be incorporated into the Site Management Plan. After performing the additional Work, the Navy may resubmit a request for certification to EPA. EPA shall then grant or deny certification pursuant to the process set forth in this Section.

## X. CONSULTATION

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

#### 10.1 Applicability:

The provisions of this Section establish the procedures that shall be used by the Parties 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. The Navy will normally be responsible for issuing Primary and Secondary Documents to EPA. 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 Sections 10.2 through 10.10 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 and the NCP.

#### 10.2 General Process for RI/FS and RD/RA Documents:

A. Primary Documents include those documents 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 thirty (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 documents 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 draft final Primary Documents. A Secondary Document may be disputed at

the time the corresponding draft final Primary Document is issued.

### 10.3 Primary Documents:

A. Prior to the Effective Date of this Agreement, the Navy has completed and transmitted the site specific Primary Documents indicated in Appendix A to the EPA for review and comment. In addition, the Navy has completed and transmitted a Community Relations Plan and Site Management Plan to the EPA for review and comment.

B. All Primary Documents shall be prepared in accordance with the NCP and applicable EPA Guidance. The Navy shall complete and transmit drafts of the following Primary Documents to EPA for review and comment in accordance with the provisions of this Section:

- (1) Site Screening Process Work Plans
- (2) Site Screening Process Reports
- (3) RI/FS (including Baseline Risk Assessment) and FFS Work Plans
- (4) Remedial Investigation Reports (including baseline Risk Assessments)
- (5) FS and FFS Reports
- (6) Proposed Plans
- (7) Final Remedial Designs
  
- (8) Remedial Action Work Plans
  - Remedial Action Sampling Plan
  - Remedial Action Construction Quality Assurance Plan
  - Remedial Action Environmental Monitoring Plan
- (9) Remedial Action Completion Reports
- (10) Operation and Maintenance Plans
- (11) Site Management Plan

C. Only the draft final Primary Documents identified above shall be subject to dispute resolution in accordance with Section XX - DISPUTE RESOLUTION of this Agreement. The Navy shall complete and transmit draft Primary Documents in accordance with the Schedule and Deadlines established in Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement.

D. The Community Relations Plan and the Long-Term Remedial Action Monitoring Plans will be considered Primary Documents for submission and as Secondary Documents for review and comment.

#### 10.4 Secondary Documents:

A. All Secondary Documents shall be prepared in accordance with the NCP and applicable EPA Guidance. The Navy shall complete and transmit drafts of the following Secondary Documents to EPA for review and comment in accordance with the provisions of this Section:

- (1) Health and Safety Plans
- (2) Non-Time Critical Removal Action Plans  
(40 C.F.R. Section 300.415(b)(4)(ii))
- (3) Pilot/Treatability Study Work Plans
- (4) Pilot/Treatability Study Reports
- (5) Engineering Evaluation/Cost Analysis Report
- (6) Well Closure Methods and Procedures
- (7) Preliminary/Conceptual Remedial Designs, or Equivalents
- (8) Prefinal Remedial Designs
- (9) Periodic Review Assessment Reports
- (10) Removal Action Memorandums

B. Although EPA may comment on the draft Secondary Documents listed above, such documents shall not be subject to dispute resolution except as provided by Subsection 10.2 hereof. Target Dates shall be established for the completion and transmission of draft Secondary Documents pursuant to Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement.

#### 10.5 Meetings of the Project Managers on Development of Documents:

The Project Managers shall meet approximately every ninety (90) days, and confer by telephone at least every thirty (30) days, except as otherwise agreed by the Parties, to review and discuss the development of Primary and Secondary Documents. Prior to preparing any draft document specified in Subsections 10.3 and 10.4 above, the Project Managers shall meet or confer by telephone to discuss the document in an effort to reach a common understanding, to the maximum extent practicable, with respect to the content of draft documents.

## 10.6 Identification and Determination of Potential ARARs:

A. For those Primary Documents or Secondary Documents that consist of, or include ARAR determinations, the Project Managers shall meet prior to the issuance of a draft report, to identify and propose, to the best of their ability, all potential ARARs pertinent to the document being addressed. The Navy shall request that the Commonwealth identify all potential State ARARs as early in the remedial process as possible consistent with the requirements of CERCLA Section 121(d)(2)(A)(ii), 42 U.S.C. Section 9621(d)(2)(A)(ii), and the NCP. The Navy shall consider any State ARARs and written interpretations of ARARs provided by the Commonwealth. 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.

## 10.7 Review and Comment on Draft Documents:

A. The Navy shall complete and transmit each draft Primary Document to EPA on or before the corresponding Deadline established pursuant to Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement for the issuance of the document. The Navy shall complete and transmit the draft Secondary Document in accordance with the Target Dates established for the issuance of such documents.

B. Unless the Parties mutually agree to another time period, all draft documents, except the Site Management Plan, the prefinal Remedial Design, and the final Remedial Design shall be subject to a sixty (60) day period for review and comment. The Site Management Plan shall be reviewed and commented on in accordance with Section XI or as agreed to by the Parties.

The Parties recognize that time periods for review and comment on the draft Remedial Design and Remedial Action Work Plans may need to be expedited in order for the Navy to satisfy the requirement of Section 120(e)(2) of CERCLA, 42 U.S.C. Section 9620(e)(2). The prefinal Remedial Design shall be subject to a forty-five (45) day period for review and comment. The final Remedial Design will be subject to a two (2) week period for review and comment by the Parties. In the event that the final Remedial Design differs substantially from the prefinal Remedial Design, EPA may extend the two (2) week review and comment period for an additional two (2) weeks by providing written notice to the Navy prior to the end of the initial two (2) week comment period. Review of any document by EPA may concern all aspects of the document (including completeness) and should include, but not be limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP, and any pertinent policy or Guidance issued by EPA or the State. Comments by EPA shall be provided

with adequate specificity so that the Navy may respond to the comment and, if appropriate, make changes to the draft document. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of the Navy, EPA shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy reports, EPA may extend the sixty (60) day comment period for an additional twenty (20) days by written notice to the Navy prior to the end of the sixty (60) day period. On or before the close of the comment period, EPA shall transmit by next day mail their 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 documents. 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 document which contains a proposed ARAR determination, EPA shall include a reasoned statement of whether they object to any portion of the proposed ARAR determination. To the extent that EPA does object, it shall explain the basis for the objection 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 document, the Navy shall give full consideration to all written comments on the draft document submitted during the comment period. Within sixty (60) days of the close of the comment period on a draft Secondary Document, the Navy shall transmit to EPA its written response to comments received within the comment period. Within sixty (60) days of the close of the comment period on a draft Primary Document, the Navy shall transmit to EPA a draft final Primary Document, which shall include the Navy's response to all written comments received within the comment period. While the resulting draft final document 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 60-day period for either responding to comments on a draft document or for issuing the draft final Primary Document for an additional twenty (20) days by providing timely notice to EPA. In appropriate circumstances, this time period may be further extended in accordance with Section XIII - EXTENSIONS, hereof.

#### 10.8 Availability of Dispute Resolution on Draft Final Primary Documents:

A. Dispute resolution shall be available to the Parties for draft final Primary Documents as set forth in Section XX - DISPUTE RESOLUTION.

B. When dispute resolution is invoked on a draft final Primary Document, work may be stopped in accordance with the procedures set forth in Section XX - DISPUTE RESOLUTION.

#### 10.9 Finalization of Documents:

The draft final Primary Document shall serve as the final Primary Document 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 thirty-five (35) days, a revision of the draft final document 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 XIII - EXTENSIONS, hereof.

#### 10.10 Subsequent Modification of Final Document:

Following finalization of any Primary Document pursuant to Subsection 10.9 above, any Party to this Agreement may seek to modify the document, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in Subsections A. and B. below.

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

B. In the event that a consensus is not reached by the Project Managers on the need for a modification, any Party may invoke the dispute resolution process to determine if such

modification shall be conducted. Modification of a document 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 Subsection 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.

