

IAG COVER SHEET

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Concord, California**

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TABLE OF CONTENTS

1. JURISDICTION 4

2. DEFINITIONS 4

3. PARTIES BOUND 9

4. PURPOSE 10

5. SCOPE OF AGREEMENT 11

6. FINDINGS OF FACT 12

7. DETERMINATIONS 12

8. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION 13

9. WORK TO BE PERFORMED 15

10. CONSULTATION 18

11. CONTENTS OF SITE MANAGEMENT PLAN ("SMP") 24

12. BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN
. 26

13. FUNDING 32

14. EXTENSIONS 33

15. FORCE MAJEURE 35

16. PROJECT MANAGERS 36

17. EXEMPTIONS 39

18. ACCESS 40

19. PERMITS 42

20. REMOVAL AND EMERGENCY ACTIONS 44

21. PERIODIC REVIEW 47

22.	DISPUTE RESOLUTION	48
23.	STIPULATED PENALTIES	51
24.	ENFORCEABILITY	53
25.	OTHER CLAIMS	54
26.	RESERVATION OF RIGHTS	55
27.	PROPERTY TRANSFER	55
28.	REIMBURSEMENT OF STATE SERVICES	55
29.	RECOVERY OF EPA EXPENSES	56
30.	QUALITY ASSURANCE	56
31.	RECORD PRESERVATION	56
32.	SAMPLING AND DATA/DOCUMENT AVAILABILITY	57
33.	PROTECTED INFORMATION	58
34.	COMMUNITY RELATIONS	59
35.	PUBLIC COMMENT ON THIS AGREEMENT	60
36.	RESTORATION ADVISORY BOARD	62
37.	STATE PARTICIPATION CONTINGENCY	63
38.	EFFECTIVE DATE	64
39.	AMENDMENT OF AGREEMENT	64
40.	APPENDICES AND ATTACHMENTS	64
41.	SEVERABILITY	64
42.	TERMINATION AND SATISFACTION	65

Appendix A: Site Management Plan (SMP)

Attachment A: Facility Map

Attachment B: Map Showing IR Sites and SWMUS

Attachment C: Summary of Historical Investigation Activities

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 U.S. Environmental Protection Agency (EPA), the U.S. Department of the Navy (Navy), and the State of California (State), (collectively, the Parties) agree as follows:

1. JURISDICTION

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

(a) The EPA enters into those portions of this Agreement that relate to the remedial investigation/feasibility study (RI/FS) pursuant to CERCLA section 120(e)(1), 42 U.S.C. § 9620(e)(1), RCRA sections 6001, 3008(h) & 3004(u) and (v), 42 U.S.C. § 6961, 6928(h), 6924(u) & (v), and Executive Order (E.O.) 12580;

(b) The EPA 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. § 9620(e)(2), RCRA sections 6001, 3008(h) and 3004(u) & (v), 42 U.S.C. § 6961, 6928(h), 6924(u) & (v), and E.O. 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. § 9620(e)(1), RCRA sections 6001, 3008(h) and 3004(u) & (v), 42 U.S.C. § 6961, 6928(h), 6924(u) & (v), E.O. 12580, the National Environmental Policy Act, 42 U.S.C. § 4321, and the Defense Environmental Restoration Program (DERP), 10 U.S.C. § 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. § 9620(e)(2), RCRA sections 6001, 3008(h), and 3004(u) & (v), 42 U.S.C. § 6961, 6928(h), 6924(u) & (v), E.O. 12580 and the DERP; and

(e) The State of California enters into this agreement pursuant to CERCLA Sections 120(a)(4) and 120(f) and 121(f), 42 U.S.C. Sections 9620(a)(4) and 9621(f), Section 3006 of RCRA, 42 U.S.C. Sections 6926 and 6961, Chapters 6.5 and 6.8 of Division 20 of the California Health and Safety Code, and California Water Code Division 7.

2. DEFINITIONS

Except as noted below or otherwise explicitly stated, the definitions provided in CERCLA, CERCLA case law, and the NCP

shall control the meaning of terms used in this Agreement.

(a) "Agreement" shall mean this document and shall include all Appendices to this document. All such Appendices are integral parts of this Agreement and shall be enforceable to the extent provided herein.

(b) "Concord" shall mean the Naval Weapons Station, Seal Beach Detachment Concord, and any successor command.]

(c) "Applicable State law" shall mean all State of California laws that are either applicable to off-site management of CERCLA wastes or are ultimately judicially determined to be applicable notwithstanding this Agreement. Other than the above-stated situations, State law shall be applied through the process required in Section 121 of CERCLA, 42 U.S.C. Sec. 9621, for determining Applicable or Relevant and Appropriate Requirements (ARARs).

(d) "Action Memorandum" shall mean a document in which a Removal Action is selected and explained.

(e) "ARARs" shall mean federal and State 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.

(f) "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act, Public Law 96-510, 42 U.S.C. § 9601 et seq., as amended by SARA the Superfund Amendments and Reauthorization Act (SARA), Pub. L. 99-499 and any subsequent amendments.

(g) "Community Relations" shall mean the program to inform and involve the public in the installation restoration, Superfund, and the RCRA process and to respond to community concerns.

(h) "Corrective Action Permit" shall mean the corrective action portion of any RCRA Permit issued to the Facility by EPA or the State pursuant to HSWA.

(i) "Days" shall mean calendar days, unless business days are specified. Any submittal that under the terms of this Agreement would be due on Saturday, Sunday, or Federal or State holidays shall be due on the following business day.

(j) "Deadlines" shall mean the Near Term Milestones established for the current fiscal year under the SMP. Deadlines are subject to stipulated penalties in accordance with

Section 23 - STIPULATED PENALTIES.

(k) "Documents" or "records" shall mean any documents, writings, correspondence, computer disks 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) "EFA West" shall mean the Engineering Field Activity

West, Naval Facilities Engineering Command, and any successor command.

(m) "EPA" shall mean the Environmental Protection Agency, its employees, and its duly authorized representatives.

(n) "Facility" shall have the same definition as in CERCLA Section 101(9), 42 U.S.C. Section 9601(9), as applied to Concord.

(o) "Feasibility Study" or "FS" means a study conducted pursuant to CERCLA and the NCP which fully develops, screens and evaluates in detail remedial action alternatives to prevent, mitigate, or abate the migration or the release of hazardous substances, pollutants, or contaminants at and from the Site.

(p) "Fiscal Year" shall mean the time period used by the United States Government for budget management and commences on October 1 and ends September 30 of the following calendar year.

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

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

(s) "Interim Remedial Action" shall mean all discrete Remedial Actions implemented prior to a final Remedial Action which are taken to prevent or minimize the release of hazardous substances, pollutants, or contaminants.

(t) "Milestones" shall mean the dates established by the Parties in the SMP for the initiation or completion of Primary Actions and the submission of Primary Documents and Project End Dates. Milestones shall include Near Term Milestones, Out Year Milestones, Primary Actions, and Project End Dates.

(u) "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, and amendments thereto.

(v) "Navy" shall mean the U.S. Department of the Navy, including EFA West and Southwest Division, and its employees, members, agents, and authorized representatives. "Navy" shall also include the U.S. Department of Defense, to the extent necessary to effectuate the terms of this Agreement, including, but not limited to, appropriations, funding and Congressional Reporting Requirements.

(w) "Near Term Milestone" shall mean the Milestones within the current fiscal year (FY), the next FY or "budget year" (FY+1), and the year for which the budget is being developed or "planning year" (FY+2).

(x) "Non Time Critical Removal Action" shall mean a removal action that is neither an emergency removal action nor a time

critical removal action.

(y) "Onsite" shall have the meaning as defined in the NCP.

(z) "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 a release, or pathway or exposure related to the Site.

OUs 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 OUs, depending on the complexity of the problems associated with the Site. All OUs shall be addressed in accordance with the NCP, EPA Guidance, the requirements of CERCLA, and applicable state law.

(aa) "Out Year Milestones" shall mean the Milestones 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).

(bb) "Parties" shall mean the parties to this Agreement as identified in **Section 3 - PARTIES BOUND**.

(cc) "Preliminary Assessment" shall have the same meaning as in the NCP.

(dd) "Primary Actions" as used in these definitions shall mean those specified major, discrete actions that Parties identify as such in the SMP. The Parties should identify all major discrete actions for which there is sufficient information to be confident that the date for taking such an action is implementable.

(ee) "Project End Dates" shall mean the dates established by the Parties in the SMP for the completion of major portions of the cleanup or completion of the cleanup of the facility. The Parties recognize that, in many cases, a higher degree of flexibility is appropriate with Project End Dates due to uncertainties associated with establishing such dates.

(ff) "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), Public Law No. 98-616, and any amendments thereto.

(gg) "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 basis for the selection of such remedy. 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.

(hh) "Remedial Design" or "RD" shall have the same meaning as provided in the NCP.

(ii) "Remedial Investigation" or "RI" means that investigation conducted pursuant to CERCLA and the NCP. The RI serves as a mechanism for collecting data for Site and waste characterization and conducting treatability studies as necessary to evaluate performance and cost of the treatment technologies. The data gathered during the RI will also be used to conduct a baseline risk assessment and, unless a No Action ROD is justified, perform a feasibility study, and support design of a selected remedy. The Navy shall conduct and prepare the RI in a manner to support the intent and objectives of Section XVIII (Statutory Compliance/RCRA-CERCLA Integration).

(jj) "Remedy" or "Remedial Action" or "RA" shall have the same meaning as provided in section 101(24) of CERCLA, 42 U.S.C. § 9601(24), and the NCP, and may consist of Operable Units.

(kk) "Remove" or "Removal" shall have the same meaning as provided in section 101(23) of CERCLA, 42 U.S.C. § 9601(23), and the NCP.

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

(mm) "Site" shall include the Facility and any other areas identified before or after execution of this Agreement, 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. For purposes of the need to obtain permits, "on-site" shall have the meaning provided in the NCP and "off-site" shall mean all locations that are not on-site.

(nn) "Site Inspection" or "SI" shall have the same meaning as in the NCP.

(oo) "Site Management Plan" or "SMP" shall mean a planning document, prepared specifically under **Section 11 - CONTENTS OF SITE MANAGEMENT PLAN** ("SMP"), that contains a timetable, plan or schedule which indicates the dates 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 developed under the terms of this Agreement are listed in the SMP. Deadlines listed in the SMP are subject to stipulated penalties.

(pp) "Solid Waste Management Unit" or "SWMU", as defined pursuant to RCRA, shall mean any discernable unit at which solid wastes have been placed at any time, regardless 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.

(qq) "Southwest Division" shall mean the Naval Facilities Engineering Command, Southwest Division, and any successor command.

(rr) "Target Dates" shall mean dates established for the

completion and transmission of secondary documents. Target Dates are not subject to dispute resolution and they are not Milestones.

(ss) "Time Critical Removal Action" (TCRA) shall mean a removal action for which a planning period of less than six months is required before on-site activities must be initiated.

(tt) "To Be Considered" or "TBC" is any advisory criteria or guidance developed by EPA, other federal agency, or the State that may be useful in developing CERCLA remedies. TBCs shall be timely identified and provided as required by the NCP.

(uu) "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 this Agreement. Documents other than primary documents will also be considered as transmitted on time if they are received electronically by the due date. The parties agree that they will follow up electronic correspondence immediately with paper copies at the request of another party.

