

## IAG COVER SHEET

FILE NAME: **Yorktown.pdf**

Title: **Naval Weapons Station - Yorktown**

Subject: **Region 3, III**

Author: **Navy, DoD, Virginia, VA**

Keywords: **08/31/94, 1994, FY94**

# FEDERAL FACILITY AGREEMENT

(Under CERCLA Section 120)

United States Environmental Protection Agency

Region III

Commonwealth of Virginia

United States Department of the Navy

## NAVAL WEAPONS STATION YORKTOWN YORKTOWN, VIRGINIA

September 1994





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

COMMONWEALTH OF VIRGINIA

AND THE

UNITED STATES DEPARTMENT OF THE NAVY

IN THE MATTER OF: )

U.S. Department of the Navy )  
Naval Weapons Station - Yorktown )  
Yorktown, Virginia )

)  
)  
) **FEDERAL FACILITY AGREEMENT**  
) **Under CERCLA Section 120**

)  
)  
) **Administrative**  
) **Docket Number:**  
) **III-FCA-CERC-009**

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U.S. Department of the Navy ) FEDERAL FACILITY AGREEMENT  
Naval Weapons Station - Yorktown ) Under CERCLA Section 120  
Yorktown, Virginia )  
 )  
 ) Administrative  
 ) Docket Number:  
 ) III-FCA-CERC-009

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

**I. JURISDICTION**

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

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

B. EPA Region III enters into those portions of this Agreement that relate to interim remedial actions and final remedial actions pursuant to CERCLA Section 120(e)(2), 42 U.S.C.

Section 9620(e)(2), RCRA Sections 6001, 3008(h) and 3004(u) and (v), 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v), and Executive Order 12580;

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

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

E. The Commonwealth of Virginia enters into this Agreement pursuant to CERCLA Sections 120(f) and 121(f), 42 U.S.C. Sections 9620(f) and 9621(f), Section 3006 of RCRA, 42 U.S.C. Sections 6926, and the Virginia Waste Management Act, Virginia Code Sections 10.1-1400 et. seq.

## II. DEFINITIONS

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

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

B. "Agreement" shall refer to this document and shall include all Attachments to this document. All such Attachments

are integral parts of this Agreement and shall be enforceable to the extent provided herein.

C. "Applicable Commonwealth law" shall mean all Commonwealth of Virginia laws determined to be applicable under this Agreement. The term shall include but not be limited to all laws determined to be Applicable or Relevant and Appropriate Requirements (ARARs).

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

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

F. "Commonwealth" shall mean the Commonwealth of Virginia, including all departments, offices and agencies thereof.

G. "Community Relations" shall mean the program to inform and involve the public in the installation restoration, Superfund, and 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 Naval Weapons Station - Yorktown by EPA pursuant to HSWA.

I. "Days" shall mean calendar days, unless business days are specified. Any submittal, written statement of position, or written statement of dispute which, under the terms of this Agreement, would be due on a Saturday, Sunday, or Federal or Commonwealth holiday shall be due on the following business day.

J. "Deadline" shall mean a time limitation specifically established or provided for under the terms of this Agreement for submittal of primary documents and shall not include target dates. Final deadlines shall be subject to stipulated penalties. Proposed deadlines shall not be subject to stipulated penalties until final as provided in Section XII - SITE MANAGEMENT PLAN of this agreement.

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

L. "EPA" or "U.S. EPA" shall mean the United States Environmental Protection Agency, its employees, agents,



authorized representatives, successors and assigns.

M. "Facility" shall mean that property owned by the United States and operated by the U.S. Department of the Navy, including that portion known as Naval Weapons Station ("WPNSTA")-Yorktown located in York County, Virginia and including all areas identified in Appendix A. This definition is for the purpose of describing a geographical area and not a governmental entity.

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

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

P. "Interim Remedial Action" shall mean all discrete Remedial Actions, including, but not limited to, Accelerated Operable Units, implemented prior to a final Remedial Action which are taken to prevent or minimize the release of Hazardous Substances, pollutants, or contaminants.

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

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

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

T. "Operable Unit" or "OU" shall mean a discrete action that comprises an incremental step toward comprehensively remediating the Site. This discrete portion of a remedial response manages migration, or eliminates or mitigates a release, threat of release, or pathway of exposure related to the Site. Operable Units may address geographical portions of the Site, specific Site problems, or initial phases of an action, or may consist of any set of actions performed over time or any actions that are concurrent but located in different parts of the Site.

The cleanup of the Site can be divided into a number of Operable Units, depending on the complexity of the problems associated with the Site. The term "Operable Unit" is not intended to refer to the term "operating unit" as used in RCRA. All Operable Units shall be addressed in accordance with the NCP, EPA Guidance and the requirements of CERCLA.

U. "Parties" shall mean the Navy, EPA, and the Commonwealth of Virginia.

V. "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.

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

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

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

Z. "Site Management Plan" or "SMP" shall mean a planning document, prepared specifically under Section XII - SITE MANAGEMENT PLAN, that contains a timetable, plan, or schedule which indicates the time and sequence of events. The Site Management Plan will be used as a management tool in planning, reviewing and setting priorities for all response activities at the facility. Deadlines and target dates developed under the terms of this Agreement are listed in the SMP. Final deadlines listed in the SMP are subject to stipulated penalties.

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

contamination and the geographical area needed to be studied.

BB. "Site-Screening Process" or "SSP" refers to the mechanism described in Subsection 9.3 for evaluating whether identified SSAs should proceed with a Remedial Investigation/Feasibility Study. The Site-Screening Process encompasses both the Facility's RCRA AOCs and SWMU areas and newly discovered CERCLA areas of concern within the Facility boundaries as defined in the NPL listing.

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

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

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

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

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

HH. "WPNSTA-Yorktown" or "WPNSTA" shall mean the Naval Weapons Station - Yorktown, located in York County, Virginia.

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

### III. PARTIES BOUND

3.1 This Agreement shall apply to and be binding upon EPA, the Commonwealth, and the Navy. The Commonwealth intends to voluntarily comply with all terms of this Agreement and is committed to full participation in the remediation efforts to be conducted pursuant to this Agreement. The Commonwealth does not consider this Agreement to be a contract and as to the Commonwealth, this Agreement does not create third party beneficiaries. The Navy agrees to include the notices required by Section 120(h) of CERCLA in any contract for the sale or transfer of real property affected by this Agreement. Transfer (sale or lease) of property affected by this paragraph shall not relieve the Navy of its applicable obligations under this Agreement.

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

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

### IV. PURPOSE

4.1 The general purposes of this Agreement are to:

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

B. Establish a procedural framework and schedule for developing, implementing and monitoring appropriate response actions at the Site in accordance with CERCLA, as amended by SARA, the NCP, Superfund guidance and policy, RCRA, RCRA guidance and policy, and applicable Commonwealth law; and

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

4.2 Specifically, the purposes of this Agreement are to:

A. Identify interim and final remedial action alternatives which are appropriate at the Site. The interim remedial action alternatives shall be identified and proposed to the Parties as early as possible prior to formal proposal of interim remedial

action(s) to EPA and the Commonwealth pursuant to CERCLA and applicable Commonwealth law. This process is designed to promote cooperation among the Parties in identifying remedial alternatives for operable units prior to selection of final remedial actions.

B. Establish requirements for the performance of Remedial Investigations (RIs) to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release and threatened release of hazardous substances, pollutants or contaminants at the Site and to establish requirements for the performance of Feasibility Studies (FSS) for the Site to identify, evaluate and select alternatives for the appropriate remedial action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants or contaminants at the Site in accordance with CERCLA, the NCP and applicable Commonwealth law.