## **XI. DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN**

11.1 In order to ensure that the Work to be performed under this Agreement is accomplished in a timely manner, the Parties have agreed to establish Deadlines consisting of (i) Near Term Milestones for the current fiscal year (FY), the budget year (FY+1) and the planning year (FY+2); (ii) Out Year Milestones for the years occurring after the planning year until the completion of the cleanup or phase of the cleanup (FY+3 and beyond); and (iii) Project End

Dates for the completion of major portions of the cleanup or for the cleanup as a whole. Near Term Milestones for performance of Work and submittal of Primary Documents within the current fiscal year (FY) are enforceable and shall be subject to stipulated penalties. Near term milestones, Out Year Milestones and Project End Dates will not change without the mutual consent of all Parties to the Agreement. Out Year Milestones and Project End Dates shall not be enforceable until they become Near Term Milestones for the current FY in accordance with the terms of Section 12.4 below; provided, however, if an activity is fully funded in the current FY, milestones associated with performance of Work and submittal of Primary Documents associated with such activity (even if they extend beyond the current FY) shall be enforceable. For the purposes of this Agreement, a fiscal year is the yearly time frame used by the United States Government that commences on October 1 and ends September 30th of the following calendar year.

11.2 The Site Management Plan (SMP) establishes Deadlines for a three-year period for the submittal of Primary Documents pursuant to this Agreement. The most recent version of the SMP was finalized in January, 1999 and is attached to this Agreement as Appendix D. The SMP includes proposed actions for both CERCLA responses and actions which would otherwise be handled pursuant to RCRA corrective actions per Section VIII - STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION and outlines all response activities and associated documentation to be undertaken at the Facility. The SMP incorporates all Deadlines and Target Dates contained in approved Work Plans. All Schedules approved in future Work Plans immediately become incorporated in the Site Management Plan.

11.3 Deadlines in the SMP reflect the priorities agreed to by the Parties, in consultation with stakeholders, through a process of "Risk Plus Other Factors" Priority Setting. Site activities have been prioritized by weighing and balancing a variety of factors including, but not limited to: (i) the DoD relative risk rankings for the Site; (ii) potential or future use of the Facility; (iii) ecological impacts; (iv) intrinsic and future value of affected resources; (v) cost effectiveness of the proposed activities; (vi) regulatory requirements; (vii) environmental justice considerations; and (viii) actual and anticipated funding levels. While Deadlines should not be driven by budget targets, such targets should be considered. Furthermore, in setting and modifying Deadlines, the Parties agree to make good faith efforts to accommodate federal fiscal constraints, which include budget targets established by the Navy.

11.4 The SMP includes (and shall be amended annually to include):

A. Actions necessary to mitigate any immediate threat to human health or the environment;

B. A listing of all currently identified SSAs, Operable Units (including Accelerated Operable Units (AOUs)), Interim Remedial Actions, Supplemental Response Actions, and Critical and Non-Time Critical Removal Actions covered or identified pursuant to this Agreement;

C. Activities and Schedules for response actions planned for the three-fiscal-year period covered by the SMP. Activities included, at a minimum, are:

- Near Term Milestones for the performance of Work and submittal of all Primary Documents in the three-year SMP period;

-Out Year Milestones for all Primary Documents covered in the SMP for the years FY+3 through the Project End Date;

-Target dates for the submittal of all Secondary Documents;

-Schedule for initiation of Remedial Designs, Interim Response Actions, Non-Time Critical Removal Actions, AOU's and any initiation of other planned response action(s) covered by this Agreement; and

-Project End Dates for the completion of any planned response action(s) covered by this Agreement;

D. A provision that, for each OU or AOU identified by the Parties within the three-year period covered by that SMP, the Navy shall submit a draft Proposed Plan within thirty (30) days of submission of a final FS or FFS Report;

E. If the development of a Primary Document is fully funded in the first year of the three-year period covered by the SMP, enforceable Deadlines for submittal of that draft Primary Document may extend beyond the current fiscal year as reflected in the SMP.

11.5 The SMP shall be amended on a yearly basis as provided in Section XII - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN. All subsequent Amendments to the SMP shall meet all of the requirements set forth in this Section.

11.6 The enforceable Deadlines established pursuant to this Section and Section XII - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN shall be published by EPA and shall be incorporated into the SMP attached to this Agreement.

11.7 The Deadlines established in accordance with this Section and Section XII - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN may be extended during the SMP review process by following Section XII, 12.4 - 12.7. All other extensions shall be governed pursuant to Section XIII - EXTENSIONS of this Agreement. The Parties recognize that possible bases for extension of the Deadlines, as determined by mutual consent of the Parties, include: i) the identification of significant new Site conditions at this installation, (ii) reprioritization of activities under this Agreement caused by changing priorities or new Site conditions elsewhere in the Navy and (iii) reprioritization of activities under this FFA caused by budget adjustments (e.g., rescissions, inflation adjustments, and reduced Congressional appropriations).

## XII. BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN

12.1 The Department of the Navy, as a federal agency, is subject to fiscal controls, hereinafter referred to as the Future Year Defense Plan (FYDP). The Navy describes the first year of the FYDP as the year for which the next budget will be developed. The process for reviewing and adjusting the FYDP to (i) meet program requirements and (ii) conform to OMB fiscal plans is called the "POM" process. The Parties recognize that the planning, programming and budgeting is a multi-year process.

The Parties also agree that all Parties should be involved in the full cycle of planning, programming, and budgeting activities.

### Facility-Specific Planning, Programming and Budgeting

12.2 In order to ensure effective involvement by the Parties in the planning, programming, and budgeting process, the Navy agrees to meet at the Project Manager level, with the other Parties, for the purpose of reviewing the FYDP controls, developing a list of requirements/Work to be performed at the Site for inclusion in the DoN POM process, and participating in development of the LANTDIV submission to the President's proposed budget based on POM decisions for the year currently under consideration. When developing the President's proposed budget, the Navy agrees to notify the other Party, at the Project Manager level, that budget controls have been received within two working days of receiving those controls. Unless the Parties agree to a different timeframe, within 5 days of such notification, the Navy also agrees to consult with the other Party, at the Project Manager level, on the President's proposed budget. This consultation must occur prior to LANTDIV's initial budget submission to Naval Facilities Engineering Command (NAVFAC).

In the event that the Project Managers cannot agree on funding levels required to perform all Work outlined in the SMP, the Parties agree to make reasonable efforts to informally resolve these disputes, either at the immediate or secondary supervisors' level, which would include discussions with NAVFAC. If resolution cannot be achieved informally within a reasonable period of time, LANTDIV shall resolve the disagreement, if possible with the concurrence of all Parties and notify each Party. If all Parties do not concur in the resolution, LANTDIV, through NAVFAC, agrees to elevate the budget request to the Office of the Chief of Naval Operations (OCNO) Navy Headquarters (after incorporating as much input from the Parties as possible) and inform OCNO of the possibility of future enforcement action should the money requested not be sufficient to perform the Work in dispute. In addition, if LANTDIV's budget submission to NAVFAC does not include sufficient funds to complete all Work in the existing SMP, after any agreed-upon modifications, the Navy's budget submission shall also include supplemental reports that fully disclose the Work required by the SMP, but not included in the budget request. These supplemental reports shall accompany the cleanup budget that the Navy submits from LANTDIV through successive levels of the Navy to OCNO and to the DoD Comptroller.

## LANTDIV-Budget

12.3 It is understood by all Parties that LANTDIV will coordinate the development of their budget with representatives of the EPA regional offices and the States located within the geographical area administered by LANTDIV.

The Navy shall forward to EPA documentation of the budget requests (and any supplemental reports as outlined in Section 12.1 above) for the Site, as submitted by LANTDIV to NAVFAC, and by NAVFAC to OCNO, within 14 days after the submittal of such documentation to OCNO.