(vv) "Work" shall mean all activities the Navy is required to perform under this Agreement except those required by **Section 31 - RECORD PRESERVATION**.

3. PARTIES BOUND

3.1 The Parties to this Agreement are EPA, the Navy, and the State. The terms of the Agreement shall apply to and be binding upon EPA, the State, and the Navy.

3.2 This Agreement shall be enforceable against all of the Parties to this Agreement. This Section shall not be construed as an agreement to indemnify any person. The Navy shall notify its agents, members, employees, response action contractors for the Site, and all subsequent owners, operators, and lessees of the Site, of the existence of this Agreement.

3.3 Each Party shall be responsible for ensuring that its contractors comply with the terms and conditions of this Agreement. The Navy will notify EPA and the State of the identity and assigned tasks of each of its contractors performing work under this Agreement upon their selection.

3.4 If the State does not sign this Agreement, the

provisions of **Section 37 - STATE PARTICIPATION CONTINGENCY** - will apply.

4. PURPOSE

4.1 The general purposes of this Agreement are to:

(a) Ensure that the environmental impacts associated with past and present activities at the Site are thoroughly investigated and appropriate remedial action 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, the NCP, Superfund guidance and policy, RCRA, RCRA guidance and policy, DERP, and applicable State law;

(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 and the State pursuant to CERCLA and applicable state law. This process is designed to promote cooperation among the Parties in identifying remedial alternatives for IR Sites or OUs prior to selection of final interim remedial actions;

(b) Establish requirements for the performance of a Remedial Investigation to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release and/or threatened release of hazardous substances, pollutants, or contaminants at the Site and to establish requirements for the performance of a Feasibility Study 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, and 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 and applicable State law;

(d) Implement the selected remedial actions in accordance with CERCLA, the NCP, and applicable State law and meet the requirements of CERCLA section 120(e)(2). For the purposes of

this Agreement, the "completion of investigation and study" referred to in CERCLA Section 120(e)(2) for each IR Site will be the date of signature of the Record of Decision for that IR Site;

(e) Assure compliance, through this Agreement, with RCRA and other Federal and State laws and regulations for matters covered herein;

(f) Coordinate Response Actions at the Site with the mission and support activities at Concord.

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

(h) Provide, in accordance with the NCP and DERP, for State involvement in the initiation, development, selection, and enforcement of remedial actions undertaken at the Site, 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; and,

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

5. 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.A. Section 9601 et seq. and Sections 3004(u) and (v) and 3008(h) of RCRA as amended, 42 U.S.C. Sections 6924(u) and (v) and 6928(h) and Division 20 of the California Health and Safety Code.

5.2 This Agreement is intended to cover the investigation, development, selection, and implementation of Response Actions for all releases or threatened releases of hazardous substances, pollutants or contaminants 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 not all such releases at the Site are currently known, the Agreement establishes a system for dealing with those undiscovered releases. To accomplish remediation of undiscovered releases, the Parties will establish schedules as necessary and as information becomes available, and if necessary, amend this Agreement.

5.3 The Site cannot be removed from the NPL unless it is determined, in accordance with CERCLA, 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 and

the environment. All the Response Actions at the Site shall occur in discrete locations called IR Sites identified at the Site pursuant to this Agreement.

5.4 Any Response Action in progress on the effective date of this Agreement shall be subject to the obligations and procedures of this Agreement.

5.5 The Parties agree to use their best efforts to expedite the initiation of response actions at the Site, including interim response actions, and to carry out all activities under this Agreement so as to protect human health 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.

6. FINDINGS OF FACT

6.1 Naval Weapons Station, Seal Beach Detachment Concord is in the north-central portion of Contra Costa County. Suisun Bay lies to the north, the City of Concord surrounds it to the west and south, and the cities of Baypoint and Pittsburg are to the east. The station operates an ocean terminal facility to transship ordnance from trucks or rail cars to ships and vice versa. Concord encompasses nearly 13,000 acres and is divided into two geographical areas called the Inland Area and the Tidal Areas. The Inland Area consists of about 5200 acres of mainland and includes various facilities for munitions storage, munitions inspection, maintenance, administration, public works, supply and housing. The Tidal Area includes about 6077 acres of mainland and 1570 acres of land on 6 islands. The Tidal Area is used for receiving, inspecting and storing munitions transported to and from offsite locations. The Tidal Area is subdivided further to include an area called the Litigation Area. (See Attachment C for a summary of historical investigation activities.)

6.2 Concord was added to the National Priorities List on December 16, 1994 (Federal Register, Vol 59, No. 241, dated December 16, 1994)

6.3 Attachment B to this Agreement is a map showing the areas of suspected and known contamination, based on information available at the signing of this Agreement.

7. DETERMINATIONS

At the time the Parties entered into this agreement, the following is a summary of the determinations relied upon by the Parties to establish their jurisdiction and authority to enter into this Agreement. None of these determinations shall be considered admissions by 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) Concord 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., a federal facility under the jurisdiction of the Secretary of Defense within the meaning of CERCLA section 120, 42 U.S.C. Section 9620, and is subject to the Defense Environmental Restoration Program.

(c) The United States is the owner and operator of Concord 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/operator under CERCLA at Concord.

(d) There has been a release or a substantial threat of a release of hazardous substances, pollutants or contaminants 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 human health or the environment.

(g) This Agreement provides for the expeditious completion of all necessary Response Actions.

(h) The authority of the Navy to exercise the delegated removal authority of the President pursuant to CERCLA section 104, 42 U.S.C. Sec. 9604, is not altered by this Agreement.

(i) The Department of the Navy is the authorized delegate of the President under E.O. 12580 for receipt of notification by the State of its ARARs as required by CERCLA section 121(d)(2)(A)(ii), 42 U.S.C. Sec. 9621(d)(2)(A)(ii).

(j) Except as otherwise specified in this Agreement, nothing in this Agreement shall alter the State's authority to conduct or require corrective action pursuant to Chapter 6.5 of Division 20 of California Health and Safety Code and Title 22 of the California Code of Regulations.

8. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

8.1 The Parties intend to integrate into this comprehensive

Agreement the Navy's CERCLA response obligations with the Navy's (a) RCRA corrective action obligations, (b) State corrective/remedial action obligations, and (c) obligations under all Orders and other statutory requirements of the California Regional Water Quality Control Board, in each case relating to the release(s) of hazardous substances, hazardous wastes, hazardous constituents, pollutants or contaminants covered by this 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) or otherwise applicable State hazardous waste or water quality protection laws. The Parties agree that, with respect to releases of hazardous waste covered by this Agreement, RCRA and such State laws shall be considered applicable or relevant and appropriate requirements pursuant to CERCLA Section 121, 42 U.S.C. Section 9621.

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 Concord 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 on-going 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.

8.5 DTSC will coordinate its oversight of the Navy's RCRA corrective action obligations with the California Regional Water Quality Control Board, and will coordinate State Applicable or Relevant and Appropriate Requirements (ARARs) identification with all other participating State agencies.

9. WORK TO BE PERFORMED

9.1 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 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.

9.2 The Parties agree to perform the tasks, obligations and responsibilities described in this Section in accordance with CERCLA and CERCLA guidance and policy; the NCP; pertinent provisions of RCRA and RCRA guidance and policy; E.O. 12580; applicable State laws and regulations; and all terms and conditions of this Agreement including documents prepared and incorporated in accordance with **Sec. 10 - CONSULTATION**.

9.3 The Navy agrees to undertake, seek adequate funding for, fully implement and report on the following tasks, with participation of the EPA and the State as set forth in this Agreement:

- (a) Remedial Investigations of the Site;
- (b) Federal and State Natural Resource Trustee Notification and Coordination;
- (c) Feasibility Studies for the Site;
- (d) All response actions, including Operable Units, for the Site; and
- (d) Operation and maintenance of response actions at the Site.

9.4 The Parties agree to:

- (a) Make their best efforts to expedite the initiation of response actions for the Site, particularly for Operable Units; and
- (b) Carry out all activities under this Agreement so as to protect the public health, welfare and the environment.

9.5 Upon request, EPA and the State agree to provide the Navy with guidance or reasonable assistance in obtaining and interpreting guidance relevant to the implementation of this Agreement.

9.6 The Parties recognize that any discovered release of hazardous substances determined to have originated either on or off Concord and to have been caused by a potentially responsible party other than the Navy, including groundwater plumes mingled with plumes originating on Concord, may be addressed by a separate agreement between the potentially responsible parties and appropriate regulatory agencies. Nothing in this subsection shall reduce or otherwise affect the Navy's obligations under this Agreement except as may be specifically provided in such other agreement if EPA is a party thereto and such other agreement refers to this Agreement.

Remedial Investigation and Feasibility Study

9.7 RIs shall be conducted in accordance with the requirements set forth in the approved RI Work Plan and schedules set forth in the SMP. RIs shall meet the purposes set forth in **Section 4 - PURPOSE.**

9.8 The Navy agrees it shall develop, implement and report upon a FS for areas subject to an RI, unless a no action ROD is justified. The FS shall be conducted in accordance with the requirements and schedules set forth in the approved RI/FS Work Plan and SMP. The FS shall be conducted in accordance with the requirements of the NCP and the schedules set forth in the SMP. The FS shall meet the purposes set forth in **Section 4 - PURPOSE.**

Records of Decision and Proposed Plan for Remedial Action

9.9 (a) The Navy shall prepare a Proposed Plan in accordance with the requirements of the NCP and the schedule set forth in the SMP, and submit a draft Proposed Plan to EPA and the State for review and comment as described in **Section 10 - CONSULTATION.**

After receiving EPA acceptance and the State's comments on the Proposed Plan, the Navy shall publish its Proposed Plan for public review and comment in accordance with the NCP. During the public comment period, the Navy shall make the administrative record available to the public and distribute the Proposed Plan. The Navy shall provide the opportunity for a public meeting to be held during the public comment period to discuss the preferred alternative for each IR Site. 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.

(b) Following public comment, the Navy, in consultation with EPA and the State, will determine if the Proposed Plan should be modified based on the comments received. These modifications will be made by the Navy and the modified documents will be reviewed by EPA and the State. 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.

(c) The Navy shall submit its draft ROD to EPA and the State following the close of the public comment period, including any extensions, on the Proposed Plan in accordance with the schedule in the SMP. 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 IR Site.

(d) The ROD shall be subject to the review and comment procedures described in **Section 10 - CONSULTATION** and is subject to the dispute resolution process in **Section 22 - DISPUTE RESOLUTION**.

(e) Notice of the final ROD shall be published by the Navy 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).

Remedial Design and Remedial Action

9.10(a) The SMP shall include deadlines for the Preliminary Remedial Design and 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. Procedures for commenting on these documents are set forth in Section 10.7(b) of this Agreement.

(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 SMP.

(c) After the final design document is approved, pursuant to **Section 10 - 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.

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 may present an immediate threat to public health, welfare, or the environment, it shall be addressed pursuant to **Section 20 - REMOVAL AND EMERGENCY ACTIONS**. If not, it shall be addressed pursuant to Subsection 9.12 below.