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

D. Implement the selected interim remedial and final remedial action(s) at the Site in accordance with CERCLA, the NCP and applicable Commonwealth law and meet the requirements of CERCLA Section 120(e)(2) for an interagency agreement among the Parties.

E. Assure compliance, through this Agreement, with RCRA and other federal and Commonwealth hazardous waste laws and regulations for matters covered herein.

F. Coordinate response actions at the Site with the mission and support activities at WPNSTA-Yorktown.

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

H. Provide, in accordance with the NCP, for Commonwealth involvement in the initiation, development, selection, and enforcement of remedial actions to be 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 Commonwealth ARARs into the remedial action process.

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

## V. SCOPE OF AGREEMENT

5.1 This Agreement is entered into by the Parties to enable the Navy to meet the provisions of CERCLA, 42 U.S.C. Section 9601 et seq., and Sections 3004(u) and (v) and 3008(h) of the Resource Conservation and Recovery Act (RCRA) as amended, 42 U.S.C. Sections 6924(u) and (v) and 6928(h).

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

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

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

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

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

## VI. FINDINGS OF FACT

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

A. The Site is currently a 10,624 acre installation located on the Virginia Peninsula in York and James City Counties and the City of Newport News. The installation is bounded on the northwest by the Naval Supply Center Cheatham Annex; the Virginia Emergency Fuel Farm and the future community development of Whittaker's Mill; on the northeast by the York River and the Colonial National Historic Parkway; on the southwest by Route 143 and Interstate 64; and on the southeast by Route 238 and the community of Lackey. The WPNSTA-Yorktown (originally named the U.S. Naval Mine Depot) was established in 1918 to support the laying of mines in the North Sea during World War I. The name of the installation, as well as its mission, has changed throughout the years. The United States is the current owner and operator of the Site.

B. The Navy completed an Initial Assessment Study (IAS) of the Facility in June, 1984 pursuant to the DoD Installation Restoration Program (IRP). The IAS identified a total of 19 potentially contaminated sites at the WPNSTA-Yorktown, and concluded that 15 of the 19 sites posed enough of a threat to human health and/or to the environment to warrant further investigation as Confirmation Studies.

C. Confirmation Studies at the WPNSTA-Yorktown were conducted in two rounds, Round 1 and Round 2. The first round of work, performed at the identified 15 sites during the winter of 1986, included the installation of monitoring wells, collection and analysis of surface water and sediment samples from the same locations, and collection and analysis of surface soil samples. The results from Round 1 sampling were documented in the report entitled "Confirmation Study Step IA (Verification), Round One," issued on June 11, 1986. The second round of sampling was

conducted during November and December of 1987. The Round 2 effort for the 15 sites included the collection and analysis of groundwater, surface water, sediment, and soil samples. The results of the chemical analyses performed on the Round 2 samples were presented in the report entitled "Confirmation Study Step IA (Verification), Round Two" issued on June 20, 1988.

D. A final Interim RI Report was issued by the Navy on July 1, 1991. The final Interim RI Report included comments and recommendations from the WPNSTA's Technical Review Committee. The purpose of these reports was to summarize available data for each of the 15 sites, and, based upon the data, provide recommendations for additional efforts to be conducted as a remedial investigation. RI efforts were recommended for 14 of the 15 sites identified in the confirmation studies.

E. Hazardous substances and other contaminants of concern detected among the 14 sites at WPNSTA-Yorktown include arsenic, cadmium, chlordane, ethylbenzene, explosives, heptachlor, hexavalent chromium, lead, mercury, PAHs, PCBs, phenols, TCE, TCA, 1,2-DCE, thallium, toluene, and zinc.

F. In February 1992, EPA completed, pursuant to CERCLA, a Hazard Ranking System evaluation of the WPNSTA-Yorktown that resulted in a score of 50.00.

G. Based on the Hazard Ranking System evaluation, and in accordance with EPA policy, on February 7, 1992 the WPNSTA-Yorktown was proposed for inclusion on the National Priorities List (NPL). On October 15, 1992, the WPNSTA-Yorktown was finalized on the NPL.

H. As part of the Comprehensive Long-Term Environmental Actions Navy (CLEAN) Program, the Naval Facilities Engineering Command (NAVFACENCOM), Atlantic Division (LANTDIV), contracted Baker/Weston to prepare an RI Work Plan to investigate the sites identified in the previous confirmation studies, including Site 18, as well as a newly identified site, the Battery and Drum Disposal Area - Site 21. On May 18, 1992, LANTDIV issued a final RI Work Plan for the WPNSTA-Yorktown to investigate the following areas:

SITE 1	Dudley Road Landfill
SITE 2	Turkey Road Landfill
SITE 3	Group 16 Magazine Landfill
SITE 4	Burning Pad Residue Landfill
SITE 5	Surplus Transformer Storage Area
SITE 6	Explosives Wastewater Impoundment
SITE 7	Plant 3 Explosives Wastewater Discharge Area
SITE 8	Naval Explosives Development Engineering Department (NEDED) Explosives Wastewater Discharge Area



SITE 9 Plant 1 Explosives Wastewater Discharge Area  
 SITE 11 Abandoned Explosives Burning Pits  
 SITE 12 Barracks Road Landfill  
 SITE 16 West Road Landfill  
 SITE 17 Holm Road Landfill  
 SITE 18 Building 476 Discharge Area  
 SITE 19 Conveyor Belt Soils at Building 10  
 SITE 21 Battery & Drum Disposal Area

I. The EPA Office of RCRA Programs conducted a RCRA Solid Waste Management Unit Investigation at the WPNSTA, and issued a final report in December, 1992. The final report identified 94 areas (77 SWMUs and 17 AOCs) at the WPNSTA that require additional investigation under RCRA. Of the 94 identified areas, 10 areas (6 SWMUs, 4 AOCs) will be deferred to the Virginia Department of Environmental Quality Underground Storage Tank (UST) Program. The ten areas include: **SWMU 36** - Building 118 Waste Oil Tank; **SWMU 100** - Base Exchange Gas Station Former Waste Oil Tank; **SWMU 119** - Building 5 Waste Oil Tank; **SWMU 130** - Building 372 PW Vehicle Maintenance Tank; **SWMU 146** - Building 683 Waste Oil Tank; **SWMU 169** - Building 710 Waste Oil Tank; **AOC I** - Building 1347 Inactive Missile Fuel Storage Tanks; **AOC K** - Inactive Gasoline Tanks; **AOC P** - Roundhouse Former Underground Oil Tank; and **AOC Q** - Building 372 Public Works Vehicle Maintenance Underground Storage Tanks. Of the 84 remaining areas, the 16 identified in Subsection 6.1H, above, are currently undergoing a Remedial Investigation as described in Subsection 9.2 of this Agreement. Of the 68 remaining areas not included in this RI, 9 areas (7 SWMUs and 2 AOCs) will be investigated as part of a separate RI including: **SWMUs 50, 51, & 52** - Open Burning Facility; **SWMU 142** - Large Incinerator; **SWMU 143** - Small Incinerator; **SWMU 164** - Wood/Debris Disposal Area; **SWMU 179** - Bldg. 109 Trenches and Piping; **AOC C** - Bldg. 109 (contaminated structure); and **AOC G** - Foliage Burn Area. Of the remaining 59 identified areas, 26 areas (23 SWMUs and 3 AOCs) will be investigated as part of 19 Site Screening Areas under this Agreement (See Appendix A), and 20 areas (16 SWMUs and 4 AOCs) are included in the Areas of Concern listed at Appendix B to this Agreement.