### Amended Site Management Plan

12.4 No later than June 15 of each year after the development of the SMP, the Navy shall submit a draft Amended SMP to EPA which will propose Deadlines to take effect in the next FY. Unless the Parties agree to modify the Deadlines as provided below, the draft Amended SMP should carry forward all Near Term Milestones, Out Year Milestones and Project End Dates included in the existing SMP. Therefore, in most cases, Near Term Milestones in the existing SMP for FY+1 and FY+2 shall be proposed as the Near Term Milestones for FY and FY+1 in the draft Amended SMP. In addition, the Navy shall examine the newly proposed FY and FY+1 milestones, funding circumstances (including OMB targets/guidance), and "risk plus other factors" outlined in Section 11.3 to evaluate whether the previously agreed upon Project End

Dates and Out Year Milestones for FY+3 (i.e., what is FY+3 under the existing SMP and will become FY+2 under the Amended SMP) should become Near Term Milestones.

Any proposed changes to Milestones must be explained in a cover letter to the draft Amended SMP. Moreover, any changes to Near Term Milestones, Out Year Milestones or Project End Dates require the agreement of all Parties, in consultation with public stakeholders. The draft Amended SMP should reflect any decisions made by the Parties during the planning, programming, and budgeting consultation process outlined in Section 12.1, above, and shall be based upon the assumption that all remedial requirements for the Facility submitted during the development of the President's budget for the upcoming fiscal year will be fully funded. Any disagreement over adjustment of Deadlines pursuant to this Section shall be resolved in the context of the draft final amendment to the SMP. Additionally, the yearly Amended SMP shall contain revised Target Dates for the submission of Secondary Documents to be submitted during the upcoming three fiscal years. The yearly Amendment to the SMP will incorporate any newly finalized SSAs or Operable Units identified pursuant to this Agreement.

12.5 The Parties shall meet as necessary to discuss the draft Amended SMP. Within thirty (30) days of receipt of the draft Amended SMP, EPA shall review the draft Amended SMP and provide comments to the Navy. If EPA submits comments and is not satisfied with the draft Amended SMP, the Parties will meet within fifteen (15) days of Navy's receipt of comments on the draft Amended SMP to discuss and finalize the draft Amended SMP.

Within thirty (30) days of receipt of EPA comments on the draft Amended SMP, the Navy shall, as appropriate, make revisions and issue a revised draft, hereinafter referred to as a draft final

SMP. Following receipt of the draft final SMP, EPA has 30 days to approve or disapprove of the draft final SMP.

If EPA disapproves the draft final SMP, the Navy shall have 20 days from receipt of notice of disapproval to invoke dispute resolution directly to the SEC level or amend the SMP in conformance with EPA comments.

12.6 It is understood by all Parties that the Navy will work with representatives of EPA Region III and the Commonwealth of Virginia to reach consensus on the reprioritization of Work made necessary by any yearly appropriation shortfalls or other circumstances as described in Section 11.7. This may also include discussions with other EPA Regions and States with installations affected by the reprioritization; the Parties may participate in any such discussions with the other States.

12.7 Within 45 days after LANTDIV has received official notification of LANTDIV's allocation based on the current year's Navy Environmental Restoration, Navy (ER,N) appropriation, the Navy shall determine if planned work (as outlined in the draft final SMP) can be accomplished with the allocated funds. If the allocated funds are sufficient to complete all planned work for that fiscal year and no changes to the draft final SMP are required, the Navy shall immediately forward a letter to EPA indicating that the draft final SMP has become the final SMP.

In the event that the Navy determines within the 45-day period specified above that the allocated funds are not sufficient to accomplish the planned work for the Site (an appropriation shortfall), the Navy shall immediately notify EPA and the Project Managers shall meet within thirty (30) days to determine if planned Work (as outlined in the draft final SMP) can be accomplished through: 1) rescoping or rescheduling activities in a manner that does not cause previously agreed upon Near Term Milestones and Out Year Milestones to be missed; or 2) developing and implementing new cost-saving measures. If, during this thirty (30) day consultation period, the Parties determine that rescoping or implementing cost-saving measures are not sufficient to offset the appropriation shortfall and the Parties agree that Near Term Milestones, Out Year Milestones and Project End Dates should be modified, the Parties shall discuss these changes and develop modified Deadlines. Such modifications shall be based on the "Risk Plus Other Factors" prioritization process discussed in Section 11.3, above. If agreement on appropriate modifications cannot be reached among the Parties, EPA retains authority to disapprove a request to modify or extend existing Schedules and Deadlines.

The Navy shall submit a revised draft final SMP within thirty (30) days of the end of the consultation period. The revised draft final SMP shall reflect EPA input during the consultation period outlined above. EPA shall have twenty-one (21) days to review the revised draft final SMP. If EPA concurs with any modifications made in the revised SMP, EPA shall notify the Navy in writing of their concurrence and the revised draft final SMP shall become the final SMP.

If following the twenty-one (21) day review period for the revised draft final SMP, the Parties fail to agree on the content of the revised draft final SMP, the matter shall immediately be submitted directly to the SEC level for dispute resolution pursuant to Section XX - DISPUTE RESOLUTION. Within twenty (20) days after the conclusion of dispute resolution, the Navy

shall revise and reissue as necessary, the final SMP. The pendency of any dispute under this Section shall not affect the timely adherence to the terms of this Agreement, including Schedules, except as specifically provided herein. Enforceable Deadlines established in the Final SMP are subject to stipulated penalties in accordance with Section XXI - STIPULATED PENALTIES of this Agreement.

### XIII. EXTENSIONS

13.1 A timetable, Deadline or Schedule shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension as described in Subsection 13.2, below. Any request for extension by the Navy shall be submitted in writing and shall specify:

- A. The timetable, Deadline or Schedule that is sought to be extended;
- B. The length of the extension sought;
- C. The good cause(s) for the extension; and
- D. Any related timetable and Deadline or Schedule that would be affected if the extension were granted.

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

- A. An event of Force Majeure, as defined in Section XXII;
- B. A delay caused by another Party's failure to meet any requirement of this Agreement;
- C. A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;
- D. A delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and Deadline or Schedule; and
- E. Any other event or series of events mutually agreed to by the Parties as constituting good cause.

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

13.4 Within seven (7) days of receipt of a request for an extension of a timetable and Deadline or a Schedule, the other Party shall advise the requesting Party in writing of their respective positions on the request. Any failure by the other Party to respond within the seven (7) day period shall be deemed to constitute concurrence in the request for extension. If a Party does not

concur in the requested extension, it shall include in its statement of nonconurrence an explanation of the basis for its position.

13.5 If there is consensus among the Parties that the requested extension is warranted, the requesting Party shall extend the affected timetable and Deadline or Schedule accordingly. If there is no consensus among the Parties as to whether all or part of the requested extension is warranted, the timetable and Deadline or Schedule shall not be extended except in accordance with a determination resulting from the dispute resolution process.

13.6 Within seven (7) days of receipt of a statement of nonconurrence with the requested extension, the requesting Party may invoke dispute resolution.

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

#### XIV. PROJECT MANAGERS

14.1 On or before the Effective Date of this Agreement, EPA and the Navy shall each designate a Project Manager and notify the other Party of the name and address of their Project Manager. The Project Managers shall be responsible for assuring proper implementation of all Work performed under the terms of the Agreement. To the maximum extent practicable, communications among 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 Project Managers. The Parties may designate an Alternate Project Manager to exercise the authority of the Project Manager in his or her absence.

14.2 The Parties may change their respective Project Managers. Such change shall be accomplished by notifying the other Parties, in writing, within five (5) days of the change and prior to the new Project Manager exercising his or her delegated authority.

14.3 The Parties' Project Managers shall meet or confer informally as necessary as provided in Section X - CONSULTATION of this Agreement. Although the Navy has ultimate responsibility for meeting its respective Deadlines, 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 SSP, RI/FS or RD/RA progress, and attempting to resolve disputes informally. At least one week prior to each Project Manager meeting, the Navy will provide to the EPA a draft agenda, applicable supporting documentation if any, and a summary of the status of the Work subject to this Agreement.



These status reports shall include, when applicable:

A. identification of all data received and not previously provided by the Navy during the reporting period consistent with the limitations of Paragraph 32.1

B. all activities completed pursuant to this Agreement since the last Project Manager meeting as well as such actions and plans which are scheduled for the upcoming ninety (90) days; and

C. a description of any delays, the reasons for such delays, anticipated delays, concerns over possible timetable implementation or problems that arise in the execution of a Work Plan during the quarter and any steps that were or will be taken to alleviate the delays or problems.