9.12 If, at any time subsequent to ROD signature, including but not limited to during a review conducted pursuant to **Section 21 - PERIODIC REVIEW**, any Party concludes that a supplemental response action is necessary to ensure compliance with CERCLA or the NCP, such Party shall promptly notify the others of its conclusion in writing. The need for supplemental action shall be determined based on the standards in subsection 10.10(b). The notification shall specify the nature of the necessary supplemental response action and the information required by subsection 10.10(b). 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 by the thirtieth (30th) day following the date of the written notification, any Party may notify the other Parties in writing within ten (10) days thereafter that it intends to invoke dispute resolution. If the Project Managers are still unable to reach consensus within fourteen (14) days of the issuance of such notice, the question of the need for the supplemental response action shall be resolved through dispute resolution.

10. CONSULTATION

Review and Comment Process for Draft and Final Documents

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. In accordance with CERCLA § 120, 42 U.S.C. 9620 and the DERP, 10 U.S.C. § 2705, the Navy will normally be responsible for issuing primary and secondary documents to EPA and the State. 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 and the State 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 and the State. Following receipt of comments on a particular draft primary document, the Navy will respond to the comments received and issue a draft final primary document subject to dispute resolution. The draft final primary document will become the final primary document either 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. They may also include certain stand-alone documents. Secondary documents are issued by the Navy in draft subject to review and comment by EPA and the State. 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 primary documents listed in Attachment C to EPA and the State for review.

(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 and the State for review and comment in accordance with the provisions of this Section:

- (1) RI/FS Workplans
- (2) QAPP and Field Sampling Plans
- (3) Community Relations Plans
- (4) Remedial Investigation Reports
- (5) Feasibility Study Reports
- (6) Proposed Plans
- (7) Records of Decision
- (8) Preliminary Remedial Designs
- (9) Final Remedial Designs
- (10) Remedial Design/Remedial Action Workplans
 - Remedial Action Sampling Plans
 - Remedial Action Construction Quality Assurance Plans
 - Remedial Action Environmental Monitoring Plans
 - Contingency Plans
- (11) Site Management Plans ("SMPs")

(c) Only the draft final Primary Documents identified above shall be subject to dispute resolution in accordance with **Section 22 - DISPUTE RESOLUTION**. The Navy shall complete and transmit draft Primary Documents in accordance with the schedule and deadlines established pursuant to **Section 11 - CONTENTS OF THE SMP**.

(d) EPA believes that remedial action reports, Land Use Control Implementation and Certification Plans, O & M Plans, site completion reports, long term monitoring plans, five year reviews and associated schedules should also be included as independent primary documents or as part of the documents listed in 10.3(b). The Department of Defense disagrees. EPA and DOD reserve their rights to maintain these positions during any dispute that may be raised in accordance with Section 22 (Dispute Resolution) of this Agreement. In addition, these issues may be negotiated between EPA Headquarters and DOD. If these issues are resolved in the future, the Parties agree to amend the FFA, if appropriate, to reflect that resolution. The Parties agree that this FFA is intended to address only this site and shall have no precedential effect on other FFAs currently under negotiation or to be negotiated.

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 and the State for review and comment in accordance with the provisions of this Section:

- (1) Health and Safety Plans
- (2) Pilot/Treatability Study Work Plans
- (3) Pilot/Treatability Study Reports
- (4) Well Closure Methods and Procedures
- (5) Periodic Review Assessment Reports
- (6) Engineering Evaluation/Cost Analyses (EE/CAs)
- (7) Non-Time Critical Removal Action Work Plans

(b) EPA and the State 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 11 - CONTENTS OF THE SMP.**

(c) Non-Emergency Removal Action Memoranda are also considered secondary documents and shall be prepared in accordance with the NCP and applicable EPA Guidance. In addition, they are subject to the alternative dispute resolution process set forth in Subsection 20.5.

10.5 Meetings of the Project Managers on Development of Documents:

The Project Managers, as defined in **Section 16 - PROJECT MANAGERS**, shall meet approximately every ninety (90) days, and confer by telephone every thirty (30) days, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the Site, including 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 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 State shall identify all potential State ARARs as early in the removal and remedial processes 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 written interpretations of ARARs provided by the State. 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 not inconsistent 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 and the State on or before the corresponding deadline established pursuant to **Section 11 - CONTENTS OF SITE MANAGEMENT PLAN ("SMP")** 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 SMP, the Preliminary Remedial Design and the final Remedial Design shall be subject to a sixty (60) day period for review and comment. The SMP shall be reviewed and commented on in accordance with **Section 12 - BUDGET DEVELOPMENT AND AMENDMENT OF SMP** or as agreed to by the Parties.

(1) 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 Preliminary Remedial Design, EPA or the State 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.

(2) Review of any document by EPA and the State 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 and the State 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, or the State shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy

reports, the EPA or the State may extend a sixty (60) day comment period for an additional (30) days by written notice to the Navy prior to the end of the sixty (60) day period. On or before the close of any comment period, EPA and the State shall transmit by mail their written comments to the Navy.

(c) Representatives of the Navy shall make themselves readily available to EPA and the State 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 or the State shall include a reasoned statement of whether they object to any portion of the proposed ARAR determination. To the extent that EPA or the State 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 any 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 and the State 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 and the State 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 thirty (30) days by providing timely written notice to EPA and the State. In appropriate circumstances, this time period may be further extended in accordance with **Section 14 - EXTENSIONS**.

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 22 - 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 22 - 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 14 - EXTENSIONS.**

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 or the State'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 pursuant to Subsection 9.11 and 9.12 or this Subsection 10.10.

11. CONTENTS OF SITE MANAGEMENT PLAN ("SMP")

11.1 The Site Management Plan ("SMP") will be attached to this Agreement as Appendix A within sixty (60) days of execution

of this Agreement by the Navy and EPA. The SMP and each annual Amendment to the SMP shall be Primary Documents. Milestones established in a SMP or established in a final Amendment to a SMP remain unchanged unless otherwise agreed to by the Parties or unless directed to be changed pursuant to the agreed dispute resolution process set out in Subsection 12.4. In addition, if an activity is fully funded in the current FY, Milestones associated with the performance of work and submittal of Primary Documents associated with such activity (even if they extend beyond the current FY) shall be enforceable.

11.2 The SMP includes proposed actions for both CERCLA responses and actions which would otherwise be handled pursuant to RCRA corrective actions per **Section 8 - STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION**, and outlines all response activities and associated documentation to be undertaken at the Facility. The SMP incorporates all existing Milestones contained in approved Work Plans, and all Milestones approved in future Work Plans immediately become incorporated into the SMP.

11.3 Milestones in the SMP reflect the priorities agreed to by the Parties 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) current, planned, or potential uses of the facility; (iii) ecological impacts; (iv) impacts on human health; (v) intrinsic and future value of affected resources; (vi) cost effectiveness of the proposed activities; (vii) environmental justice considerations; (viii) regulatory requirements; and, (ix) actual and anticipated funding levels. While Milestones should not be driven by budget targets, such targets should be considered when setting Milestones. Furthermore, in setting and modifying Milestones, 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 and its annual Amendments include:

(a) A description of actions necessary to mitigate any immediate threat to human health or the environment;

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

(c) Activities and schedules for response actions covered by the SMP, including at a minimum:

- Identification of any Primary Actions;

- All Deadlines;
- All Near Term Milestones;
- All Out Year Milestones;
- All Target dates;
- Schedule for initiation of Remedial Designs, Interim Response Actions, Non-Time Critical Removal Actions, and any initiation of other planned response action(s) covered by this Agreement; and,
- All Project End Dates.

11.5 The Navy shall submit an Amendment to the SMP on an annual basis as provided in **Section 12 - BUDGET DEVELOPMENT and AMENDMENT OF SITE MANAGEMENT PLAN ("SMP")**. All Amendments to the SMP shall conform to all of the requirements set forth in this Section.

11.6 The Milestones established in accordance with this Section and **Section 12 - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN ("SMP")**, remain the same unless otherwise agreed by the Parties, or unless changed in accordance with the dispute resolution procedures set out in Subsections 22.5 and 22.6. The Parties recognize that possible bases for requests for changes or extensions of the Milestones include but are not limited to: (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; (iii) reprioritization of activities under this Agreement caused by budget adjustments (e.g., rescissions, inflation adjustments, and reduced Congressional appropriations); (iv) an event of force majeure; (v) a delay caused by another party's failure to meet any requirement of this Agreement; (vi) a delay caused by the good faith invocation of dispute resolution or the initiation of judicial action; (vii) 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 (viii) any other event or series of events mutually agreed to by the Parties as constituting good cause.

11.7 The Deadlines established in the Plan and its Amendments shall be published by EPA and the State.

12. BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN

12.1 The Navy, as a federal agency, is subject to fiscal controls, hereinafter referred to as the Future Years Defense Plan (FYDP). The planning, programming, and budgeting process, hereinafter referred to as the POM process, is used to review

total requirements for DOD programs and make appropriate adjustments within the FYDP for each program while adhering to the overall FYDP control. The Parties recognize that the POM process is a multi-year process. The Parties also agree that all Parties should be involved in the full cycle of POM activities as specified in this Agreement. Further, the Parties agree that each Party should consider the factors listed in Subsection 11.3, including federal fiscal constraints as well as each of the other factors, in their priority-setting decisions. Initial efforts to close any gap between cleanup needs and funding availability shall be focused on the identification and implementation of cost savings.

Facility-Specific Budget Building

12.2 In order to promote effective involvement by the Parties in the POM process, the Parties will meet at the Project Manager level for the purpose of (1) reviewing the FYDP controls; (2) developing a list of requirements/work to be performed at the site for inclusion in the Navy POM process; and, (3) participating in development of the Navy submission to the proposed President's budget, based on POM decisions for the year currently under consideration. Unless the Parties agree to a different time frame, the Navy agrees to notify the other Parties within ten (10) days of receipt, at the Project Manager level, that budget controls have been received. Unless the Parties agree to a different time frame or agree that a meeting is not necessary, the Parties will meet, at the Project Manager level, within five (5) days of receiving such notification to discuss the budget controls. However, this consultation must occur at least ten (10) days prior to the Navy'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 disagreements, either at the immediate or secondary supervisor level; this would also include discussions, as necessary, with NAVFAC. If agreement cannot be reached informally within a reasonable period of time, the Navy 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, the Navy will forward through NAVFAC to the Navy Headquarters its budget request with the views of the Parties not in agreement and also inform Navy Headquarters of the possibility of future enforcement action should the money requested not be sufficient to perform the work subject to disagreement. In addition, if the Navy's budget submission to NAVFAC relating to the terms and conditions of this Agreement does not include

sufficient funds to complete all work in the existing SMP, such budget submission shall include supplemental reports that fully disclose the work required by the existing SMP, but not included in the budget request due to fiscal controls (e.g., a projected budget shortfall). These supplemental reports shall accompany the cleanup budget that the Navy submits through its higher Headquarters levels until the budget shortfall has been satisfied. If the budget shortfall is not satisfied, the supplemental reports shall be included in the Navy's budget submission to the DoD Comptroller. DUSD(ES) shall receive information copies of any supplemental reports submitted to the DoD Comptroller.

Navy Budget for Clean Up Activities

12.3 The Navy shall forward to the other Parties documentation of the budget requests (and any supplemental reports) for the site, as submitted by the Navy to NAVFAC, and by NAVFAC to the Navy Headquarters, within 14 days after the submittal of such documentation to the Navy Headquarters by NAVFAC. If the Navy proposes a budget request relating to the terms and conditions of this Agreement that impacts other installations, discussions with other affected EPA Regions and states regarding the proposed budget request need to take place.