Thirteen remaining areas: **SWMU 38** - Bldg. 118 Coal Storage Area, **SWMU 77** - Satellite Accumulation Area, **SWMU 83** - Bldg. 1754 Container Storage Area, **SWMU 106** - X-Ray Facility Container Storage Area, **SWMU 149** - Building 683 O/W Separator Sludge Container Storage Area, **SWMU 152** - PW Battery Storage Area, **SWMU 161** - Refrigerator/Debris Disposal Area, **SWMU 170** - Building 710 Hobby Shop Storage Area, **SWMU 176** - Building 468 Concrete Tank/Pit, **AOC D** - Boiler House Condensate Accumulation Residue, **AOC E** - Bldg. 118 Boiler Spill Area, **AOC T** - Bldg. 530 Stained Soil Area, and **AOC U** - Electrical Shop Scrap Dumpster will not be investigated further, unless information leads the Parties to

believe that the unit(s) has released or has the potential to release hazardous wastes into the environment, and poses a threat to human health and the environment.

## VII. EPA DETERMINATIONS

7.1 The following constitutes a summary of the determinations relied upon by EPA to establish its jurisdiction and authority to enter into this Agreement. None of these determinations shall be considered admissions to any person, related or unrelated to this Agreement, for purposes other than determining the basis of this Agreement or establishing the jurisdiction and authority of the Parties to enter into this Agreement.

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

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

C. The United States is the owner and operator of WPNSTA-Yorktown 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 WPNSTA-Yorktown.

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

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

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

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

## VIII. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

8.1 The Parties intend to integrate the Navy's CERCLA response obligations and RCRA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes, pollutants or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will achieve compliance with

CERCLA, 42 U.S.C. Section 9601 et seq.; satisfy the corrective action requirements of RCRA Sections 3004(u) and (v), 42 U.S.C. Sections 6924(u) and (v), for a RCRA permit, and RCRA Section 3008(h), 42 U.S.C. Section 6928(h), for interim status facilities; and meet or exceed all applicable or relevant and appropriate Federal and Commonwealth laws and regulations, to the extent required by CERCLA Section 121, 42 U.S.C. Section 9621, and applicable Commonwealth law.

8.2 Based upon the foregoing, the Parties intend that any remedial action selected, implemented and completed under this Agreement will be protective of human health and the environment such that remediation of releases covered by this Agreement shall obviate the need for further corrective action under RCRA (i.e., no further corrective action shall be required). The Parties agree that, with respect to releases of hazardous waste covered by this Agreement that are associated with the NPL portions of the Site, RCRA shall be considered an applicable or relevant and appropriate requirement pursuant to CERCLA Section 121, 42 U.S.C. Section 9621. Releases or other hazardous waste activities not covered by this Agreement remain subject to all applicable Virginia and federal environmental requirements.

8.3 The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties further recognize that ongoing hazardous waste management activities at WPNSTA-Yorktown may require the issuance of permits under Federal and Commonwealth 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 Commonwealth shall reference and incorporate any appropriate provisions, including appropriate schedules (and the provisions for extension of such schedules), of this Agreement into such permit. With respect to those portions of this Agreement incorporated by reference into permits, the Parties intend that judicial review of the incorporated portions shall, to the extent authorized by law, only be reviewed under the provisions of CERCLA.

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

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

9.1 A. The Parties recognize that background information exists and must be reviewed prior to developing the Work Plans required by this Agreement. The Navy need not halt currently ongoing work but may be obligated to modify or supplement work previously done to meet the requirements of this Agreement. It is the intent of

the Parties to this Agreement that work done and data generated prior to the Effective Date of this Agreement be retained and utilized as elements of the RI/FS to the maximum extent feasible.

B. Any Party may propose that a portion of the Site be designated as a distinct Operable Unit. This proposal must be in writing to the other Parties, and must stipulate the reasons for such a proposal. The proposal shall be discussed by all Project Managers within forty-five (45) days of the written notice. Dispute Resolution may be invoked if the Parties are not in agreement on the proposal of a specific Operable Unit. If Dispute Resolution is not invoked by the Parties within thirty (30) days after the Project Manager's discussion concerning the proposal or if the need for an Operable Unit is established through Dispute Resolution, the portion of the Site proposed shall be an Operable Unit as that term is defined in Section II - DEFINITIONS, of this Agreement.

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

D. The Navy shall develop, implement and report upon the Site-Screening Areas (SSAs) as defined herein, and listed in Attachment A to this Agreement, in order to satisfy its obligations under RCRA/CERCLA integration. The Site-Screening Process (SSP), outlined in Subsection 9.3 of this Agreement, is intended to provide a simplified investigative method whereby identified RCRA units and CERCLA areas of concern can be evaluated to determine whether Remedial Investigations are required for these areas. Additional SSP investigations may be initiated at areas later identified by the Parties. The SSP investigation(s) shall be conducted in accordance with an SSP Work Plan as agreed to by the Parties.

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

#### Remedial Investigations for 16 Previously Identified Sites

9.2 A. The Navy has previously submitted a draft RI Work Plan for the continued investigation of the 16 sites identified in

Section 6.1H. of this Agreement for EPA and Commonwealth review and comment. EPA and the Commonwealth have reviewed the draft RI Work Plan and provided comments to the Navy. The Navy's LANTDIV issued the Final RI/FS Work Plan on May 18, 1992. LANTDIV issued notification to proceed with the implementation of the Final Round 1 RI Work Plan on April 1, 1992. A Draft Round 1 RI Report was submitted on April 1, 1993. A Technical Review Committee meeting was held on April 15, 1993 to discuss the Draft Round 1 RI Report. All EPA and Commonwealth comments on the Draft Round 1 RI Report were received by the Navy by June 11, 1993. The Final Round 1 RI Report was submitted on July 30, 1993.

B. In the draft Site Management Plan for FY 1994-1995 to be submitted pursuant to Subsection 12.2 of the Agreement, the Navy shall propose a deadline for submittal of the Round 2 RI Work Plan for those Operable Units determined by the Parties to continue with a Round 2 RI. The Round 2 RI Work Plan shall contain a proposed deadline for the submittal of the Round 2 RI Report and the FS Report(s). The schedule and deadlines included in the Final Round 2 RI Report shall be incorporated into the Site Management Plan in accordance with Section XII - SITE MANAGEMENT PLAN of this Agreement. The development of the FS will proceed in accordance with Subsection 9.5 of this Agreement.

C. For those Operable Units determined by the Parties not to be included in a Round 2 RI, the Navy shall propose a deadline in the Draft Site Management Plan for FY 1994-1995 for submittal of the FS Report for each of these Operable Units. These deadlines will be finalized in accordance with Sections XI and XII of this Agreement.

D. For those Operable Units which the Parties determine represent a negligible or minimal impact and are strong candidates for no action, or remediation limited to periodic monitoring, the Navy shall propose a schedule in the Draft Site Management Plan for FY 1994-1995 for submittal of a risk screening report and any limited sampling that may be recommended to support the risk screening. If the Parties determine that no further action is required, a no-action Proposed Plan will then be prepared. This schedule will be finalized in accordance with Section XII of this Agreement.