The minutes of each Project Manager meeting will be prepared by the Navy and, with the meeting agenda, will be sent to all Project Managers within twenty-one (21) days after the meeting. Any documents requested during the meeting will be provided in a timely manner, except for those documents for which express written notification is required.

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

14.5 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. The minor field modifications proposed under this Subsection must be approved orally by all the Parties' 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 XX - DISPUTE RESOLUTION shall be invoked by the Navy by submitting a written statement to the other Party in accordance with Section XX - DISPUTE RESOLUTION. If the Parties agree to the modification, within five (5) business days following a modification made pursuant to this Section, the Project Manager who requested the modification shall prepare a written memorandum detailing the modification and the reasons therefor and shall provide or mail a copy of the memorandum to the Project Manager of the other Party for signature and return.

14.6 Modifications of Work not provided for in Subsections 14.4 and 14.5 of this Section must be approved by all 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 XX - DISPUTE RESOLUTION, shall be used. 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 Project Manager of the other Party for signature and return.

14.7 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.

14.8 The Parties shall transmit Primary and Secondary Documents and all notices required herein by next day mail, hand delivery or certified letter to the persons specified in Subsection 14.9 below by the Deadline established under Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN. Time limitations shall commence upon receipt. The Navy shall provide to EPA seven (7) and two (2) copies, respectively, of each Primary and Secondary Document.

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

A. For the Navy:      Commanding Officer, Atlantic Division  
                          Naval Facilities Engineering Command  
                          Code 1822  
                          1510 Gilbert Street  
                          Norfolk, Virginia 23511-2699

B. For EPA:            EPA Region III (3HS50)  
                          Attn: Naval Base Norfolk Project Manager  
                          Federal Facilities Branch  
                          1650 Arch Street  
                          Philadelphia, PA 19103-2029

14.10 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.

14.11 The Project Manager for the Navy shall represent the Navy with regard to the day-to-day field activities at the Site. The Navy Project Manager or a person designated by him or her shall be physically present at the Site or available to supervise Work during implementation of all the Work performed at the Site pursuant to this Agreement. The absence of the EPA Project Manager from the Site shall not be cause for Work stoppage or delay, unless the Project Managers agree otherwise in writing.

14.12 The authority of the Project Managers shall include, but not be limited to:

A. Taking samples and ensuring that sampling and other field Work is performed in accordance with the terms of any final Work Plans and QA/QC Plan;

B. Observing, taking photographs, and making such other reports on the progress of the Work as the Project Managers deem appropriate, subject to the limitations set forth in Section XVI - ACCESS hereof;

C. Reviewing sampling data, records, files, and documents relevant to the Agreement, subject to the limitations set forth in Section XXXI - RECORD PRESERVATION; and

D. Determining the form and specific content of the Project Manager meetings.

14.13 If any event occurs or has occurred that may delay or prevent the performance of any obligation under this Agreement, whether or not caused by a Force Majeure event, any Party shall notify by telephone the other Party's Project Manager within two (2) working days of when the Party first became aware that the event might cause a delay. If the Party intends to seek an extension of a Deadline or Schedule because of the event, the procedures of Section XIII - EXTENSIONS shall apply.

## XV. EXEMPTIONS

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

## XVI. ACCESS

16.1 The EPA and/or representatives shall have the authority to enter the Site at all reasonable times for the purposes consistent with provisions of this Agreement. Such authority shall include, but not be limited to: inspecting records, logs, contracts, and other documents relevant to implementation of this Agreement; reviewing and monitoring 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 deems necessary; assessing the need for planning additional remedial response actions at the Site; and verifying data or information submitted to EPA. The Navy shall honor all reasonable requests for access to the Site made by EPA, upon presentation of credentials showing the bearer's identification and that he/she is an employee or agent of the EPA. The Navy Project Manager or his/her designee will provide briefing information; coordinate access and escort to restricted or controlled-access areas, arrange for base passes, and coordinate any other access requests which arise. The Navy shall use its best efforts to ensure that conformance with the requirements of this Subsection do not delay access.

16.2 The rights granted in Paragraph 16.1 and 16.4 to EPA regarding access shall be subject to regulations and statutes, including NBN's security regulations, as may be necessary to protect national security information ("classified information") as defined in Executive Order 12356, and comply with NBN's health and safety requirements. Such requirements shall not be applied so as

to unreasonably hinder EPA from carrying out their responsibilities and authority pursuant to this Agreement.

16.3 The Navy shall provide an escort whenever EPA requires access to restricted areas of NBN for purposes consistent with the provisions of this Agreement. EPA shall provide reasonable notice (which may, if practical, be 48 hours advance notice) to the Navy Project Manager or his or her designee to request any necessary escorts for such restricted areas. The Navy shall not require an escort to any area of this Site unless it is a restricted or controlled-access area. Upon request of the EPA, the Navy shall promptly provide a written list of current restricted or controlled-access areas.

16.4 The EPA shall have the right to enter all areas of the Site that are entered by contractors performing Work under this Agreement.

16.5 Upon a denial of any aspect of access, the Navy shall provide an immediate explanation of the reason for the denial, including reference to the applicable regulations, and upon request, a copy of such regulations. Within forty-eight (48) hours, the Navy shall provide a written explanation for the denial. To the extent possible, the Navy shall expeditiously provide a recommendation for accommodating the requested access in an alternate manner.

16.6 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.

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

## XVII. PERMITS

17.1 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.

17.2 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, portions of the response actions called for by this Agreement and conducted entirely on the Site, where such response actions are selected and carried out in accordance with CERCLA, 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.

17.3 When the Navy proposes a response action, other than an emergency removal action, to be conducted entirely onsite, which in the absence of Section 121(e)(1) of CERCLA and the NCP

would require a federal, State or local permit, the Navy shall include in its Draft ROD or removal memorandum:

A. Identification of each permit which would otherwise be required;

B. Identification of the standards, requirements, criteria, or limitations which would have had to have been met to obtain each such permit; and

C. An explanation of how the response action proposed will meet the standards, requirements, criteria or limitations identified immediately above.

17.4 Subsection 17.2 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, pollutant, or contaminant or hazardous waste off the Site or in any other circumstances where the exemption provided for at Section 121(e)(1), 42 U.S.C. Section 9621(e), does not apply.

17.5 The Navy shall notify EPA in writing of any permits required for any off-Site activities it plans to undertake 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, applications, and other documents related to the permit process and final permits.

17.6 The Navy agrees to notify EPA of its intention to propose modifications to this Agreement to obtain conformance with the permit, or lack thereof if a permit or other authorization which is necessary for implementation of this Agreement is not issued, or is issued or renewed in a manner which is materially inconsistent with the requirements of this Agreement. Notification by the Navy of its intention to propose modifications shall be submitted within sixty (60) calendar days of receipt by the Navy of notification that: (1) a permit will not be issued; (2) a permit has been issued or reissued; or (3) a final determination with respect to any appeal related to the issuance of a permit has been entered. Within sixty (60) days from the date it submits its notice of intention to propose modifications to this Agreement, the Navy shall submit to EPA its proposed modifications to this Agreement with an explanation of its reasons in support thereof.

17.7 EPA shall review the Navy's proposed modifications to this Agreement in accordance with Section XXXVIII - AMENDMENT OF AGREEMENT of this Agreement. If the Navy submits proposed modifications prior to a final determination of any appeal taken on a permit needed to implement this Agreement, EPA may elect to delay review of the proposed modifications until after such final determination is entered.

17.8 During any appeal by any Party of any permit required to implement this Agreement or during review of any proposed modification(s) to the permit, 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 Deadline, timetable, or Schedule shall be subject to Section XIII - EXTENSIONS of this Agreement.

17.9 Nothing in this Agreement shall be construed to affect the Navy's obligation to comply with any RCRA permit(s) that the Facility may already have or be issued in the future.