Amended SMP

12.4 No later than June 15 of each year after the initial adoption of the SMP, the Navy shall submit to the other Parties a draft Amendment to the SMP. When formulating the draft Amendment to the SMP, the Navy shall consider funding circumstances (including OMB targets/guidance) and "risk plus other factors" outlined in Subsection 11.3 to evaluate whether the previously agreed upon Milestones should change. Prior to proposing changes to Milestones in its annual Amendment to the SMP, the Navy will first offer to meet with the other Parties to discuss the proposed changes. The Parties will attempt to agree on Milestones before the Navy submits its annual Amendment by June 15, but failure to agree on such proposed changes does not modify the June 15 date, unless agreed by all the Parties. Any proposed extensions or other changes to Milestones must be explained in a cover letter to the draft Amendment to the SMP. The draft Amendment to the SMP should reflect any agreements made by the Parties during the POM process outlined in this Section. Any disagreement over adjustment of Milestones pursuant to this subsection shall be resolved pursuant to Subsection 12.4(a) through 12.4(e).

(a) The Parties shall meet as necessary to discuss the

draft Amendment to the SMP. The Parties shall use the consultation process contained in **Section 10 - CONSULTATION**, except that none of the Parties will have the right to use the extension provisions provided therein. Accordingly, comments on the draft Amendment will be due to the Navy no later than 30 days after receipt by EPA and the State of the draft Amendment. If either EPA or the State provides comments and is not satisfied with the draft Amendment during this comment period, the Parties shall meet to discuss the comments within 15 days of the Navy's receipt of comments on the draft Amendment. The draft final Amendment to the SMP will be due from the Navy no later than 30 days after the end of the EPA and State comment period. During this second 30-day time period, the Navy will, as appropriate, make revisions and re-issue a revised draft herein referred to as the draft final Amendment. To the extent that **Section 10 - CONSULTATION**, contains time periods differing from these 30 day periods, this provision will control for consultation on the Amendment to the SMP.

(b) If the Navy proposes, in the draft final Amendment to the SMP, modifications of Milestones to which either EPA or the State have not agreed, those proposed modifications shall be treated as a request by the Navy for an extension. Milestones may be extended during the SMP review process by following Subsections 12.4 through 12.7. All other extensions will be governed by **Section 14 - EXTENSIONS**. The time period for EPA to respond to the request for extension will begin on the date EPA receives the draft final Amendment to the SMP, and EPA and the State shall advise the Navy in writing of their respective positions on the request within thirty days. If EPA and the State approve of the Navy's draft final Amendment, the document shall then await finalization in accordance with Subsections 12.4(e) and 12.5. If EPA denies the request for extension, then the Navy may amend the SMP in conformance with EPA and State comments or seek and obtain a determination through the dispute resolution process established in **Section 22 - DISPUTE RESOLUTION**, within 21 days of receipt of notice of denial. Within 21 days of the conclusion of the dispute resolution process, the Navy shall revise and reissue, as necessary, the draft final Amendment to the SMP. If EPA or the State initiates a formal request for a modification to the SMP to which the Navy does not agree, EPA or the State may initiate dispute resolution as provided in **Section 22 - DISPUTE RESOLUTION** with respect to such proposed modification. In resolving a dispute, the persons or person resolving the dispute shall give full consideration to the bases for changes or extensions of the Milestones referred to in Subsection 11.6 asserted to be present, and the facts and arguments of each of the Parties.

(c) Notwithstanding Subsection 12.4(b), if the Navy

proposes, in the draft final Amendment to the SMP, modifications of Project End Dates which are intended to reflect the time needed for implementing the remedy selected in the Record of Decision but to which either EPA or the State has not agreed, those proposed modifications shall not be treated as a request by the Navy for an extension, but consistent with **Section 22 - DISPUTE RESOLUTION**, EPA or the State may initiate dispute resolution with respect to such Project End Date.

(d) In any dispute under this Section, the time periods for the standard dispute resolution process contained in Subsections 22.5, 22.6, 22.7 and 22.10 of **Section 22 - DISPUTE RESOLUTION**, shall be reduced by half in regard to such dispute, unless the Parties agree to dispute directly to the SEC level.

(e) The Navy shall finalize the draft final Amendment as a final Amendment to the SMP consistent with the mutual consent of the Parties, or in the absence of mutual consent, in accordance with the final decision of the dispute resolution process. The draft final Amendment to the SMP shall not become final until 21 days after the Navy receives official notification of Congress' authorization and appropriation of funds if funding is sufficient to complete work in the draft final SMP or, in the event of a funding shortfall, following the procedures in Subsection 12.5. However, upon approval of the draft final Amendment or conclusion of the dispute resolution process, the parties shall implement the SMP while awaiting official notification of Congress' authorization and appropriation.

Resolving Appropriations Shortfalls

12.5 After authorization and appropriation of funds by Congress and within 21 days after the Navy has received official notification of Navy's allocation based on the current year's Environmental Restoration, Navy (ER,N) Account, the Navy shall determine if planned work (as outlined in the draft final Amendment to the SMP) can be accomplished with the allocated funds. (1) If the allocated funds are sufficient to complete all planned work for that fiscal year and there are no changes required to the draft final Amendment to the SMP, the Navy shall immediately forward a letter to the other Parties indicating that the draft final Amendment to the SMP has become the final Amendment to the SMP. (2) If the Navy determines within the 21-day period specified above that the allocated funds are not sufficient to accomplish the planned work for the site (an appropriations shortfall), the Navy shall immediately notify the Parties. The Project Managers shall meet within thirty (30) days to determine if planned work (as outlined in the draft final Amendment to the 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 discussion period, the Parties determine that rescoping or implementing cost-saving measures are not sufficient to offset the appropriations shortfall such that Near Term Milestones, Out Year Milestones, and Project End Dates should be modified, the Parties shall discuss these changes and develop modified Milestones. Such modifications shall be based on the "Risk Plus Other Factors" prioritization process discussed in Subsection 11.3, and shall be specifically identified by the Navy. The Navy shall submit a new draft final Amendment to the SMP to the other Parties within 30 days of the end of the 30 day discussion period. In preparing the revised draft final Amendment to the SMP, the Navy shall give full consideration to EPA and State input during the 30-day discussion period. If the EPA and State concur with the modifications made to the draft final Amendment to the SMP, EPA and the State shall notify the Navy and the revised draft final Amendment shall become the final Amendment. In the case of modifications of Milestones due to appropriations shortfalls, those proposed modifications shall, for purposes of dispute resolution, be treated as a request by the Navy for an extension, which request is treated as having been made on the date that EPA receives the new draft final SMP or draft final Amendment to the SMP. EPA and the State shall advise the Navy in writing of their respective positions on the request within 21 days. The Navy may seek and obtain a determination through the dispute resolution process established in **SECTION 22 - DISPUTE RESOLUTION**. The Navy may invoke dispute resolution within fourteen days of receipt of a statement of nonconcurrence with the requested extension. In any dispute concerning modifications under this Section, the Parties will submit the dispute directly to the SEC level, unless the Parties agree to utilize the standard dispute resolution process, in which case the time periods for the dispute resolution process contained in Subsections 22.5, 22.6, 22.7 and 22.10 of **SECTION 22 - DISPUTE RESOLUTION**, shall be reduced by half in regard to such dispute. Within 21 days after the conclusion of the dispute resolution process, the Navy shall revise and reissue, as necessary, the final Amendment to the SMP.

12.6 It is understood by all Parties that the Navy will work with representatives of the other Parties to reach consensus on the reprioritization of work made necessary by any annual appropriations shortfalls or other circumstances as described in Section 12.5. 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 other states.

Public Participation

12.7 In addition to any other provision for public participation contained in this Agreement, the development of the SMP, including its annual Amendments, shall include participation by members of the public interested in this action. The Navy must ensure that the opportunity for such public participation is timely; but this Subsection 12.7 shall not be subject to **SECTION 23 - STIPULATED PENALTIES.**

(a) The Parties will meet, after seeking the views of the general public, and determine the most effective means to provide for participation by members of the public interested in this action in the POM process and the development of the SMP and its annual Amendments. The "members of the public interested in this action" may be represented by inclusion of a restoration advisory board or technical review committee, if they exist for Concord, or by other appropriate means.

(b) The Navy shall provide timely notification under Section 12.5, regarding allocation of ER,N, or BRAC or other applicable appropriations to the members of the public interested in this action.

(c) The Navy shall provide opportunity for discussion under Sections 12.2, 12.4, 12.5, and 12.6 to the members of the public interested in this action.

(d) The Navy shall ensure that public participation provided for in this Subsection 12.7 complies with Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

13. FUNDING

13.1 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 its budgetary process to fulfill its obligations under this Agreement.

13.2 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.

13.3 Any requirement for the payment or obligation of funds, including stipulated penalties, by the Navy established by the

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

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

13.5 Funds authorized and appropriated annually by Congress under the Environmental Restoration, Navy's (ER,N) appropriation in the Department of Defense Appropriations Act will be the source of funds for activities required by this Agreement consistent with 10 U.S.C. Chapter 160. However, should the ER,N or other appropriation be inadequate in any year to meet the Navy's total implementation requirements under this Agreement, the Navy will, after consulting with the other Parties and discussing the inadequacy with the members of the public interested in the action in accordance with **SECTION 12 - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN ("SMP")**, prioritize and allocate that year's appropriation.

14. EXTENSIONS

14.1 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 14.2, below. Any request for extension by the Navy shall be submitted to the other Parties in writing and shall specify:

- (a) The timetable, and 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 obtained.

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

- (a) An event of Force Majeure, as defined in **Section 15 - FORCE MAJUERE**.

(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 target date or milestone or timetable and deadline or schedule.

(e) A delay caused by receipt of unusually extensive public comments in connection with the Navy's performance of this Agreement.

(f) Any work stoppage within the scope of **Section 20 - REMOVAL AND EMERGENCY ACTIONS**, but only to the extent of work stopped or work necessarily dependent on that work.

(g) Any other event or series of events mutually agreed to by the Parties as constituting good cause.

14.3 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.

14.4 Within seven (7) days of receipt of a request for an extension of a timetable and deadline or a schedule, the other Parties shall advise the requesting Party in writing of their respective positions on the request. Any failure by the other Parties 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 nonconcurrence an explanation of the basis for its position.

14.5 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.

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

14.7 A written, timely, and good faith request by the Navy for an extension shall delay 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.

15. FORCE MAJEURE

15.1 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 or other national emergency declared by the President or Congress and affecting the Navy;
- (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 or overcome;
- (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 12 - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN ("SMP")**.

15.2 A Force Majeure shall also include any strike or other labor dispute, whether or not within the control of the Parties affected thereby. Force Majeure shall not include increased costs or expenses of Response Actions, whether or not anticipated at

the time such Response Actions were initiated.

15.3 The Navy shall exercise its best efforts to avoid or minimize any such delay and any effects of such delay.

16. PROJECT MANAGERS

16.1 On or before the effective date of this Agreement, EPA, the Navy, and the State shall each designate a Project Manager and notify the other Parties 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, EPA, and the State 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.

16.2 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.