#### Site-Screening Areas

9.3 A. Determination of Site-Screening Areas When a Party to this Agreement determines that an area on the Site which has not previously been identified as an area which may pose a threat, or potential threat, to public health, welfare, or the environment, does pose such a threat, or potential threat, such Party shall notify in writing the other Parties of such determination. Notification of the other Parties under this Paragraph shall at a minimum include the location of such area on the Site and the

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

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

C. Appendix A contains a list of nineteen (19) Site Screening Areas (SSAs) which the Parties agree may pose a threat, or potential threat to human health and the environment. In the first draft Site Management Plan, the Navy shall submit to EPA and the Commonwealth proposed deadlines for the submission of Work Plan(s) for the SSAs, in accordance with Subsection 12.1 of this Agreement. The Navy shall submit to the EPA and the Commonwealth SSP Work Plan(s) which shall outline the activities necessary to determine if there have been releases of hazardous substances, pollutants, contaminants, hazardous wastes, or hazardous constituents to the environment from the SSAs. The scope of the SSPs shall be determined by the Parties. The SSP Work Plan(s) shall include a proposed deadline for the submittal of an SSP Report(s). The schedule and deadlines included in the final SSP Work Plan will be incorporated into the Site Management Plan in accordance with Section XII - SITE MANAGEMENT PLAN of this Agreement.

(1) In planning SSPs, the Navy shall consider current CERCLA and RCRA guidance to determine if there have been releases of hazardous substances, pollutants, contaminants, hazardous wastes or hazardous constituents to the environment from the SSAs. Upon conclusion of an SSP, the Navy shall submit to the EPA and Commonwealth a draft SSP Report which shall provide the basis for a determination that either: (1) an RI/FS be performed on the area addressed

by the SSP or, (2) the area does not pose a threat, or potential threat to public health, welfare, or the environment and therefore the area should be removed from further study under this Agreement.

(2) Unless otherwise agreed to by the Parties, the Parties shall determine which (if any) of the SSAs listed in Appendix A or established pursuant to Subsection 9.3 will require an RI/FS within sixty (60) days of receipt by the Parties of the final SSP Report(s).

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

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

#### D. Areas of Concern

Twenty-one (21) areas at the Facility have been listed as Areas of Concern (AOC) in Appendix B to this Agreement. These areas will undergo a "desk-top" evaluation, which involves a thorough review of all existing or easily obtainable documentation/information on the identified sites. If the Parties agree, in writing, the evaluation could also include obtaining discrete samples from the AOC without the development of a work plan. If the Parties cannot agree on whether discrete sampling can be performed at an AOC without the development of a work plan, then the AOC "desk-top" evaluation will continue without the performance of sampling. The "desk-top" evaluation will also involve assessing information concerning the handling of hazardous wastes at each AOC, or actions taken at each AOC, or actions that will be occurring under other regulatory programs. Based on this evaluation, a decision will be made by the Project Managers on which AOCs will proceed to the Site Screening Process (SSP) as SSAs, and which AOCs will require no further action and can be closed-out. For those AOCs which the Parties agree will not proceed to the Site Screening Process, the Navy shall

prepare, with EPA and Commonwealth assistance, a brief AOC Close-Out document.

EPA and the VDEQ shall review all information submitted by the Navy in support of the AOC "desk-top" evaluation and shall provide a response to the Navy as to whether the information provided is sufficient to close-out the AOC(s). The response shall be forwarded from EPA and the VDEQ to the Navy within 30 days of receipt of the supporting documentation. Within 120 days of the effective date of this Agreement, the final determination on which AOCs will become SSAs and which AOCs shall be closed-out shall be completed. Those AOCs which are not agreed upon by the Parties to be closed-out will proceed to the SSP. If the Parties agree, in writing, the "desk-top" evaluation for specific AOCs may be extended beyond the 120-day finalization deadline. If the Navy submits supporting documentation to EPA and the VDEQ in such a manner that the 30-day review and response time for EPA and VDEQ extends beyond the 120-day finalization date, the finalization date will automatically be extended to allow for a full 30 days of review and discussion.

For those AOCs which all Parties agree should proceed to the SSP, the Navy shall include those AOCs in the draft amended Site Management Plan for Fiscal Years 95-96 as SSAs and propose deadlines for submittal of SSP Work Plans as prescribed in Subsection 9.3.C.

#### Remedial Investigation and Feasibility Study

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

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

#### Procedures for Interim Remedial Actions

9.6 A. The Navy shall implement those Interim Remedial Actions (IRA) necessary to prevent, minimize, or eliminate risks to human health and the environment caused by the release of hazardous



substances, pollutants, or contaminants. An Interim Remedial Action is identified, proposed, and implemented prior to a final Remedial Action. An IRA shall attain ARARs to the extent required by CERCLA or the NCP and be consistent with and contribute to the efficient performance of a final Remedial Action(s) taken at an area or Operable Unit. An IRA must be protective of human health and the environment, and comply with CERCLA, the NCP, and Commonwealth laws to the extent that they are legally applicable, or relevant and appropriate requirements in accordance with Section 121 of CERCLA, and this Agreement.

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

C. After the determination that an Interim Remedial Action is required under this Agreement, the Navy shall, in the next draft Amended Site Management Plan, submit to EPA and the Commonwealth proposed Deadlines for the submission of Work Plan(s) for the performance of a Focused Feasibility Study (FFS) for the identified area(s). The deadlines will be finalized in accordance with Sections 11 and 12. Each FFS Work Plan shall contain a proposed deadline for the submittal of the FFS. The schedule and deadlines included in the approved, final FFS Work Plan will immediately be incorporated in the Site Management Plan. The FFS shall include a limited number of proposed Interim Remedial Action alternatives. To the extent possible, the FFS shall provide an assessment of the degree to which these alternatives were analyzed during their development and screening. The Navy shall develop, implement and report upon each FFS in accordance with the requirements set forth in the final FFS Work Plan.

D. Within thirty (30) days of submission of a final FFS Report, the Navy shall prepare and submit a Proposed Plan for the Interim Remedial Action. The Navy shall make a Proposed Plan for the Interim Remedial Action available for public review and comment in accordance with Paragraph 9.7B. As required, the Navy

shall follow the steps outlined in Paragraphs 9.7B through 9.14 below.

Records of Decision and Plans for Remedial Action

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

B. Within thirty (30) days after finalization of an RI and FS or FFS, the Navy shall submit a draft Proposed Plan to EPA and the Commonwealth for review and comment as described in Section X - CONSULTATION, of this Agreement. Within seven (7) days after receiving EPA acceptance and the Commonwealth's comments on the Proposed Plan, the Navy shall publish its Proposed Plan for forty-five (45) days of public review and comment. During the public comment period, the Navy shall make the administrative record available to the public and distribute the Proposed Plan. The Navy shall hold a public information meeting during the public comment period to discuss the preferred alternative for each Operable Unit. Copies of all written and oral public comments received will be provided to the Parties. Public review and comment shall be conducted in accordance with Section 117(a) of CERCLA, 42 U.S.C. Section 9617(a), and applicable EPA and Commonwealth guidance.

C. Following public comment, the Navy, in consultation with EPA and the Commonwealth, 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 Commonwealth. 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.

D. The Navy shall submit its draft ROD to EPA and the Commonwealth within thirty (30) days following the close of the public comment period, including any extensions, on the Proposed Plan. The draft ROD will include a Responsiveness Summary, in accordance with applicable EPA Guidance. Pursuant to CERCLA Section 120(e)(4)(A), 42 U.S.C. Section 9620(e)(4)(A), the EPA and the Navy in consultation with the Commonwealth, shall make the final selection of the remedial action(s) for each Operable Unit.

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

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

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

H. Notice of the final ROD shall be published by the Party preparing it and shall be made available to the public prior to commencement of the remedial action, in accordance with Section 117(b) of CERCLA, 42 U.S.C. Section 9617(b). The final ROD shall include a statement that the Commonwealth has concurred or not concurred with the selection of the remedy.