## XVIII. REMOVAL AND EMERGENCY ACTIONS

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

18.2 Nothing in this Agreement shall alter 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.

18.3 If during the course of performing the activities required under this Agreement, any Party identifies an actual or a substantial threat of a release of any hazardous substance, pollutant, or contaminant at or from the Site, that Party may propose that the Navy undertake removal actions to abate the danger and threat which may be posed by such actual or threatened release. All removal actions conducted on NBN shall be conducted in a manner consistent with this Agreement, CERCLA, Executive Order 12580, DERP, including provisions for timely notification and consultation with EPA and appropriate State and local officials, 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. Such a proposal to undertake such actions by the Navy shall be submitted to the 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, applicable State regulations, 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. Prepare an Engineering Evaluation/Cost Analysis ("EE/CA"), or its equivalent. The EE/CA shall contain an analysis of removal alternatives for a site. The screening of alternatives shall be based on criteria as provided in CERCLA and the NCP, such as cost, feasibility, and effectiveness; and
- E. A Non-Time Critical Removal Action Plan and Target Date for the proposed action.

The EPA shall expedite all reviews of these proposals to the maximum extent practicable.

18.4 The opportunity for review and comment for proposed removal actions, as stated in Subsection 18.3 above, may not apply if the action is in the nature of an emergency removal taken because a release or threatened release may present an imminent and substantial endangerment to human health or the environment. The Navy may determine that review and comment, as stated in Subsection 18.3 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. Within 7 days 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. Within thirty (30) days of completion of an emergency response action, the Navy will furnish EPA with an Action Memorandum addressing the information provided in the oral notification, whether and to what extent the action varied from the description previously provided, and any other information required by CERCLA or the NCP, and in accordance with EPA Guidance for such actions. Such actions may be conducted at anytime, either before or after the issuance of a ROD.

18.5 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 other Party and the Navy will take immediate action to promptly notify all appropriate State and local agencies, potentially affected persons and officials in accordance with 10 U.S.C. Section 2705(a). The Navy will expeditiously take appropriate measures to protect all persons affected.

18.6 All activities pursuant to this Agreement will be performed in accordance with the Health and Safety Plan and will be conducted so as to minimize the threat to the surrounding public.

## XIX. PERIODIC REVIEW

19.1 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 EPA upon its completion. This report, the Periodic Review Assessment Report, shall be a Secondary Document as described in Section X - CONSULTATION.

19.2 If upon such review it is the conclusion of any 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 IX - WORK TO BE PERFORMED of this Agreement.

19.3 Any dispute by the Parties regarding the need for or the scope of additional action or modification to a remedial action shall be resolved under Section XX - DISPUTE RESOLUTION of this Agreement and enforceable hereunder.

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

19.5 The EPA reserves the right to exercise any available authority to seek the performance of additional work that arises from a Periodic Review, pursuant to applicable law.

19.6 The assessment and selection of any additional response actions determined necessary as a result of a Periodic Review shall be in accordance with Paragraphs 9.7 to 9.10. Except for emergency response actions, which shall be governed by Section XVIII - REMOVAL AND EMERGENCY ACTIONS, such response actions shall be implemented as a supplemental response action in accordance with Paragraphs 9.12 and 9.13.

19.7 When the final ROD for an Operable Unit contains the requirement for the development and implementation of a Long-Term Monitoring Plan because the selected remedial action results in any hazardous substance, pollutants or contaminants remaining at the Site, the Long-Term Remedial Action Monitoring Plan shall be submitted in accordance with Section X - CONSULTATION.

## XX. DISPUTE RESOLUTION

20.1 Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Section shall apply. The 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.

20.2 Within thirty (30) days after: (1) issuance of a draft final Primary Document pursuant to Section X - CONSULTATION of this Agreement, or (2) any action which leads to or generates a dispute, the disputing Party shall submit to the other Party a written statement of dispute setting forth the nature of the dispute, the Work affected by the dispute, the disputing Party's position with respect to the dispute and the information the disputing Party is relying upon to support its position.

20.3 Prior to either 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 and/or confer as many times as are necessary to discuss and attempt resolution of the dispute.

20.4 The Dispute Resolution Committee (DRC) will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (Senior Executive Service (SES) or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The EPA's representative on the DRC is the Hazardous Site Cleanup Division Director of EPA Region III. The Navy's designated member is the



Commanding Officer, Atlantic 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 the other Party pursuant to the procedures of Section XIV - PROJECT MANAGERS.

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

20.6 The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The EPA's representative on the SEC is the Regional Administrator of EPA Region III, or his or her delegatee. The Navy's representative on the SEC is the Assistant Secretary of the Navy (Installations and Environment) or his or her delegatee. In the event of a delegation, the positions presented by the delegates shall represent the positions of the Regional Administrator of EPA Region III and the Assistant Secretary of the Navy (Installations and Environment). Any documents issued by the SEC or its members pertaining to a dispute shall be issued by the Regional Administrator of EPA Region III and/or the Assistant Secretary of the Navy (Installations and Environment). Notice of any delegation of authority from a Party's designated representative on the SEC shall be provided to the other Party in writing before the delegation takes effect. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a unanimous written decision signed by both Parties. If unanimous resolution of the dispute is not reached within twenty-one (21) days, the EPA Regional Administrator shall issue a written position on the dispute. The Secretary of 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 the Navy elects not to elevate the dispute to the Administrator within the designated twenty-one (21) day escalation period, the decision will become final and the Work will proceed in accordance with the Regional Administrator's written position with respect to the dispute.

20.7 Upon escalation of a dispute to the Administrator of EPA pursuant to Subsection 20.6 above, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the EPA Administrator shall meet and confer with the Secretary of the Navy to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the other Party with a written final decision setting forth resolution of the dispute. The duties of the Administrator pursuant to this Paragraph may be delegated only to the EPA Assistant Administrator for Enforcement and Compliance Assurance. The duties of the Secretary of the Navy pursuant to Paragraph 20.7 may be delegated only to the Assistant Secretary of the Navy (Installations and Environment).

20.8 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.

20.9 When dispute resolution is in progress, Work affected by the dispute will immediately be discontinued if the Hazardous Site Cleanup Division Director for EPA 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 a Work stoppage to discuss the Work stoppage. Following this meeting, and further consideration of the issues, the EPA Division Director will issue, in writing, a final decision with respect to the Work stoppage. The final written decision of the U.S. EPA Hazardous Site Cleanup 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.

20.10 Within twenty-one (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.

20.11 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.

## XXI. STIPULATED PENALTIES

21.1 In the event that the Navy fails to submit a Primary Document, as listed in Section X - CONSULTATION, 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 Subsection occurs.

21.2 Upon determining that the Navy has failed in a manner set forth in Subsection 21.1, 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 fifteen (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 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.

21.3 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, 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.

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

21.5 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.

21.6 This Section shall not affect the Navy's ability to obtain an extension of a timetable, Deadline or Schedule pursuant to Section XIII - EXTENSIONS.

21.7 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.

## XXII. FORCE MAJEURE

22.1 A Force Majeure, for the purpose of this Agreement, 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:

- A. Acts of God;
- B. Fire;
- C. War;
- D. Insurrection;
- E. Civil disturbance;

F. Explosion;

G. Unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance;

H. Adverse weather conditions that could not be reasonably anticipated;

I. Unusual delay in transportation due to circumstances beyond the control of the Navy;

J. Restraint by court order or order of public authority;

K. 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;

L. Delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; and

M. 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 include increased costs or expenses of response actions, whether or not anticipated at the time such response actions were initiated.

22.2 When circumstances, which may delay or prevent the completion of the Navy's obligation under this Agreement, are caused by a Force Majeure event, the Navy shall notify the EPA Project Manager orally of the circumstances within forty-eight (48) hours after the Navy first became aware of these circumstances. Within fifteen (15) days of the oral notification, the Navy shall supply to EPA in writing an explanation of the cause(s) of any actual or expected delay and the anticipated duration of any delay. The Navy shall exercise its best efforts to avoid or minimize any such delay and any effects of such delay.