16.3 The Parties' Project Managers shall meet or confer informally as necessary as provided in **Section 10 - CONSULTATION**. Although the Navy has ultimate responsibility for meeting its respective deadlines, EPA and State Project Managers shall endeavor to assist in this effort by scheduling meetings to review documents and reports, evaluating the performance of environmental monitoring at the Site, reviewing RI/FS or RD/RA progress, and attempting to resolve disputes informally. At least one week prior to each scheduled Project Manager meeting, the Navy will provide to EPA and State Project Managers a draft agenda and 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 Subsection 33.1;

(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, 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.

16.4 The Parties' Project Managers shall make necessary and appropriate adjustments to deadlines or schedules in accordance with **Sections 12 - BUDGET DEVELOPMENT AND AMENDMENT OF SMP and 14 - EXTENSIONS.**

16.5 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 used in carrying out this Agreement. The minor field modifications proposed under this Part 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 all 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 therefore and shall provide or mail a copy of the memorandum to the Project Managers of the other Parties for signature and return.

16.6 Modifications of work not provided for in Subsections 16.4 and 16.5 of this Section must be approved by all Project Managers to be effective. If agreement cannot be reached on the proposed modification to work, the procedures of **Section 22 - DISPUTE RESOLUTION** shall be used. Within five (5) business days following a request for a modification made pursuant to this Section, the Project Manager who requested the modification shall prepare a memorandum detailing the modification and the reasons therefore and shall provide or mail a copy of the memorandum to the other Project Managers for signature and return. 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.

16.7 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 16.8 below by the deadline established under **Section 11 - CONTENTS OF SITE MANAGEMENT PLAN ("SMP")**. Time limitations shall commence upon receipt. The Navy shall provide to the EPA and the State three (3) and two (2) copies (or fewer, if mutually agreed), respectively, of each Primary and Secondary Document. Secondary documents may also be transmitted electronically.

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

(a) For the Navy:

Gilbert A. Rivera
Engineering Field Activity, West
Naval Facilities Engineering Command
900 Commodore Drive
San Bruno, CA 94066-5066

(b) For EPA:

Roberta Blank SFD 8-2
U.S. Environmental Protection Agency
Federal Facilities Cleanup Branch
75 Hawthorne Street
San Francisco CA 94105

(c) For the California Department of Toxic Substances Control:

James Pinasco
California Environmental Protection Agency
Department of Toxic Substances Control
Site Mitigation Branch
10151 Croydon Way, Suite 3
Sacramento, CA 95827

(d) For the California Regional Water Quality Control Board:

Claudia Villacorta
California Regional Water Quality Control
Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

16.9 The Project Manager for the Navy shall represent the Navy with regard to day-to-day field activities at the Site. The Navy Project Manager or other designated representative of the Navy 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 or State Project Managers from the Site shall not be cause for work

stoppage or delay unless the Project Managers agree otherwise in writing.

16.10 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 Field Sampling Plan ("FSP") and Quality Assurance Project Plan ("QAPP");

(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 18 - ACCESS;**

(c) Reviewing sampling data, records, files, and documents relevant to the Agreement, subject to the limitations set forth in **Section 31 - RECORD PRESERVATION;**

(d) Determining the form and specific content of the Project Manager meetings; and,

(e) Recommending and requesting minor field modifications to the work to be performed pursuant to a final work plan, or in techniques, procedures, or design utilized in carrying out such work plan.

16.11 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 Project Managers 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 14 - EXTENSIONS** shall apply.

17. EXEMPTIONS

17.1 The Parties recognize that the President may issue an order regarding response actions at Concord pursuant to Section 120(j) of CERCLA, 42 U.S.C. Section 9620(j), or may exempt any solid waste management facility at Concord from compliance with federal, State, interstate and local requirements respecting control or abatement of solid waste or hazardous waste disposal or management pursuant to Section 6001(a) of RCRA, 42 U.S.C. Section 6961(a). The Navy shall obtain access to and perform all actions required by this Agreement within all areas inside those portions of Concord which are not the subject of or subject to any such Executive Order or exemption issued by the President.

17.2 The State reserves any statutory right it may have to

challenge any order or exemption specified in Subsection 17.1 relieving the Navy of its obligations to comply with this Agreement.

18. ACCESS

18.1 The EPA and the State or their 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 or the State deems necessary under this Agreement; assessing the need for planning additional Remedial Response Actions at the Site; and verifying data or information submitted to EPA and the State. The Navy shall honor all reasonable requests for access to the Site made by EPA or the State, upon presentation of credentials showing the bearer's identification and that she or he is an employee or agent of the EPA or the State. The Navy Project Manager or her/his 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.

18.2 The rights granted in Paragraph 18.1 and 18.4 to EPA and the State regarding access shall be subject to regulations and statutes, security regulations, OPNAVINST 5510.1H, April 29, 1986, as may be necessary to protect national security information ("classified information") as defined in Executive Order 12356, and any Site health and safety requirements. Such requirements shall not be applied so as to unreasonably hinder EPA or the State from carrying out their responsibilities and authority pursuant to this Agreement.

18.3 The Navy shall provide an escort whenever EPA or the State requires access to restricted areas of Concord for purposes consistent with the provisions of this Agreement. EPA and the State shall provide reasonable notice (which may, if practical, be 48 hours advance notice) to the Navy Project Manager 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 or the State, the Navy shall promptly provide a written list of

current restricted or controlled-access areas.

18.4 The EPA and the State shall have the right to enter all areas of the Site that are entered by contractors performing work under this Agreement.

18.5 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.

18.6 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 any other entity by agreement with the Navy; or b) are in any manner under the control of the Navy or of any other entity under agreement with 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. The Navy shall ensure that any agreements with other entities shall provide for the continued right of entry for all Parties for the performance of such response activities. In accordance with applicable law, any agreement shall provide that no conveyance of title, easement, or other interest in the property shall be consummated without the continued right of entry.

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

18.8 To the extent the activities pursuant to this Agreement must be carried out on non-Navy property, the Navy shall use its best efforts, including its authority, to the extent such authority is delegated to the Navy, under CERCLA Section 104, 42 U.S.C. Section 9604, to obtain access agreements from the owners that shall provide reasonable access for the Navy, EPA, the State, and their representatives. In the event that the Navy is unable to obtain such access agreements, the Navy shall promptly notify the other Parties. The Navy may request the assistance of the State in obtaining such access, and upon such request, the State will use its best efforts to obtain the required access.

18.9 With respect to non-Navy property on which monitoring wells, pumping wells, or other response actions are to be located, the Navy shall use its best efforts to ensure that any access agreements shall provide for the continued right of entry for all Parties for the performance of such remedial activities.

In accordance with applicable law, any access agreement shall provide that no conveyance of title, easement, or other interest in the property shall be consummated without the continued right of entry.

19. PERMITS

19.1 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.

19.2 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 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.

19.3 When the Navy proposes a response action, other than an emergency removal action, to be conducted entirely on site, which in the absence of Section 121(e)(1) of CERCLA, 42 U.S.C. Section 9621(e)(1), 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 in Subsection 19.3(b) above.

19.4 Subsection 19.2 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, contaminant, or hazardous waste off the Site or in any other circumstances where the exemption provided for at Section 121(e)(1) of CERCLA, 42 U.S.C. Section

9621(e), does not apply.

19.5 The Navy shall notify EPA and the State 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 and the State with copies of all such permits, applications, and other documents related to the permit process and final permits. Upon request by the Navy Project Manager, the EPA and State Project Managers will assist the Navy, to the extent feasible, in obtaining any required permit.

19.6 The Navy agrees to notify EPA and the State of its intention to propose modifications to this Agreement to obtain conformance with a permit that has been issued or to enable the Navy to obtain a permit or other authorization which is necessary for implementation of this Agreement where implementation of the permit requirement would be 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 and the State its proposed modifications to this Agreement with an explanation of its reasons in support thereof.

19.7 EPA and the State shall review the Navy's proposed modifications to this Agreement in accordance with **Section 39 - AMENDMENT OF 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 and the State may elect to delay review of the proposed modifications until after such final determination is entered.

19.8 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 as provided above, 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. Pending the resolution of an appeal of, or a request to modify, a permit required to implement this Agreement, the inability to implement the relevant portions of this Agreement without violating the permit shall serve as good cause for the extension of any corresponding deadline.

19.9 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.

20. REMOVAL AND EMERGENCY ACTIONS

20.1 Discovery and Notification:

(a) For purposes of this Agreement, "emergency removal action" is defined as a situation that poses a risk of fire or explosion or that needs immediate attention, i.e., within hours or days of discovering the situation.

(b) If any Party discovers or becomes aware of an emergency or other situation that may present an endangerment to public health, welfare or the environment at or near the Facility, which is pertinent to or may affect the work performed under this Agreement, that Party shall notify the other Parties orally within twenty-four (24) hours and will forward written notification within seven (7) days.

(c) The Navy shall comply with the emergency preparedness and emergency response planning and reporting requirements of all applicable statutes, regulations and standards, including but not limited to the Emergency Response and Community Right-to-Know Act, as applied to federal facilities pursuant to Executive Order 12856; the Clean Water Act; RCRA and DERP. The Navy shall retain copies of any documents required by such provisions in a central location at or near Concord and shall, upon request provide access to such documents to EPA, the State or a local emergency response agency.

(d) If the emergency arises from activities conducted pursuant to this Agreement, the Navy shall then take immediate action to notify the appropriate Federal, State, and local agencies and affected members of the public.

(e) For emergency removal actions, the Parties will consult to the extent practical before commencement of fieldwork and the Navy shall notify EPA and the State in accordance with Subsection 20.1(b). Such oral notification shall, except in such a case where the urgency of the situation does not allow, include adequate information concerning site background, threat to public health and welfare or the environment (including the need for response), proposed actions and costs (including a comparison of possible alternatives, means of transportation of any hazardous substances off the premises at Concord, and the proposed manner of disposal), and expected change in the situation should action not be taken or should action be delayed (including associated environmental impacts). If the Navy believes it must commence emergency activities without delay, the Navy shall attempt to

contact the EPA and State Project Managers, or if the Project Manager is unavailable, his/her supervisor, prior to commencing such activities. Within sixty days from initiation of fieldwork, the Navy will furnish EPA and the State with an Action Memorandum addressing the information provided in the oral notification, and any other information required pursuant to applicable State law, CERCLA and the NCP, and in accordance with pertinent EPA guidance for such actions.

(f) If any Party determines that there may be an endangerment to the public health, or welfare or the environment because of an actual or threatened release of hazardous substances, pollutants or contaminants at or from the Facility, that Party may request that the Navy take such response actions as may be necessary to abate such danger or threat and to protect the public health or welfare and the environment.

20.2 Emergency Work Stoppage:

In the event that any Party determines that activities conducted pursuant to this Agreement will cause or otherwise be threatened by a situation that may present an endangerment to public health, welfare or the environment at or near the Facility, that Party may propose the suspension of such activities, and activities may be stopped as per the Parties' agreement. In the absence of mutual agreement, the activities shall be stopped in accordance with the proposal, and the matter shall be immediately referred to the EPA Superfund Division Director for a work stoppage determination in accordance with Section 22.9.

20.3 Removal Actions:

(a) All removal actions conducted at the Facility shall be conducted in a manner consistent with this Agreement, CERCLA, the NCP, EO 12580, and applicable State law.

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

(c) Nothing in this Agreement shall alter any authority the State or EPA may have with respect to removal actions at the Site.