#### Remedial Design and Remedial Action

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

B. The RA Work Plan(s) shall at a minimum contain a schedule for the completion of the Remedial Action, a Health and Safety Plan, a Sampling and Analysis Plan, and a Quality Assurance Project Plan, if necessary. The schedule contained in the final RA Work Plan(s) will be immediately incorporated in the Site Management Plan.

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

#### Finalization of Remedial Actions

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

#### Accelerated Operable Unit

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

A. Within fifteen (15) days after the determination that an AOU is required under this Agreement, the Navy shall submit to EPA and the Commonwealth proposed Deadlines for the submission of Work Plan(s) for the performance of an AOU Focused Feasibility Study (FFS) for the identified AOU(s). Each AOU FFS Work Plan

shall contain a proposed deadline for submittal of the AOU FFS and Proposed Plan. The schedule and deadlines included in the final AOU FFS Work Plan will be incorporated in the next draft Amended Site Management Plan. The Navy shall develop, implement and report upon each AOU FFS in accordance with the requirements set forth in the final AOU FFS Work Plan. In accordance with Subsection 9.6.D, the Navy shall submit a Proposed Plan within 30 days of finalization of the AOU FFS.

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

#### Supplemental Response Action

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

9.12 A supplemental response action shall be undertaken only when:

A. A determination is made that:

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

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

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

(1) For supplemental response actions proposed after finalization of the ROD, but prior to EPA

Certification, the determination must be based upon conditions at the Site that were unknown at the time of finalization of the ROD or based upon new information received in whole or in part by EPA following finalization of the ROD; or

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

9.13 If, subsequent to ROD signature, any Party concludes that a supplemental response action is necessary, based on the criteria set forth in Subsection 9.12, such Party shall promptly notify the others of its conclusion in writing. The notification shall specify the nature of the modification needed and the new information on which it is based. The Project Managers shall confer and attempt to reach consensus on the need for such an action within a thirty (30) day period. If the Project Managers have failed to reach consensus, any Party may notify the other 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.

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

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

9.16 EPA Certification

A. When the Navy determines that the final Remedial Action(s) for a given Operable Unit has been completed in accordance with the requirements of this Agreement, it shall so advise EPA and the Commonwealth in writing, and shall schedule and conduct a close-out inspection to be attended by the Navy, EPA and the Commonwealth. Within thirty (30) days of each close-out inspection, the Navy shall submit an Operable Unit Close-Out

Inspection Report, signed by the Navy's signatory authority or designee, certifying that the Remedial Action(s) has been completed in full satisfaction of the requirements of this Agreement, and a request for EPA certification of the completion of the Remedial Action.

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

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

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

B. If EPA denies the Navy's request for certification that a Remedial Action has been completed in accordance with this Agreement, the Navy may invoke dispute resolution within twenty (20) days of receipt of EPA's written denial to review EPA's determination on certification or additional work needed. If EPA's denial of certification is upheld in Dispute Resolution, the Navy will perform the requested additional work.

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

## X. CONSULTATION

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

#### 10.1 Applicability:

The provisions of this Section establish the procedures that

shall be used by the Parties to provide each other with appropriate notice, review, comment, and response to comments regarding RI/FS and RD/RA documents, specified herein as either primary or secondary documents. The Navy will normally be responsible for issuing primary and secondary documents to EPA and the Commonwealth. 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 Commonwealth 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 Commonwealth. Following receipt of comments on a particular draft primary document, the Navy will respond to the comments received and issue a draft final primary document subject to dispute resolution. The draft final primary document will become the final primary document thirty (30) days after issuance if dispute resolution is not invoked or as modified by decision of the dispute resolution process.

B. Secondary documents include those documents that are discrete portions of the primary documents and are typically input or feeder documents. Secondary documents are issued by the Navy in draft subject to review and comment by EPA and the Commonwealth. 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 following primary documents to EPA and the Commonwealth for review and comment:

- (1) Community Relations Plan
- (2) Draft Master RI/FS Project Plan
- (3) Draft Master SSP Project Plan



- (4) Round One RI Work Plan for sites 1-9, 11-12, 16-19 and 21
- (5) Round 1 RI Report for sites 1-9, 11-12, 16-19, and 21
- (6) Draft RI Work Plan for sites 6, 7, 12, 16 and Background
- (7) FY-94/95 Site Management Plan

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

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

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

D. The Community Relations Plan and the Long-Term Remedial

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

#### 10.4 Secondary Documents:

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

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

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

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

The Project Managers shall meet approximately every ninety (90) days, and confer by telephone every thirty (30) days, except as otherwise agreed by the Parties, to review and discuss the development of primary and secondary documents. Prior to preparing any draft document specified in Subsections 10.3 and 10.4 above, the Project Managers shall meet 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 Commonwealth shall identify all potential state ARARs as early in the remedial process as possible consistent with the requirements of CERCLA Section 121(d)(2)(A)(ii), 42 U.S.C. Section 9621(d)(2)(A)(ii), and the NCP. The Navy shall consider any written interpretations of ARARs provided by the Commonwealth. Draft ARAR determinations shall be prepared by the Navy in accordance with CERCLA Section 121(d)(2), 42 U.S.C. Section 9621(d)(2), the NCP, and pertinent guidance issued by EPA, that is consistent with CERCLA and the NCP.

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

#### 10.7 Review and Comment on Draft Documents:

A. The Navy shall complete and transmit each draft Primary Document to EPA and the Commonwealth on or before the corresponding deadline established pursuant to Section XI - DEADLINES and Section XII - SITE MANAGEMENT PLAN of this Agreement for the issuance of the document. The Navy shall complete and transmit the draft secondary document in accordance with the target dates established for the issuance of such documents.

B. Unless the Parties mutually agree to another time period, all draft documents, except the Site Management Plan, the prefinal Remedial Design and the final Remedial Design shall be subject to a sixty (60) day period for review and comment. The Site Management Plan shall be reviewed and commented on in accordance with Section 12 or as agreed to by the Parties. The Parties recognize that time periods for review and comment on the draft Remedial Design and Remedial Action Work Plans may need to be expedited in order for the Navy to satisfy the requirement of Section 120(e)(2) of CERCLA, 42 U.S.C. Section 9620(e)(2). The

prefinal Remedial Design shall be subject to a forty-five (45) day period for review and comment. The final Remedial Design will be subject to a two (2) week period for review and comment by the Parties. In the event that the final Remedial Design differs substantially from the prefinal Remedial Design, EPA or the Commonwealth may extend the two (2) week review and comment period for an additional two (2) weeks by providing written notice to the Navy prior to the end of the initial two (2) week comment period. Review of any document by EPA and the Commonwealth 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 Commonwealth. Comments by EPA and the Commonwealth 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 Commonwealth shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy reports, the EPA or the Commonwealth may extend a sixty (60) day comment period for an additional twenty (20) days by written notice to the Navy prior to the end of the sixty (60) day period. On or before the close of any comment period, EPA and the Commonwealth shall transmit by next day mail their written comments to the Navy.

C. Representatives of the Navy shall make themselves readily available to EPA and the Commonwealth 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 and/or the Commonwealth shall include a reasoned statement of whether they object to any portion of the proposed ARAR determination. To the extent that EPA or the Commonwealth 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 Commonwealth 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 Commonwealth a draft final Primary Document, which shall include the Navy's response to all written comments received within the comment period. While the resulting draft final document shall be the responsibility of the Navy, it shall be the product of consensus to the maximum extent possible.