### XXIII. ENFORCEABILITY

23.1 EPA and the Navy 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 timetables and Deadlines will be subject to civil penalties under CERCLA Sections 310(c) and 109, 42 U.S.C. Sections 9659(c) and 9609;

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, 42 U.S.C. Sections 9659(c) and 9609; and

D. Any final resolution of a dispute pursuant to Section XX - 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, 42 U.S.C. Sections 9659(c) and 9609.

23.2 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), 42 U.S.C. Section 9613(h).

23.3 Nothing in this Agreement shall be construed as a restriction or waiver of any rights EPA may have under CERCLA, including, but not limited to, any rights under Sections 113, 120, 121 and 310, 42 U.S.C. Sections 9613, 9620, 9621 and 9659, or any rights or defenses, including - sovereign immunity, the State may have under Federal or State law. The Navy does not waive any rights it may have under CERCLA Section 120, 42 U.S.C. Section 9620, SARA Section 211, 10 U.S.C. Section 2701 et seq., and Executive Order 12580.

23.4 The Parties agree to exhaust their rights under Section XX - DISPUTE RESOLUTION, prior to exercising any rights to judicial review that they may have.

23.5 EPA and the Navy agree that EPA and the Navy shall have the right to enforce the terms of this Agreement.

#### XXIV. OTHER CLAIMS

24.1 Subject to Section VIII - STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION, 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 bar, or a discharge, or a release, from any claim, cause of action or demand in law or equity by or against any person, firm, partnership, or corporation not a signatory to this Agreement for any liability it may have arising out of, or relating in any way to the generation, storage, treatment, handling,

transportation, release, or disposal of any hazardous substances, hazardous waste, pollutants, or contaminants found at, taken to, or taken from the Site.

24.3 This Agreement does not constitute any decision or pre-authorization 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 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.

24.6 This Agreement does not bar any claim for:

- A. natural resources damage assessments, or for damage to natural resources; or
- B. liability for disposal of any hazardous substances or waste material taken from NBN.

## XXV. RESERVATION OF RIGHTS

25.1 Notwithstanding anything in this Agreement, EPA may initiate any administrative, legal or equitable remedies available to them, 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.

25.2 The Parties agree to exhaust their rights under Section XX - DISPUTE RESOLUTION, prior to exercising any rights to judicial review that they may have.

25.3 The Parties, after exhausting their remedies under this Agreement, reserve any and all rights, including the right to raise or assert any defense they may have under CERCLA, or any other law, where those rights are not inconsistent with the provisions of this Agreement, CERCLA, or the NCP.

## XXVI. PROPERTY TRANSFER

26.1 No change or transfer of any interest in the Facility or any part thereof shall in any way alter the status or responsibility of the Parties under this Agreement. The Navy agrees to give EPA sixty (60) days notice prior to the sale or transfer by the United States of America of any title, easement, or other interest in the real property affected by this Agreement.

The Navy agrees to comply with Section 120(h) of CERCLA, 42 U.S.C. Section 9620(h), including the Community Environmental Response Facilitation Act (CERFA), and any additional amendments thereof, and with 40 C.F.R. Part 373, if applicable.

26.2 In accordance with Section 120(h) of CERCLA, 42 U.S.C. Section 9620(h) and 40 C.F.R. Part 373, the Navy shall include notice of this Agreement in any Host/Tenant Agreement or Memorandum of Understanding that permits any non-NBN activity to function as an operator on any portion of the Site.

## 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 Department of the Navy budgetary process to fulfill its obligations under this Agreement.

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

27.3 Any requirement for the payment or obligation of funds, including stipulated penalties, by the Navy established by the terms of this Agreement shall be subject to the availability of appropriated funds and provisions governing the payment of penalties (10 U.S.C. Section 2703(e)). 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, Navy (ER,N) appropriation in the Department of Defense Appropriation Act 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. Section 2701 et seq. However, should the ER,N appropriation be inadequate in any year to meet the total Navy CERCLA implementation requirements, the Navy will, in consultation with EPA and public stakeholders, prioritize and allocate that year's

appropriation, considering legal requirements pertaining to each site, relative risks to human health and the environment, and other relevant factors.

## **XXVIII. REIMBURSEMENT OF STATE SERVICES**

28. The Navy agrees to use the Defense State Memorandum of Agreement, DSMOA, signed on August 31, 1990 for the reimbursement of services provided in direct support of Navy environmental restoration activities at the Site pursuant to this Agreement.

## **XXIX. RECOVERY OF EPA EXPENSES**

29. The Parties agree to amend this Agreement at a later date in accordance with any subsequent national resolution of the issue of EPA cost reimbursement for CERCLA response costs incurred by EPA. Pending such resolution, EPA reserves the rights it may have with respect to cost reimbursement.

## **XXX. QUALITY ASSURANCE**

30.1 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/Quality Control (QA/QC) Project Plan shall be submitted as a component of each SSP, RI, FS, RD, and RA Work Plan(s) as appropriate. These Work Plans will be reviewed as Primary Documents pursuant to Section X - CONSULTATION of this Agreement. QA/QC Plans shall be prepared in accordance with applicable EPA Guidance.

30.2 In order to provide for quality assurance and maintain quality control regarding all field work and samples collected pursuant to this Agreement, the Navy shall include in each QA/QC Plan submitted to EPA all protocols to be used for sampling and analysis. The Navy shall also ensure that any laboratory used for analysis is a participant in a quality assurance/quality control program that is consistent with EPA Guidance.

30.3 The Navy shall ensure that lab audits are conducted as appropriate and are made available to EPA upon request. The Navy shall ensure that EPA and/or authorized representatives shall have access to all laboratories performing analyses on behalf of the NBN pursuant to this Agreement.

## **XXXI. RECORD PRESERVATION**

31.1 Despite any document retention policy to the contrary, EPA and the Navy shall preserve, during the pendency of this Agreement and for a minimum of ten (10) years after its termination or for a minimum of ten (10) years after implementation of any additional action taken pursuant



to Section XIX - PERIODIC REVIEW all records and documents in their possession which relate to actions taken pursuant to this Agreement. After the ten (10) year period, each Party shall notify the other Party at least forty-five (45) days prior to the proposed destruction or disposal of any such documents or records. Upon the request by any Party, the requested Party shall make available such records or copies of any such records unless withholding is authorized and determined appropriate by law. The Party withholding such records shall identify any documents withheld and the legal basis for withholding such records. No records withheld shall be destroyed until forty-five (45) days after the final decision by the highest court or administrative body requested to review the matter.

31.2 All such records and documents shall be preserved for a period of ten (10) years following the termination of any judicial action regarding the work performed under CERCLA, which is the subject of this Agreement.

### **XXXII. SAMPLING AND DATA/DOCUMENT AVAILABILITY**

32.1 Each Party shall make available to the other Party all the results of sampling, tests, or other data generated through the implementation of this Agreement in a timely manner.

32.2 At the request of either Party, a Party shall allow the other Party or its authorized representatives to observe field work and to take split or duplicate samples of any samples collected pursuant to this Agreement. Each Party shall notify the other Party by telephone not less than fourteen (14) days in advance of any scheduled sample collection activity unless otherwise agreed upon by the Parties. The Party shall provide written confirmation within three (3) days of the telephonic notification.

32.3 If preliminary analysis indicates an imminent or substantial endangerment to human health or the environment may exist, all other Project Managers shall be immediately notified.

### **XXXIII. PROTECTED INFORMATION**

33.1 The Navy shall not withhold any physical, sampling, monitoring or analytical data.

33.2 National Security Information:

A. Any dispute concerning EPA access to national security information ("classified information"), as defined in Executive Order 12356, shall be resolved in accordance with Executive Order 12356 and 32 C.F.R. Part 159, including the opportunity to demonstrate that EPA representatives have proper clearances and a need to know, appeal to the Information Security Oversight Office, and final appeal to the National Security Council.

B. Upon receipt from EPA of a request to meet with the classifying officer regarding access to classified information, the Navy shall, within ten (10) calendar days of such request, notify the requesting Party of the identity of the classifying officer and the level of classification

of the information sought. If the document was classified by the Navy, the classifying officer and the representative of the requesting Party shall meet within twenty-one (21) calendar days following receipt of the request. The purpose of the meeting shall be to seek a means to accommodate the requesting Party's request for access to information without compromising national security or violating security regulations. If no resolution is reached at the meeting, the Navy shall notify the requesting Party of the classifying officer's decision within fourteen (14) calendar days following the meeting. Failure to render a timely decision shall be construed as a denial. Failure to respond is subject to dispute resolution under this Agreement.