(d) All reviews conducted by EPA and the State pursuant to 10 U.S.C. 2705(b)(2) will be expedited so as not to unduly jeopardize the Navy's fiscal resources for funding the removal actions.

20.4 Notice and Opportunity to Comment:

(a) The Navy shall provide the other Parties with timely notice and opportunity to review and comment upon any proposed removal action for the Site, in accordance with 20 U.S.C. 2705(a)

and (b). The Navy agrees to provide the information described below pursuant to such obligation.

(b) For emergency response actions, the Navy shall provide EPA and the State with notice in accordance with subsection 20.1.

Such oral notification shall, except in the case of extreme emergencies, include adequate information concerning the Site background, threat to the public health and welfare or the environment (including the need for response), proposed actions and costs (including a comparison of possible alternatives, means of transportation of any hazardous substances off-site, and proposed manner of disposal), expected change in the situation should no action be taken or should action be delayed (including associated environmental impacts), any important policy issues, and the Navy On-Scene Coordinator recommendations. Within sixty (60) days of initiation of the field work, the Navy will furnish EPA and the State with an Action Memorandum addressing the information provided in the oral notification, and any other information required pursuant to CERCLA and the NCP, and in accordance with pertinent EPA guidance for such actions.

(c) For other removal actions, the Navy will provide EPA and the State with an opportunity to review and comment in accordance with the provisions of Section 10.4 and 10.7. Non-emergency removal action memoranda (as indicated in Sec. 10.4(c)) and determinations made under paragraph 20.1(f) are subject to the Alternative Dispute Resolution requirements of subsection 20.5.

(d) All activities related to ongoing removal actions shall be reported by the Navy in the progress reports described in **Section 16 - PROJECT MANAGERS.**

20.5 Alternative Dispute Resolution for Removal Actions:

(a) Except as provided for in Section 20.6, the following paragraphs shall apply to disputes arising out of time critical and non-time critical removal action activities. All Parties subject to this Agreement shall make reasonable efforts to informally resolve disputes at the Project Manager or immediate supervisor level. If resolution can not be achieved informally, the procedures of this Section shall be implemented to resolve a dispute on a removal action.

(b) A dispute shall be considered to have arisen when one Party sends another Party a written notice of such dispute, which shall expressly invoke the alternate dispute resolution process for removal actions. The disputing Party shall submit to the other Parties 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 on to support its position.

(c) Prior to any Party's issuance of a written statement of

dispute, the disputing Party shall engage the other Parties in informal dispute resolution among the Project Managers or their immediate supervisors. During this informal dispute resolution period the Parties may meet or confer as many times as are necessary to attempt to resolve the dispute.

(d) A Party may propose the suspension or alteration of the action, and the action shall be stopped or altered as per the proposal if the Parties agree. If the Parties do not agree, the removal action will proceed unless EPA makes a work stoppage determination in accordance with Subsection 22.9.

(e) The Dispute Resolution Committee (DRC), as defined in Section 22.4, will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution.

(f) 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 Navy shall provide a statement of the status of the dispute and its intent with respect to how the disputed removal will be conducted.

(g) EPA and the State will retain any rights they possess with regard to the issue raised in the dispute under this subsection, including, but not limited to, any enforcement or other action available to them under applicable law. The Navy may take any action or assert any defense available to it under applicable law.

(h) All time limits provided in the dispute resolution process set forth above may be extended on a case by case basis, by mutual agreement of the EPA, State and the Navy. The EPA, State and Navy agree that time is of the essence with respect to resolving disputes arising under this Section.

20.6 Any dispute between the Parties as to whether a proposed non-emergency response action is (a) properly considered a removal action, as defined by 42 U.S.C. Section 9601(23), or (b) consistent, to the extent practicable under CERCLA section 104(a)(2), with any remedial action shall be resolved pursuant to **Section 22 - DISPUTE RESOLUTION.**

21. PERIODIC REVIEW

21.1 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 substances, pollutants, or contaminants remaining at the Site above levels that would allow for unlimited use and unrestricted exposure, the

Parties shall review such remedial action 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 and the State upon its completion.

21.2 If upon such review one of the Parties proposes that additional action or modification of remedial action is appropriate at the Site such proposal shall be handled under Subsection 9.11 or 9.12 of this Agreement.

21.3 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 22 - DISPUTE RESOLUTION**.

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

21.5 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.

21.6 The State reserves the right to exercise any authority under State law to seek the performance of additional work when it is determined that such additional work is necessary.

22. DISPUTE RESOLUTION

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

22.2 Within thirty (30) days after: (1) the issuance of a draft final Primary Document pursuant to **Section 10 - CONSULTATION**, or (2) any action which leads to or generates a dispute, the disputing Party shall submit to the DRC a written statement of dispute setting forth the nature of the dispute, the Work affected by the dispute, the disputing Party's position with respect to the dispute, and the legal, technical or factual information the disputing Party is relying upon to support its position.

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

22.4 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 Superfund Division Director. The Navy's designated member is the Commanding Officer, EFA West. The State will designate its representative to the DRC after it signs this Agreement by submitting a written statement to EPA and the Navy. Written notice of any delegation of authority from the Party's designated representative on the DRC shall be provided to all other Parties in writing before the delegation takes effect.

22.5 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) within seven (7) days after the close of the twenty-one (21) day resolution period.

22.6 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 U.S. EPA Region 9 Administrator or his or her delegatee. The State will designate its representative to the SEC after it signs this Agreement by submitting a written statement to EPA and the Navy. The Navy's representative on the SEC is Commander, Naval Region Southwest 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 9 and the Commander, Naval Region Southwest. Any documents issued by the SEC or its members pertaining to a dispute shall be issued by the Regional Administrator of Region 9 and/or the Commander, Naval Region Southwest. 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 all 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 or the State 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 or the State 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.

22.7 Upon escalation of a dispute to the Administrator of EPA pursuant to Subsection 22.6 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 or his or her delegatee to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the other Parties with a written final decision setting forth resolution of the dispute. The duties of the Administrator 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 Subsections 22.6 and 22.7 may be delegated only to the Assistant Secretary of the Navy (Installations and Environment).

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

22.9 When dispute resolution under this Section, or Alternative Dispute Resolution under Subsection 20.5, is in progress, work affected by the dispute will immediately be discontinued if the Superfund Division Director for EPA Region 9 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. The State may request that the EPA Superfund Division Director order work stopped for reasons set out above. To the extent possible the Party seeking work stoppage shall consult with the other Parties prior to initiating a work stoppage request. After work stoppage, if a Party believes that the work stoppage is inappropriate or may have potential significant adverse impacts, the Party may meet with the other Parties to discuss the work stoppage. Following this meeting and further consideration of this issue, the EPA Superfund Division Director will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the EPA Superfund Division Director may immediately be subject to formal dispute resolution.

22.10 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. The deadline set forth above may in appropriate circumstances be extended in accordance with **Section 14 - EXTENSIONS**.

22.11 Except as otherwise provided for in **Section 26 - RESERVATION OF RIGHTS**, 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.

23. STIPULATED PENALTIES

23.1 In the event that the Navy fails to submit a Primary Document, as listed in **Section 10 - CONSULTATION**, to EPA and the State 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. The State may propose to EPA that such stipulated penalties be assessed. 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.

23.2 Upon determining that the Navy has failed in a manner set forth in Subsection 23.1, EPA or the State 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.

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

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

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

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

23.6 This Section shall not affect the Navy's ability to obtain an extension of a timetable, deadline, or schedule pursuant to **Section 14 - EXTENSIONS**.

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

24. ENFORCEABILITY

24.1 EPA, the State, 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 to the extent provided in CERCLA Section 310, and any violation of such standard, regulation, condition, requirement, or order may 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 to the extent provided in CERCLA Section 310, and any violation of such timetables and deadlines may 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 to the extent provided in CERCLA Section 310(c), and any violation of such terms or conditions may be subject to civil penalties under CERCLA Sections 310(c) and 109; and

(d) Any final resolution of a dispute pursuant to **Section 22 - DISPUTE RESOLUTION** which establishes a term, condition, timetable, deadline, or schedule shall be enforceable by any person to the extent provided in CERCLA Section 310(c), and any violation of such term, condition, timetable, deadline, or schedule may be subject to civil penalties under CERCLA Sections 310(c) and 109.

24.2 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).

24.3 Nothing in this Agreement shall be construed as a restriction or waiver of any rights EPA or the State 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 the State may have under State law, including sovereign immunity. The Navy does not waive any rights it may have under CERCLA, DERP, or Executive Order 12580.

24.4 The Parties agree to exhaust their rights under **Section 22 - DISPUTE RESOLUTION** prior to exercising any rights to judicial review that they may have.

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

25. OTHER CLAIMS

25.1 Subject to **Section 8 - 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.

25.2 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.

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

25.4 Unless specifically agreed to in writing by all the parties, the EPA and the State shall not be held as a party to any contract entered into by the Navy to implement the requirements of this Agreement.

25.5 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.

25.6 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 the Site.

26. RESERVATION OF RIGHTS

26.1 In consideration for the Navy's compliance with this Agreement, and based on the information known to the Parties or reasonably available on the effective date of this Agreement, the Parties agree that compliance with this Agreement shall stand in lieu of any administrative, legal, and equitable remedies against the Navy available to them regarding the releases or threatened releases of hazardous substances, hazardous wastes, pollutants or contaminants at the Site which are the subject of an RI/FS conducted pursuant to this Agreement and which have been or will be adequately addressed by the remedial actions provided for under this Agreement. The above notwithstanding, EPA and the State reserve all rights each may have with regard to the Navy taking any removal action after exhaustion of the alternative dispute resolution process set forth in Subsection 20.5.

26.2 This Agreement shall not restrict EPA, the State or the Navy from taking any legal or response action for any matter not part of the subject matter of this Agreement.

27. PROPERTY TRANSFER

27.1 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 and the State sixty (60) days notice prior to the sale or transfer by the United States of any title, easement, or other interest in the real property affected by this Agreement. 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.

27.2 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-Department of Navy activity to function as an operator on any portion of the Site.

28. REIMBURSEMENT OF STATE SERVICES

The Navy and the State agree to use the Defense State Memorandum of Agreement, DSMOA, for reimbursement of services provided in direct support of Navy environmental restoration activities at the Site pursuant to this Agreement.

29. RECOVERY OF EPA EXPENSES

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.

30. 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 SI, RI, FS, RD, and RA Work Plan(s), as appropriate. These work plans will be reviewed as Primary Documents pursuant to **Section 10 - CONSULTATION**. 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 and the State 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 QA/QC 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 and the State upon request. The Navy shall ensure that EPA and the State or their authorized representatives shall have access to all laboratories performing analyses on behalf of the Navy pursuant to this Agreement.

31. RECORD PRESERVATION

31.1 Despite any document retention policy which might allow earlier destruction or disposal, EPA and the Navy shall preserve, during the pendency of this Agreement and for a minimum of seven

(7) years after its termination or for a minimum of seven (7) years after implementation of any additional action taken pursuant to **Section 21 - PERIODIC REVIEW**, all records and documents in their possession which relate to actions taken pursuant to this Agreement. The State shall preserve all records and documents in its possession that relate to actions taken pursuant to this Agreement in accordance with State law and policy. After the seven (7) year period, or for the State at the expiration of its document retention period, each Party shall notify the other Parties 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 to the requesting party 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 seven (7) years following the termination of any judicial action regarding the work performed under CERCLA that is the subject of this Agreement.