F. The Navy may extend the 60-day period for either responding to comments on a draft document or for issuing the draft final Primary Document for an additional twenty (20) days by providing timely notice to EPA and the Commonwealth. In appropriate circumstances, this time period may be further extended in accordance with Section XIII - EXTENSIONS, hereof.

#### 10.8 Availability of Dispute Resolution on draft final Primary Documents:

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

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

#### 10.9 Finalization of Documents:

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

#### 10.10 Subsequent Modification of Final Document:

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

A. A Party may seek to modify a document after finalization if it determines, based on new information (i.e., information that became available, or conditions that became known, after the document was finalized) that the requested modification is necessary. A Party may seek such a

modification by submitting a concise written request to the Project Managers of the other Parties. The request shall specify the nature of the requested modification and how the request is based on new information.

B. In the event that a consensus is not reached by the Project Managers on the need for a modification, any Party may invoke the dispute resolution process to determine if such modification shall be conducted. Modification of a document shall be required only upon a showing that:

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

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

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

## XI. DEADLINES

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

(1) Site Management Plan: Within sixty (60) days of the effective date of this Agreement.

(2) Any deadlines contained in approved Work Plans that become incorporated in the Site Management Plan pursuant to this Agreement.

B. Within the Site Management Plan (and any subsequent Amendments thereto) referenced in Section XII - SITE MANAGEMENT PLAN, the Navy shall propose deadlines for submission of draft Primary Documents (listed herein at Subsection 10.3) in the two fiscal years covered by that Site Management Plan/Amendment. If the development of the Primary Document is fully funded in the first year of the two year period covered by the Site Management Plan the deadline established for submittal of that draft Primary Document may extend beyond the two year period covered by the Site Management Plan and subsequent amendments to the Site Management Plan.

11.2 No later than June 15 of each year hereafter, the Navy shall submit an Amended Site Management Plan which shall incorporate deadlines approved in the previous Site Management Plan(s) and propose deadlines for completion of Primary Documents to be submitted in the fiscal years covered by that Site Management Plan. This will ensure that Site Management Plans will provide clear, approved deadlines for activities and submittal of Primary Documents for a two year period. Deadlines previously established for the second year of the current Site Management Plan will be re-evaluated during the discussion of the next draft amended Site Management Plan pursuant to paragraph 12.3 of this Agreement and adjusted as necessary as site conditions, funding levels, and other factors become better defined. Resolution of any disagreement over adjustment of deadlines pursuant to this section shall be disputed in the context of the amendment to the Site Management Plan.

11.3 The final deadlines established pursuant to this Section shall be published by EPA and the Commonwealth and shall become attachments to this Agreement.

11.4 The deadlines set forth in this Section, or to be established as set forth in this Section, may be extended pursuant to Section XIII - EXTENSIONS, of this Agreement. The Parties recognize that one possible basis for extension of the deadlines for completion of the Remedial Investigation and Feasibility Study Reports is the identification of significant new Site conditions during the performance of the RI.

## **XII. SITE MANAGEMENT PLAN**

12.1 In accordance with Section XI - DEADLINES, the Navy shall develop (and update on a yearly basis) a Site Management Plan which will establish deadlines for a two year period for the submittal of Primary Documents pursuant to this Agreement. The Site Management Plan will include proposed actions for both CERCLA responses and RCRA corrective actions per Section VII - STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION and will outline all response activities and associated documentation to be undertaken at the Facility in the two year period covered by that Site Management Plan. The Site Management Plan shall incorporate any deadlines contained in approved Work Plans. All schedules approved in future Work Plans immediately become incorporated in the Site Management Plan and are enforceable under this Agreement. For the purposes of the Site Management Plan, a fiscal year is the yearly time frame used by the United States Government that commences on October 1 and ends September 30th of the following calendar year. The Site Management Plan shall, at a minimum, include:

A. actions necessary to mitigate any immediate threat to human health, welfare or the environment;

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

C. activities and schedules for response actions planned for the two fiscal year period covered by that Site Management Plan. The activities to be included, at a minimum, are:

- Enforceable deadlines for the submittal of all primary documents in the two year Site Management Plan period

- Proposed deadlines for all primary documents covered in the Site Management Plan for the years beyond the two-year period

- Target dates for the submittal of all secondary documents

- Existing enforceable deadlines established in this Agreement

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

- Schedule for the completion of any planned response action(s) covered by this Agreement

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

E. Draft schedule projections for all known response activities for subsequent (more than two years into future) fiscal year(s) which shall be used for planning purposes only and shall not be enforceable under this Agreement until incorporated as deadlines into an amended Site Management Plan covering those future years. The work projections shall include required 5-year Periodic Assessments and Operation and Maintenance Activities.



12.2 The Draft Site Management Plan for Fiscal Years 1994 and 1995 will list individual sites by Operable Unit rather than by site number as done previously in the Initial Assessment Study and as currently done in the Remedial Investigation Work Plans. Sites listed in Appendix A which are proposed to undergo an SSP as provided in Subsection 9.7 of this Agreement shall also be included in the FY 1994-95 Site Management Plan.

12.3 No later than June 15 of each year after the development of the FY 1994-95 Site Management Plan, the Navy shall submit an amended Site Management Plan which shall incorporate any approved deadlines for the upcoming fiscal year and shall propose deadlines for completion of Primary Documents to be submitted in the second fiscal year. The proposal of deadlines shall be based upon the assumption that all remedial requirements for the Facility submitted during the development of the President's budget for the upcoming fiscal year will be fully funded. Deadlines previously established for the second year of the current Site Management Plan will be re-evaluated during the discussion of the next draft amended Site Management Plan and adjusted as necessary as site conditions, funding levels, and other factors become better defined. Resolution of any disagreement over adjustment of deadlines pursuant to this section shall be disputed in the context of the amendment to the Site Management Plan. Additionally, the yearly Amended Site Management Plan shall contain revised Target Dates for the submission of Secondary Documents to be submitted during the upcoming two fiscal years. The yearly Amendment to the Site Management Plan will incorporate any newly finalized SSAs or Operable Units identified pursuant to this Agreement.

12.4 The Parties shall meet as necessary to discuss the draft Amended Site Management Plan. Within thirty (30) days of receipt of the draft Amended Site Management Plan, EPA and the Commonwealth shall review the draft Amended Site Management Plan and provide comments to the Navy. If EPA or the Commonwealth are not satisfied with the draft Site Management Plan, the Parties will meet within 30 days of receipt of the draft Amended Site Management Plan to discuss and finalize the draft Site Management Plan. Within thirty (30) days following the end of the 30 day comment period, the Navy shall, as appropriate, make revisions and issue a revised draft Site Management Plan. Following receipt of the revised draft final Site Management Plan, EPA and the Commonwealth have 30 days to invoke dispute resolution of the draft final Site Management Plan pursuant to Section XX - DISPUTE RESOLUTION of this agreement.

12.5 The Navy shall submit a Final Site Management Plan within 30 days after the Atlantic Division, Naval Facilities Engineering Command (LANTDIV), has received official notification of LANTDIV's allocation based on the current year's Defense Environmental Restoration Account (DERA) appropriation. The

Final Site Management Plan shall provide deadlines for those Primary Documents for which funds are available. Changes made from the draft final Site Management Plan shall be explained and justified in the cover letter forwarding the Final Site Management Plan. If EPA or the Commonwealth disagree with the Final Site Management Plan or request an explanation of the cover letter, the Parties shall meet within 30 days of receipt of the Final Site Management Plan to discuss their differences. If the Parties fail to agree within the thirty (30) days on the content of the Final Site Management Plan, the matter shall immediately be submitted for dispute resolution pursuant to Section XX - DISPUTE RESOLUTION. Within twenty (20) days after the close of the review period or the conclusion of Dispute Resolution, the Navy shall revise and reissue, as necessary, the Final Site Management Plan. Deadlines established in the Final Site Management Plan are enforceable and subject to stipulated penalties in accordance with Section XXI - STIPULATED PENALTIES, of this Agreement.