C. Nothing in this Subsection is intended to, or should be construed as, superseding any law, regulation, or promulgated Navy directive regarding access to, release of, or protection of national security information.

#### XXXIV. COMMUNITY RELATIONS

34.1 The NBN Community Relations Plan (CRP) was finalized May 1993. This CRP is based on response from community interviews, provides activity and site information, encourages community involvement (both on and off NBN), and promotes an understanding of the NBN IRP. Any revision or amendment to the Community Relations Plan shall be submitted to EPA for review and comment.

34.2 Except in case of an emergency requiring the release of necessary information, and except in the case of an enforcement action, any Party issuing a press release 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 upon issuance of such release.

34.3 The Parties agree to comply with all relevant EPA policy and Guidance on community relations programs and the public participation requirements of CERCLA, the NCP and other applicable, relevant and appropriate requirements, laws and regulations.

34.4 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 all the Administrative Record and public participation requirements of CERCLA, including Sections 113(k) and 117, 42 U.S.C. Sections 9613(k) and 9617, the NCP, and all applicable Guidance developed and provided by EPA. This shall be achieved through implementation of the Community Relations Plan.

34.5 The Navy has established and is maintaining an administrative record at or near NBN 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), Subpart I of the NCP, and applicable Guidance issued by EPA. The administrative record developed by the Navy shall be periodically updated and a copy of the Index will be provided to EPA. The Navy will provide to the EPA on request any document in the administrative record.

34.6 Pursuant to 10 U.S.C. Section 2705(c) and Section XXXVI - RESTORATION ADVISORY BOARD of this Agreement, the Navy has established a Restoration Advisory Board (RAB) for NBN. The purpose of the RAB is to afford a forum for cooperation between the Parties, local community representatives, and natural resource trustees on action and proposed actions at the Site.

### **XXXV. PUBLIC COMMENT ON THIS AGREEMENT**

35.1 Within fifteen (15) days after the execution this Agreement (the date by which all Parties have signed the Agreement or as soon thereafter to conform with RCRA integration requirements), EPA shall announce the availability of this Agreement to the public for their review and comment, including publication in at least two (2) major local newspapers of general circulation. Such public notices shall include information advising the public as to availability and location of the Administrative Record as discussed in Subsection 35.7. EPA shall accept comments from the public for forty-five (45) days after such announcement. Within twenty-one (21) days of completion of the public comment period, EPA shall transmit copies of all comments received within the comment period to the Navy. Within thirty (30) days after the transmittal, the Parties shall review the comments and 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.

35.2 If the Parties agree that the Agreement shall be made effective without any modifications, and if the Parties agree on the Responsiveness Summary, EPA shall transmit a copy of the signed Agreement to the Navy. The Effective Date of the Agreement shall be the date of receipt by the Navy of the signed Agreement from EPA.

35.3 If the Parties agree that modifications are needed and agree upon the modifications and amend the Agreement by mutual consent within sixty (60) days after the expiration of the public comment period, EPA, in consultation with the Navy, 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, and the Parties agree on the Responsiveness Summary, EPA shall transmit a copy of the modified Agreement to the Navy and shall notify them in writing that the modified Agreement is effective as of the date of the notification. If the Parties amend the Agreement within the sixty (60) days and EPA determines that additional notice and comment are required, such additional notice and comment shall be provided consistent with the provisions stated in Subsection 35.1 above. If the Parties agree, after such additional notice and comment has been provided, that the modified Agreement does not require any further modification and if the Parties agree on the Responsiveness Summary, EPA shall send a copy of the mutually agreed upon modified Agreement to the Navy and shall notify them that the modified Agreement is effective. In either case, the Effective Date of the modified Agreement shall be receipt by the Navy from EPA of notification that the modified Agreement is effective.

35.4 In the event that the Parties cannot agree on the modifications or on the Responsiveness Summary within the time period listed in Subsection 35.2 above, the Parties agree to have at least one meeting within the thirty (30) days following the comment period to attempt to reach agreement. The Parties agree to negotiate in good faith for at least a fifteen (15) day period before invoking Dispute Resolution.

35.5 If, thirty (30) days after expiration of the forty-five (45) day comment period, the Parties have not reached agreement on:

- 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; or
- D. whether additional public notice and comments are required; or
- E. the contents of the responsiveness summary,

then the matters which are in dispute shall be resolved by the dispute resolution procedures of Section XX - 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. Each Party reserves the right to withdraw from the Agreement by providing written notice to the other Party within twenty (20) days after receiving from EPA the Final Written Decision of the resolution of the matters in dispute. Failure by a Party to provide such a written notice of withdrawal to EPA within this twenty (20) day period shall act as a waiver of the right of that Party to withdraw from the Agreement, and 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.

35.6 At the start of the public comment period, the Navy will transmit copies of this Agreement to the appropriate federal, State, and local Natural Resource Trustees for review and comment within the time limits set forth in this Section.

35.7 Existing records maintained by NBN which will be included in the Administrative Record such as reports, plans, and Schedules, shall be made available by the Navy for public review during the public comment period.

## **XXXVI. RESTORATION ADVISORY BOARD**

36.1 The Navy has established a Restoration Advisory Board (RAB) which meets the requirements of 10 U.S.C. Section 2705(c), for a Technical Review Committee (TRC) at

Department of Defense Installations. The Parties participating in the RAB are as follows:

- A. A NBN representative who shall co-chair the RAB;
- B. An EPA representative,
- C. A Commonwealth of Virginia representative, and
- D. The Navy Project Manager.

Representatives from the following organizations have been invited to serve as members of the RAB:

- A representative from the U. S. Fish and Wildlife Service.
- A representative from the City of Norfolk Health Department.
- A representative from the City of Norfolk Environmental Services.
- A representative from the Glenwood Park Civic League.
- A representative from the Titustown Civic League.
- A representative from the Elizabeth River Project.
- A representative from the Chesapeake Bay Foundation.
- A representative from the Sierra Club.
- A representative from the Titustown Civic League.

36.2 The co-chairs shall schedule meetings on regularly scheduled interval, or at the request of individual members as needed. If possible, meetings shall be held in conjunction with the meetings of the Project Managers. Meetings of the RAB shall be for the purpose of reviewing progress under the Agreement and for the following purposes:

- A. to facilitate early and continued flow of information between the community, NBN, and the environmental regulatory agencies in relation to restoration actions taken by NBN under the Installation Restoration Program,
- B. to provide an opportunity for RAB members and the public to review and comment on actions and proposed actions taken by NBN under the Installation Restoration Program and,
- C. to facilitate regulatory and public participation consistent with applicable laws.

Special meetings of the RAB may be held at the request of the members.

### XXXVII. EFFECTIVE DATE

37.1 This Agreement shall be effective in its entirety among the Parties in accordance with Section XXXV - PUBLIC COMMENT ON THIS AGREEMENT.

### XXXVIII. AMENDMENT OF AGREEMENT

38.1 Except as provided in Section XIV - PROJECT MANAGERS, this Agreement can be amended or modified solely upon written consent of all the Parties. Such amendments or modifications shall be in writing, and shall become effective on the third business day following the date on which the EPA signs the amendments or modifications. The Parties may agree on a different Effective Date. As the last signing Party, the EPA will provide notice to each signatory pursuant to Section XIV - PROJECT MANAGERS of the Effective Date.

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

38.3 During the course of activities under this Agreement, the Parties anticipate that statutes, regulations, Guidance, and other rules will change. Those changed statutes, regulations, Guidance, and other rules will be applied to the activities under this Agreement in the following manner:

A. Applicable statutes and regulations shall be applied in accordance with the statutory or regulatory language on applicability, and if applied to ongoing activities, shall be applied on the effective date provided. However, the Parties shall, to the extent practicable, apply them in such a way as to avoid as much as possible the need for repeating work already accomplished.