32. SAMPLING AND DATA/DOCUMENT AVAILABILITY

32.1 Each Party shall make all sampling results, test results, or other data or documents generated through the implementation of this Agreement available to the other Parties.

All quality-assured data shall be supplied within sixty (60) days of its collection. If the quality assurance procedure is not completed within sixty (60) days, raw data or results shall be submitted within the sixty (60) day period and quality assured data or results shall be submitted as soon as they become available. The procedures of **Section 14 - EXTENSIONS** shall apply to the sixty-day period referred to herein.

32.2 At the request of any Party, a Party shall allow the other Parties or their authorized representatives to observe field work and to take split or duplicate samples of any samples collected pursuant to this Agreement. The sampling Party's Project Manager shall notify the other Parties' Project Managers by telephone not fewer than fourteen (14) days in advance of any scheduled sample collection activity unless otherwise agreed upon by the Parties. The Party shall provide written or electronic

confirmation within three (3) business days of the telephonic notification. Other Parties desiring to collect split or duplicate samples shall inform the sampling Party two (2) business days before the time of sample collection. Each Party receiving a split or duplicate sample shall on request provide the sampling Party with its chain of custody documents relating to such sample.

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

33. PROTECTED INFORMATION

33.1 The Navy may assert a written confidentiality claim for information to which it would be entitled to claim an exemption pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. Section 552(b), covering information requested pursuant to this Agreement. Information claimed to be confidential by the Navy pursuant to FOIA shall be afforded the protection specified therein by EPA and the State.

33.2 If EPA requests FOIA-exempt information from the Navy to which EPA is entitled, EPA shall not release such information to the public without written permission from the Navy.

33.3 If the State requests FOIA-exempt information from the Navy, the State shall ensure that it can maintain the confidentiality of the information and provide proper assurance to the Navy. If the State cannot provide such assurance, the Navy may choose not to disclose the information.

33.4 If no claim of exemption under FOIA accompanies the information when it is transmitted, the information may be made available to the public without further notice to the Sending Party, unless the privileged nature of the material is obvious to the Recipient Party, in which case the Recipient Party will confer with the Sending Party to determine if the material is, in fact, privileged and was inadvertently submitted without an exemption claim.

33.5 The Navy shall not claim as FOIA-exempt any physical, sampling, monitoring, or analytical data.

33.6 National Security Information:

(a) Notwithstanding Subsection 33.1, 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 or the State 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 not at the meeting, the Navy shall notify the requesting Party that resolution is reached and 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.

(d) Nothing in this Agreement shall be construed as requiring the Navy to release any record in violation of the Privacy Act of 1974, 5 U.S.C. Section 552a.

34. COMMUNITY RELATIONS

34.1 The Navy will maintain and implement a Community Relations Plan. This plan responds to the need for an interactive relationship with all interested community elements, both on and off Concord, regarding environmental activities conducted pursuant to this Agreement by the Navy. Any revision or amendment to the Community Relations Plan shall be submitted to EPA and the State for review and comment, pursuant to Subsection 10.3.

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 at least 48 hours prior to issuance.

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 Concord available to the public, and 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 and the State. The Navy will provide to the EPA and the State on request any document in the Administrative Record except that the Navy may require that EPA or State personnel have sufficient clearance to view classified material.

34.6 Pursuant to 10 U.S.C. Section 2705(c) and **Section 36 - RESTORATION ADVISORY BOARD**, the Navy has established a Restoration Advisory Board (RAB) for Concord. 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.

35. PUBLIC COMMENT ON THIS AGREEMENT

35.1 Within forty-five (45) days after the execution of this Agreement by EPA and the Navy, EPA shall announce the availability of this Agreement to the public for its 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 34.5. 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 other Parties. 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. 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 other Parties and shall notify the other Parties in writing that the Agreement is effective. The effective date of the Agreement shall be the date of receipt by the Navy of the signed Agreement from EPA.

35.2 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 and the State, 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 and the State determine 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 other Parties 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 and the State determine 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 other Parties 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.

35.3 In the event that the Parties cannot agree on the modifications or on the Responsiveness Summary within the time period listed in Subsection 35.1 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.

35.4 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 procedures of **Section 22 - DISPUTE RESOLUTION**. 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 Parties within twenty (20) days after receiving from EPA the Final Written Decision of the resolution of the matters in dispute. If the State withdraws, and EPA and the Navy agree to proceed, the Agreement shall be effective as to EPA and the Navy.

Failure by a Party to provide such written notice of withdrawal to the EPA within this twenty (20) day period shall act as a waiver of the right of that Party to withdraw from the Agreement, except as provided in Section 42, and EPA shall thereafter send a copy of the final Agreement to each Party and shall notify each Party 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.

35.5 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. The Navy and State will work together prior to the start of the public comment period to develop the list of appropriate State and local agencies.

35.6 Existing records maintained by Concord 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.

36. RESTORATION ADVISORY BOARD

36.1 Pursuant to 10 U.S.C. Section 2705(d), the Navy has

established a Restoration Advisory Board (RAB) made up of members of the community, the Navy, the State, EPA, and the Natural Resource Trustees. The RAB will be co-chaired by a Navy representative and a community member. The Navy, EPA and State Project Managers will administer and participate in the RAB in accordance with the DOD and EPA "Restoration Advisory Board Implementation Guidelines" dated September 1994.

36.2 The chair shall schedule monthly meetings of the RAB unless the Parties and the community RAB members agree to meet less frequently. Meetings of the RAB shall be for the purpose of:

(a) Reviewing progress under the Agreement.

(b) Providing advice to the installation, EPA, State regulatory agencies, and other governmental agencies on environmental restoration activities and community involvement.

(c) Providing advice on priorities among sites or projects.

(d) Interacting with the LRA or other land use planning bodies to discuss future land use issues relevant to environmental restoration decision making.

(e) Acting as a conduit for exchange of information between the community, DOD installation, and environmental oversight agencies regarding the installation's restoration and reuse programs.

37. STATE PARTICIPATION CONTINGENCY

37.1 If the State fails to sign this Agreement within thirty (30) days of notification of the signature by both EPA and the Navy, this Agreement will be interpreted as if the State were not a signatory and any reference to the State, California Department of Toxic Substances Control, the State Water Resources Control Board or the Regional Water Quality Control Board in this Agreement will have no effect. In addition, the Navy shall have to comply only with those State requirements, conditions, or standards, including those specifically listed in this Agreement, that the Navy would otherwise have had to comply with absent this Agreement.

37.2 If the State is not a signatory to this Agreement,

(a) The Navy agrees to transmit all primary and secondary documents to the State at the same time such documents are transmitted to EPA; and

(b) EPA and the Navy intend to consult with the State with respect to the above documents and during implementation of this Agreement.

38. EFFECTIVE DATE

This Agreement shall be effective in its entirety in accordance with **Section 35 - PUBLIC COMMENT ON THIS AGREEMENT.**

39. AMENDMENT OF AGREEMENT

39.1 Except as provided in **Section 16 - 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 of the effective date pursuant to the notice provisions of **Section 16 - PROJECT MANAGERS.**

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

39.3 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 consistent with CERCLA and the NCP.

40. APPENDICES AND ATTACHMENTS

40.1 Appendices shall be an integral and enforceable part of this Agreement.

40.2 Attachments shall be for information only and shall not be enforceable parts of this Agreement. None of the facts related therein shall be considered admissions by, nor are they legally binding upon, any Party with respect to any claims unrelated to, or persons not a Party to, this Agreement.

41. SEVERABILITY

If any provision of this Agreement is ruled invalid, illegal, or unconstitutional, the remainder of the Agreement shall not automatically be affected by such a ruling, unless the provisions are inextricably related.

42. TERMINATION AND SATISFACTION

42.1 The provisions of this Agreement shall be deemed satisfied and terminated upon receipt by the Navy of written notice from EPA, with concurrence of the State, that the Navy has demonstrated that all the terms of this Agreement have been completed. If EPA denies or otherwise fails to grant a termination notice within ninety (90) days of receiving a written request from the Navy for such notice, EPA shall provide a written statement of the basis for its denial and describe the Navy actions which, in the view of EPA, would be a satisfactory basis for granting a notice of completion. Such denial or failure to grant a termination notice shall be subject to dispute resolution.

42.2 In no event will this Agreement terminate prior to the Navy's completion of the Work required by this Agreement as set forth in the SMP. However, the Navy's statutory obligation to perform certain long term actions, including but not limited to five-year reviews as required by **Section 21 - PERIODIC REVIEW**, may continue beyond the termination of this Agreement.

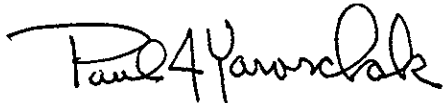
42.3 The State may terminate its participation in the Agreement at any time by giving ninety (90) days written notice to the other Parties.

AUTHORIZED SIGNATURES

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

IT IS SO AGREED:

By



Paul J. Yaroschak
Director, Environmental Compliance
& Restoration Policy

6/12/01

Date

By



Regional Administrator
U.S. EPA, Region 9

6/14/01

Date

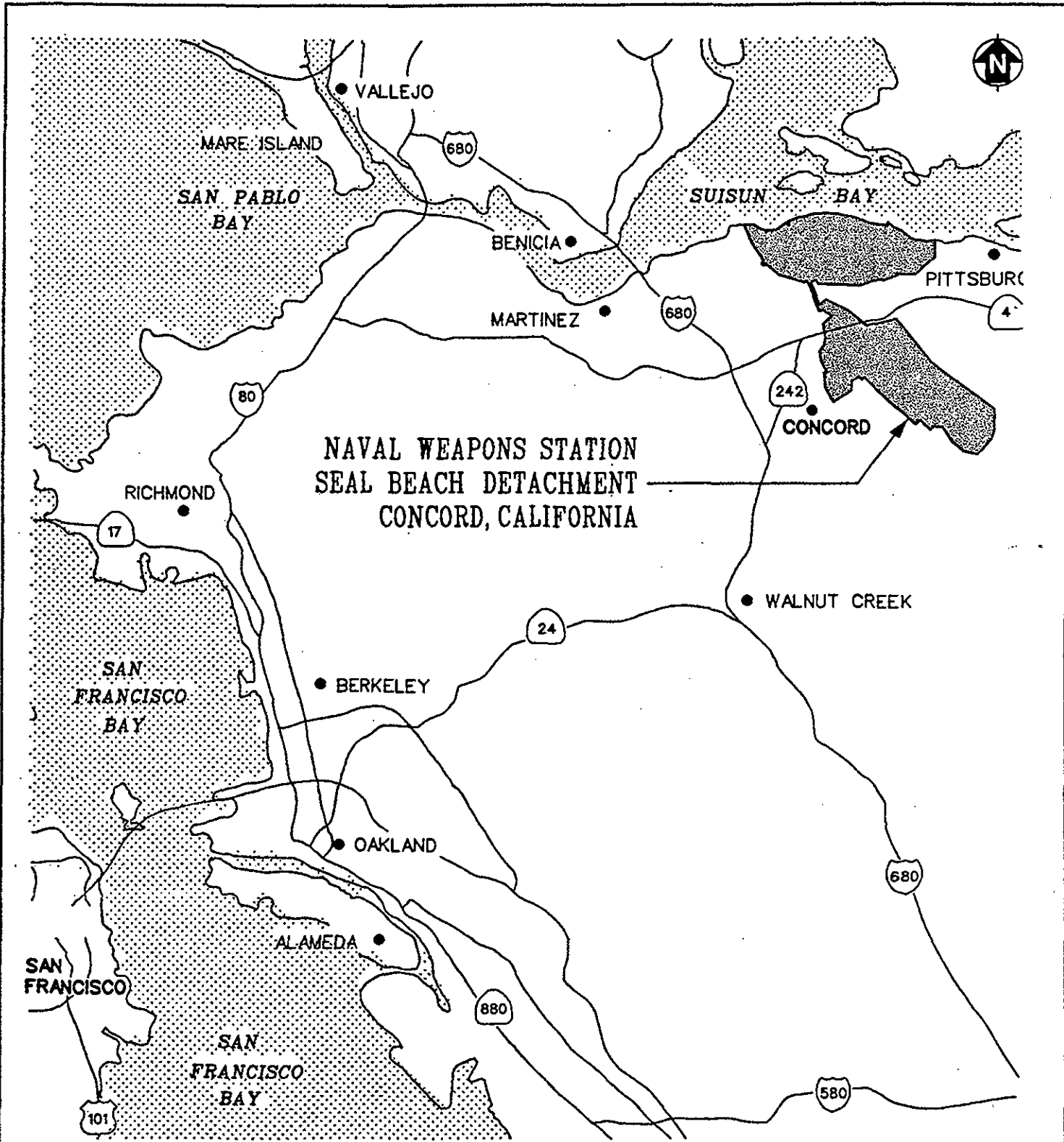
By

California Environmental
Protection Agency

Date

Appendix A
SITE MANAGEMENT PLAN

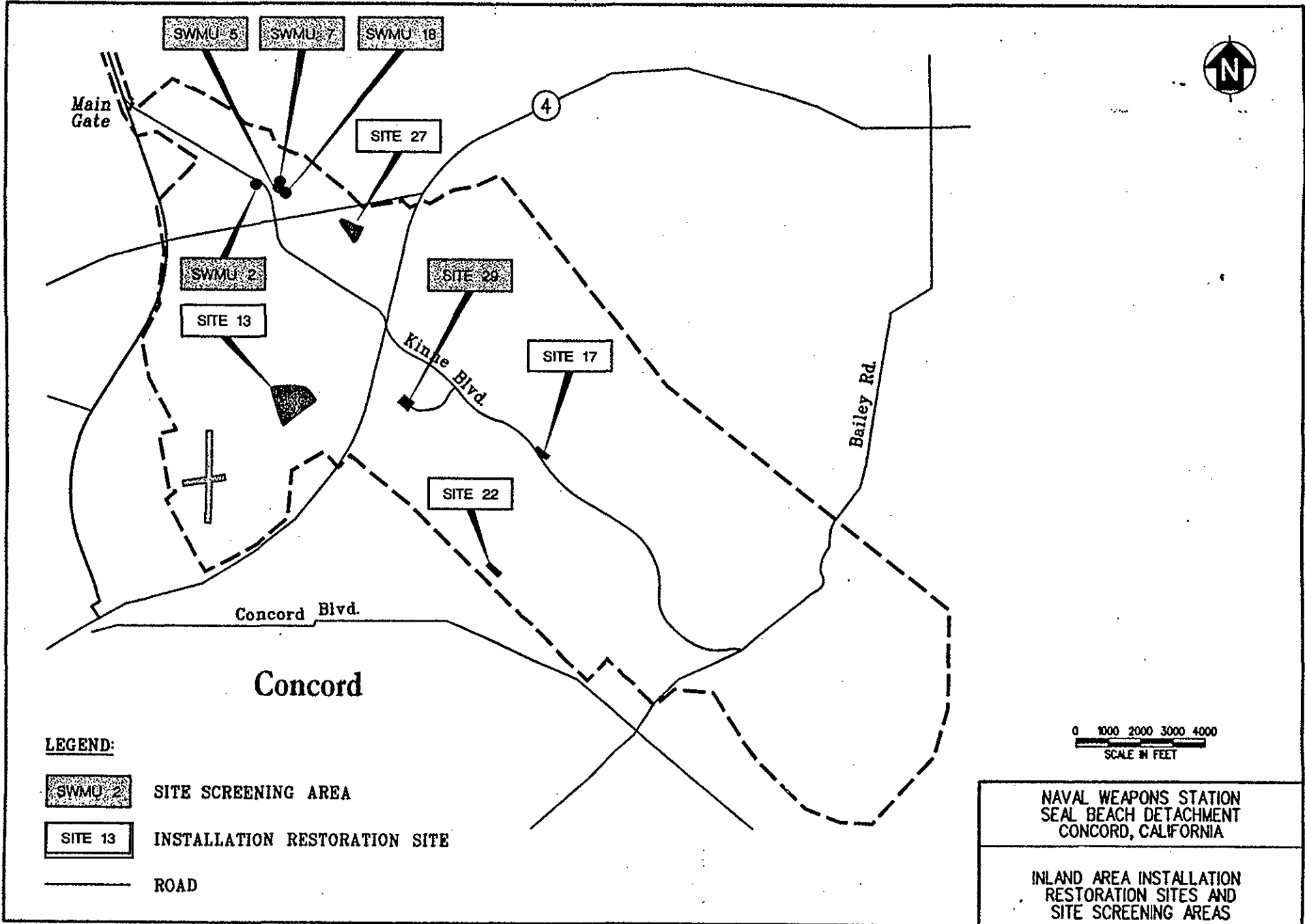
**Attachment A
Facility Map**

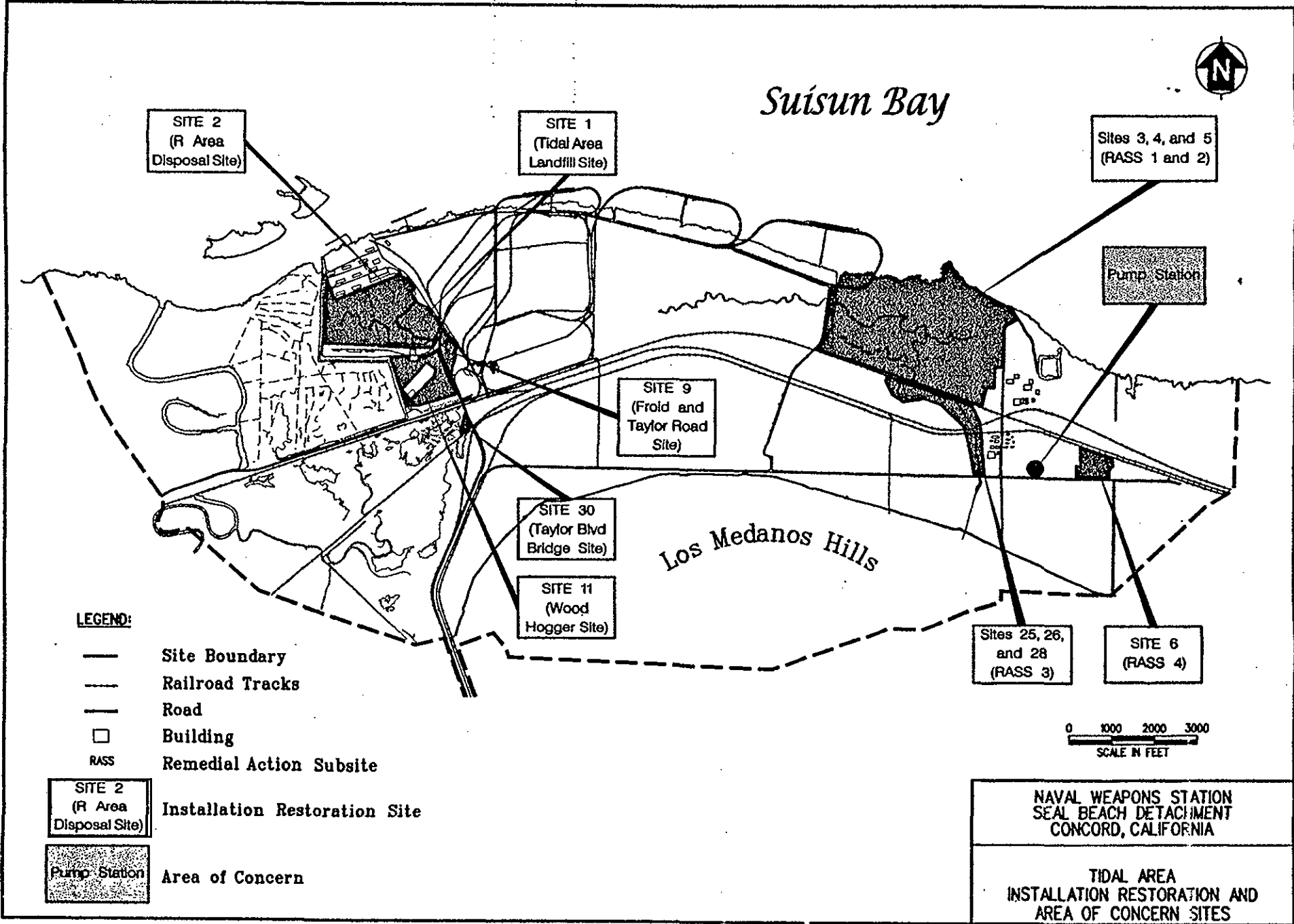


NAVAL WEAPONS STATION
SEAL BEACH DETACHMENT
CONCORD, CALIFORNIA

SITE VICINITY MAP

Attachment B
Map Showing IR Sites and SWMUs





Attachment C
Summary of Historical Activities

Summary of Historical Activities

Environmental investigations are being conducted at the following areas at Concord:

a) Inland Area: Four inland area IR Sites consisting of Sites 13 (Burn Area), 17 (Building IA24), 22 (Building 7SH5), and 27 (Building IA20) are in the RI/FS process.

b) Tidal Area: Four tidal area IR sites consisting of 2 (R Area Disposal Site), 9 (Froid and Taylor Road Disposal Area), 11 (Wood Hogger), and 30 (Taylor Blvd Bridge Site) are in the RI/FS process.

c) Tidal Area Landfill, or IR Site 1 is in the RI/FS process.

d) Litigation Area: Seven IR sites consisting of sites 3 (Kiln Sites), 4 (Allied Site a), 5 (Allied Site b), 6 (Coke Pile Site), 25 (K-2 Area), 26 (G-1 Area), and 28 (ES Area) comprise the Litigation Area. These 7 sites were later aggregated into four Remedial Action Subsites (RASSs) to facilitate subsequent RD and RA at the sites. The Navy completed a Decision Document for the 4 RASSs on April 6, 1989. The remedial action plan required excavation of contaminated soil in only the most contaminated areas, backfill, revegetation and monitoring for the excavated areas as well as for those areas where excavation was not conducted. Remediation of the four RASSes was completed in 1995. Significant monitoring and reporting were required as part of post-ROD work. Results from this monitoring will be part of a 5-yr periodic review report.

e) Inland Area SMWMU Sites 2, 5, 7, and 18 are in the RI/FS process.

f) Taylor Boulevard Bridge Disposal site is in the RI/FS process.

g) Site 29, Building IA-25 is in the RI/FS process.