### **XIII. EXTENSIONS**

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

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

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

- A. An event of Force Majeure, as defined in Section XXII;
- B. A delay caused by another Party's failure to meet any requirement of this Agreement;
- C. A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;
- D. A delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and deadline or schedule; and

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

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

13.4 Within seven (7) days of receipt of a request for an extension of a timetable and deadline or a schedule, the other 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.

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

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

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

#### XIV. PROJECT MANAGERS

14.1 On or before the effective date of this Agreement, EPA, the Navy, and the Commonwealth 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 Commonwealth on all documents, including reports, comments and other correspondence concerning the activities performed pursuant to this Agreement, shall be directed through the Project Managers. The parties may designate an Alternate Project Manager to exercise the authority of the Project Manager in his or her absence.

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

14.3 The Parties' Project Managers shall meet or confer informally as necessary as provided in Section X - CONSULTATION, of this Agreement. Although the Navy has ultimate responsibility for meeting its respective deadlines, the EPA and the Commonwealth Project Managers shall endeavor to assist in this effort by scheduling meetings to review documents and reports, overseeing the performance of environmental monitoring at the Site, reviewing SSP, RI/FS or RD/RA progress, and attempting to resolve disputes informally. At least one week prior to each scheduled Project Manager meeting, the Navy will provide to the EPA and the Commonwealth 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 32.1;
- B. all activities completed pursuant to this Agreement since the last Project Manager meeting as well as such actions and plans which are scheduled for the upcoming ninety (90) days; and
- C. a description of any delays, the reasons for such delays, anticipated delays, concerns over possible timetable implementation or problems that arise in the execution of a Work Plan during the quarter and any steps that were or will be taken to alleviate the delays or problems.

The minutes of each Project Manager meeting, 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.

14.4 Necessary and appropriate adjustments to deadlines or schedules may be proposed by any Party and must be approved orally by the Project Managers of the other Parties to be

effective. Within five (5) working days following a modification, the Party which requested the modification shall prepare a written memorandum detailing the modification and the reasons therefor and shall provide a copy of the memorandum to the other Parties for signature and return.

14.5 A Project Manager may also recommend and request minor field modifications to the work performed pursuant to this Agreement, or in techniques, procedures or designs utilized in carrying out this Agreement. The minor field modifications proposed under this 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 agreement cannot be reached on the proposed additional work or modification to work, dispute resolution as set forth in Section XX - DISPUTE RESOLUTION, shall be invoked by the Navy, by submitting a written statement to the other Parties in accordance with Section XX - DISPUTE RESOLUTION. 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 therefor and shall provide or mail a copy of the memorandum to the Project Managers of the other Parties for signature and return.

14.6 Modifications of work not provided for in Subsections 14.4 and 14.5 of this Section must be approved by all the Parties' Project Managers to be effective. If agreement cannot be reached on the proposed modification to Work, dispute resolution as set forth in Section XX - DISPUTE RESOLUTION, shall be used. Within five (5) business days following a modification made pursuant to this Section, the Project Manager who requested the modification shall prepare a memorandum detailing the modification and the reasons therefor and shall provide or mail a copy of the memorandum to the Project Managers of the other Parties for signature and return.

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

14.8 The Parties shall transmit Primary and Secondary Documents and all notices required herein by next day mail, hand delivery or certified letter to the persons specified in Subsection 14.9 below by the deadline established under Section XI - DEADLINES and Section XII - SITE MANAGEMENT PLAN. Time limitations shall commence upon receipt. The Navy shall provide to the EPA and the Commonwealth seven (7) and five (5) copies, respectively, of each Primary and Secondary Document.

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

- A. For the Navy: Commander, Atlantic Division  
Naval Facilities Engineering Command  
Code 1822  
1510 Gilbert Street  
Norfolk, Virginia 23511-2699
- B. For EPA: EPA Region III (3HW71)  
Attn: Naval Weapons Station  
Project Manager  
Va./W.Va. Federal Facilities Section  
841 Chestnut Building  
Philadelphia, PA 19107
- C. For the Commonwealth: Virginia Department of Environmental  
Quality  
Attn: Federal Facilities Program  
629 East Main Street  
Richmond, VA 23219

14.10 EPA and the Commonwealth shall also forward to the Commanding Officer, Naval Weapons Station (Attn: Code 09E), Yorktown, Virginia 23691-5000, copies of all correspondence relating to primary and secondary documents and all notices transmitted to the Navy Project Manager under Subsections 14.8 and 14.9. Delivery may be by regular first class mail. Time limitations will not commence until receipt by the Navy Project Manager as provided in Subsection 14.8.

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

14.12 The Project Manager for the Navy shall represent the Navy with regard to the day-to-day field activities at the Site. The Navy Project Manager or other designated employee 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 Commonwealth Project Managers from the Site shall not be cause for Work stoppage or delay, unless the Project Managers agree otherwise in writing.

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

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

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

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

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

14.14 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 Parties' 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 XIII - EXTENSIONS, shall apply.

#### **XV. EXEMPTIONS**

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

15.2 EPA and the Commonwealth reserve any statutory right they may have to challenge any order or exemption specified in Subsection 15.1 relieving the Navy of its obligations to comply with this Agreement.

#### **XVI. ACCESS**

16.1 The EPA and the Commonwealth and/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 Commonwealth deem necessary; assessing the need for planning additional Remedial Response Actions at the Site; and verifying data or information submitted to EPA and the Commonwealth. The Navy shall honor all reasonable requests for access to the Site made by EPA or the Commonwealth, upon presentation of credentials showing the bearer's identification and that he/she is an employee or agent of the EPA or the Commonwealth. The Navy Project Manager or his/her designee will provide briefing information, coordinate access and escort to restricted or controlled-access areas, arrange for Base passes, and coordinate any other access requests which arise. The Navy shall use its best efforts to ensure that conformance with the requirements of this subsection do not delay access.

16.2 The rights granted in Paragraph 16.1 and 16.4 to EPA and the Commonwealth regarding access shall be subject to regulations and statutes, including WPNSTA-Yorktown 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 comply with WPNSTA-Yorktown's health and safety requirements. Such requirements shall not be applied so as to unreasonably hinder EPA or the Commonwealth from carrying out their responsibilities and authority pursuant to this Agreement.

16.3 The Navy shall provide an escort whenever EPA or the Commonwealth requires access to restricted areas of WPNSTA-Yorktown for purposes consistent with the provisions of this Agreement. EPA and the Commonwealth 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 Commonwealth, the Navy shall promptly provide a written list of current restricted or controlled-access areas.

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

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



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

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

## XVII. PERMITS

17.1 The Navy shall be responsible for obtaining all Federal, Commonwealth and local permits which are necessary for the performance of all Work under this Agreement.

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

17.3 When the Navy proposes a response action, other than an emergency removal action, to be conducted entirely onsite, which in the absence of Section 121(e)(1) of CERCLA, 42 U.S.C. Section 9621(e)(1), and the NCP would require a Federal, Commonwealth or local permit, the Navy shall include in its Draft ROD or removal memorandum:

- A. Identification of each permit which would otherwise be required;
- B. Identification of the standards, requirements, criteria, or limitations which would have had to have been met to obtain each such permit; and
- C. An explanation of how the response action proposed will meet the standards, requirements, criteria or limitations identified immediately above.