B. Applicable policy or Guidance shall be applied as it exists at the time of initiation of the Work in issue.

C. Applicable policy or Guidance which is changed after the initiation of the Work in issue or after its completion shall be applied subject to Section XX - DISPUTE RESOLUTION. The Party proposing application of such changed policy or Guidance shall have the burden of proving the appropriateness of its application. In any case, the Parties shall, to the extent practicable, apply any changed policy or Guidance in such a way as to avoid, as much as possible, the need for repeating Work already accomplished.

### XXXIX. COMMONWEALTH OF VIRGINIA REVIEW OF DOCUMENTS

39.1 Unless otherwise specified, one copy of all studies, reports, action plans, applicable data, documents and other items required to be submitted to EPA for review or approval pursuant to this Agreement shall be submitted to the Commonwealth of Virginia Department of Environmental Quality to provide the VDEQ an opportunity to review and comment to EPA and

the Navy in accordance with the Schedule in this Agreement.

## **XL. SEVERABILITY**

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

## **XLI. TERMINATION AND SATISFACTION**

41.1 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 all the response actions at the Site pursuant to Subsection 9.16 of Section IX - WORK TO BE PERFORMED, any Party may propose in writing the termination of this Agreement upon a showing that the requirements of this Agreement have been satisfied. The obligations and objectives of this Agreement shall be deemed satisfied and terminated upon receipt by the Navy of written notice from EPA that the Navy has demonstrated that all the requirements of this Agreement have been satisfied. A Party opposing termination of this Agreement shall provide a written statement of the basis for its denial and describe the actions necessary to grant a termination notice to the proposing Party within ninety (90) days of receipt of the proposal.

41.2 Any disputes arising from this Termination and Satisfaction process shall be resolved pursuant to the provisions of Section XX - DISPUTE RESOLUTION, of this Agreement.

41.3 Upon termination of this Agreement, the Navy shall place a public notice announcing termination in two (2) major local newspapers of general circulation.

41.4 This Section shall not affect the Parties' obligations pursuant to Section XIX - PERIODIC REVIEW of this Agreement. In no event will this Agreement terminate prior to the Navy's completion of the Work required by this Agreement.

AUTHORIZED SIGNATURES

Each of the undersigned representatives of the Parties 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.

IT IS SO AGREED:

By

Elsie L. Munsell

Elsie L. Munsell  
Deputy Assistant Secretary of the Navy  
(Environment & Safety)

Date

2/11/99

By

W. Michael McCabe

W. Michael McCabe  
Regional Administrator  
Environmental Protection Agency, Region III

Date

2/18/99



Appendix A  
Current Status Summary IRP Sites, September 1998

Site	PA or IAS	SI or CS	EE/CA	Work Plans	RI	FS	PRAP	ROD	RD	RA Construct	RA Ops	Comments
<b>CERCLA INVESTIGATION IN PROGRESS</b>												
Site 2 - NM Slag Pile- All Media	1983*	1988**		1996, 1998	✓	✓	FY1999 <sup>1</sup>	FY1999 <sup>1</sup>				RI and FS in progress indicate high lead in subsurface soil and in sediment.
Site 5 - Pesticide Disposal Site	1983*	1988** 1998**	1998									Pesticide-contaminated soil determined suitable for removal action. Soil removal action proposed for FY1999.
Site 6 - CD Landfill	1983*	1991		1993	1995	1995						Removal of contaminated sediments partially completed in Fall 1997. Technical requirements for capping resolved, the cap will meet solid waste landfill requirements. The cap will cover entire site and remaining contaminated OU #1 sediments. Long term monitoring planned.
OU1 Sediments							1996	1996	1996	✓(1999)		
OU2 Landfill Cap							1998	FY1998 <sup>1</sup>	FY1999 <sup>1</sup>	FY1999 <sup>1</sup>		
Site 22 - Camp Allen Salvage Yard	1994	1994		1996	✓	✓	FY1999 <sup>1</sup>	FY1999 <sup>1</sup>				Portion of the site designated for removal action. Remedial process continuing for remainder of site.
Removal Action			1998						✓	✓		
<b>REMEDY IN PLACE (Ongoing O&amp;M and LTM)</b>												
Site 1 - Camp Allen Landfill	1983*	1988**		1991	1994	1994	1995	1995	1996	1997	✓	Removal action (soil) completed. Construction of Groundwater Pump and Treat and DPVE systems complete. Remediation systems in operation. Long-term monitoring to evaluate system effectiveness in progress.
Site 3 - Q-Area Drum Storage Yard	1983*	1988**		1991	1996	1996	1996	1996	1996	1998	✓	Construction of Air Sparge/SVE system in progress. Long-term monitoring planned to evaluate effectiveness.
Site 20 - Building LP-20 Site	1991	1991		1994	1996	1996	1996	1996	1997	1998	✓	Construction of Air Sparge/SVE system to address TPH and chlorinated solvents in groundwater complete. Long term monitoring to evaluate effectiveness underway.
<b>RESPONSE COMPLETE/NFA</b>												
Site 4 - P-71 Transformer Storage	1983*	1988**		1991	1991	1991	1991	1992	1991	1992		Cleanup completed. Groundwater monitoring completed in 1995.
Site 19 - Buildings V-60/V-90	1988	1988		1989	1989	1989	1989	1990	1989	1991		Building demolition and site cleanup completed.
Site 21 - Building W-316	1996	1996	1997	1996								PCB-contaminated soil removal action completed in March 1998.

**LEGEND:**

1993 - Year Activity Completed (fiscal year)  
X - Activity Completed (date unknown)  
✓ - Activity In Progress (expected completion)  
! - Activity Planned  
PA - Preliminary Assessment  
IAS - Initial Assessment Study  
SI - Site Inspection  
CS - Confirmation Study  
EE/CA - Engineering Evaluation/Cost Analysis

RI - Remedial Investigation  
FS - Feasibility Study  
PRAP - Proposed Remedial Action Plan  
ROD - Record of Decision or Decision Document  
RD - Remedial Design  
RA - Remedial Action/Removal Action  
TBA - To Be Addressed  
NFA - No Further Action  
Construct - Construction Phase

Ops - Operations Phase  
\*Refers to "Initial Assessment Study of Sewells Point Naval Complex," dated February 1983.  
\*\*Refers to "Installation Restoration Program Remedial Investigation Interim Report," dated March 1988.  
\*\*\*CH2M HILL. SI completed February, 1998

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**APPENDIX B**  
**Site-Screening Areas (SSA)**

<b>SSA Number</b>	<b>Site Identification</b>	<b>Description</b>
1	(SWMU 4, RFA M-19/M-20, EPIC WDA-1)	Q-72 Sandblast Area
2	(SWMU 6, RFA M-31)	V-28 Waste Pit
3	(SWMU 8, EPIC WDA-20)	Fire-fighting School
4	(SWMU 12, EPIC WDA-36) and (SWMU 16, RFA C-54)	NM-37 Area

**APPENDIX C**  
**Areas of Concern (AOC)**

<b>AOC Number</b>	<b>Site Identification</b>	<b>Description</b>
1	(SWMU 02, RFA M-13/14) and (SWMU 03, RFA AOC B)	Building Z-309
2	(SWMU 09, EPIC WDA-28/29) and (SWMU 10, EPIC WDA-31/32/35)	MAC Area
3	(SWMU 28, EPIC WDA-11), (SWMU 32, EPIC WDA-5), ) (SWMU 33, EPIC WDA-6), (SWMU 34, EPIC WDA-7) (SWMU 35, EPIC WDA-8), and (SWMU 42, EPIC WDA-9/10	CEP Area
4	(SWMU 14, RFA C-17)	Q-50 PWC Accumulation Area
5	(SWMU 38, EPIC WDA-13)	CD Area Behind Compost Yard
6	(SWMU 39, EPIC WDA 18/19)	Open Dump and Disposal Area at Boundary of Camp Allen Landfill
7	(SWMU 40, EPIC WDA-22)	MCA-603 Pits
8	(SWMU 41, EPIC WDA-23)	Disposal Area, CA-99 Golf Course