17.4 Subsection 17.2 above is not intended to relieve the Navy from the requirement(s) of obtaining a permit whenever it proposes a response action involving the shipment or movement of a hazardous substance, pollutant, or contaminant or hazardous waste off the Site or in any other circumstances where the exemption provided for at Section 121(e)(1) of CERCLA, 42 U.S.C. Section 9621(e), does not apply.

17.5 The Navy shall notify EPA and the Commonwealth 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 Commonwealth with copies of all such permits, applications, and other documents related to the permit process and final permits.

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

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

17.8 During any appeal by any Party of any permit required to implement this Agreement or during review of any proposed modification(s) to the permit, the Navy shall continue to implement those portions of this Agreement which can be reasonably implemented independent of final resolution of the permit issue(s) under appeal. However, as to work that cannot be so implemented, any corresponding deadline, timetable, or schedule shall be subject to Section XIII - EXTENSIONS, of this Agreement.

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

#### XVIII. REMOVAL AND EMERGENCY ACTIONS

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

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

18.3 If during the course of performing the activities required under this Agreement, any Party identifies an actual or a substantial threat of a release of any hazardous substance, pollutant, or contaminant at or from the Site, that Party may propose that the Navy undertake removal actions to abate the danger and threat which may be posed by such actual or threatened release. All removal actions conducted on WPNSTA-Yorktown shall be conducted in a manner consistent with this Agreement, CERCLA, Executive Order 12580, DERP, including provisions for timely notification and consultation with EPA and appropriate Commonwealth and local officials, and the NCP and shall, to the extent practicable, contribute to the efficient performance of any long term remedial action with respect to the release(s) or threatened release(s) concerned. Such a proposal to undertake such actions by the Navy shall be submitted to the EPA and the Commonwealth and shall include:

- A. Documentation of the actual or threatened release at or from the Site;
- B. Documentation that the actions posed will abate the danger and threat which may be posed by release of hazardous substances, pollutants, or contaminants at or from the Site;
- C. Documentation that the action is consistent with the NCP, applicable Commonwealth regulations, and, to the extent practicable, contributes to the efficient performance of any long-term remedial action with respect to the release or threatened release concerned;
- D. Prepare an Engineering Evaluation/Cost Analysis ("EE/CA"), or its equivalent. The EE/CA shall contain an analysis of removal alternatives for a site. The screening of alternatives shall be based on criteria as provided in CERCLA and the NCP, such as cost, feasibility, and effectiveness; and

E. A Non-Time Critical Removal Action Plan and target date for the proposed action.

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

18.4 The opportunity for review and comment for proposed removal actions, as stated in Subsection 18.3 above, may not apply if the action is in the nature of an emergency removal taken because a release or threatened release may present an imminent and substantial endangerment to human health or the environment. The Navy may determine that review and comment, as stated in Subsection 18.3 above, is impractical. However, in the case of an emergency removal action, the Navy shall provide EPA with oral notice as soon as possible and written notice within 48 hours after the Navy determines that an emergency removal is necessary. Within 7 days after initiating an emergency removal action, the Navy shall provide EPA and the Commonwealth with the written basis (factual, technical and scientific) for such action and any available documents supporting such action. Upon completion of an emergency removal action, the Navy shall state whether, and to what extent, the emergency removal action varied from the description of the action in the written notice provided pursuant to this Section. Within thirty (30) days of completion of an emergency response action, the Navy will furnish EPA and the Commonwealth with an Action Memorandum addressing the information provided in the oral notification, whether and to what extent the action varied from the description previously provided, and any other information required by CERCLA or the NCP, and in accordance with EPA guidance for such actions. Such actions may be conducted at anytime, either before or after the issuance of a ROD.

18.5 If an imminent health hazard (e.g. a drinking water well containing any contaminant at concentrations greater than any Federal or Commonwealth drinking water action level) or an activity conducted pursuant to this Agreement which is creating a danger to the public health or welfare or the environment is discovered by any Party during the efforts covered by this Agreement, the discovering Party will notify the other Parties and the Navy will take immediate action to promptly notify all appropriate Commonwealth and local agencies, potentially affected persons and officials in accordance with 10 U.S.C. Section 2705(a). The Navy will expeditiously take appropriate measures to protect all persons affected.

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

## XIX. PERIODIC REVIEW

19.1 Consistent with Section 121(c) of CERCLA, 42 U.S.C. Section 9621(c), and in accordance with this Agreement, if the selected remedial action results in any hazardous substance, pollutants or contaminants remaining at the Site, the Parties shall review the remedial action program for each Operable Unit at least every five (5) years after the initiation of the final remedial action to assure that human health and the environment are being protected by the remedial action being implemented. As part of this review, the Navy shall report the findings of the review to EPA and the Commonwealth upon its completion. This report, the Periodic Review Assessment Report, shall be a Secondary Document as described in Section X - CONSULTATION.

19.2 If upon such review it is the conclusion of any of the Parties that additional action or modification of remedial action is appropriate at the Site in accordance with Sections 104 or 106 of CERCLA, 42 U.S.C. Sections 9604 or 9606, the Navy shall implement such additional or modified action in accordance with Section VIII - WORK TO BE PERFORMED, of this Agreement.

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

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

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

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

19.7 The assessment and selection of any additional response actions determined necessary as a result of a Periodic Review shall be in accordance with Paragraphs 9.8 to 9.10. Except for emergency response actions, which shall be governed by Section XVIII - REMOVAL AND EMERGENCY ACTIONS, such response actions shall be implemented as a supplemental response action in accordance with Paragraphs 9.12 and 9.13.

19.8 When the final ROD for an Operable Unit contains the requirement for the development and implementation of a Long-Term Monitoring Plan because the selected remedial action results in any hazardous substance, pollutants or contaminants remaining at

the Site, the Long-Term Remedial Action Monitoring Plan shall be submitted in accordance with Section X - CONSULTATION.

## XX. DISPUTE RESOLUTION

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

20.2 Within thirty (30) days after: (1) issuance of a draft final Primary Document pursuant to Section X - CONSULTATION of this Agreement, or (2) any action which leads to or generates a dispute, the disputing Party shall submit to the other 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 upon to support its position.

20.3 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 and/or their immediate supervisors. During this informal dispute resolution period, the Parties shall meet and/or confer as many times as are necessary to discuss and attempt resolution of the dispute.

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

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20.5 Following elevation of a dispute to the DRC, the DRC shall have twenty-one (21) days to unanimously resolve the dispute and issue a written decision signed by all Parties. If the DRC is

unable to unanimously resolve the dispute within this twenty-one (21) day period, the written statement of dispute shall be forwarded to the Senior Executive Committee (SEC) for resolution.

20.6 The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The EPA's representative on the SEC is the Regional Administrator of EPA Region III. The Commonwealth's representative on the SEC is the Division Director, Waste Division, VDEQ. The Navy's representative on the SEC is the Deputy Assistant Secretary of the Navy for Environment and Safety. 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 Navy or the Commonwealth may, within twenty-one (21) days of the Regional Administrator's issuance of EPA's position, issue a written notice elevating the dispute to the Administrator of U.S. EPA for resolution in accordance with all applicable laws and procedures. In the event that a Party elects not to elevate the dispute to the Administrator within the designated twenty-one (21) day escalation period, the decision will become final and the work will proceed in accordance with the Regional Administrator's written position with respect to the dispute.

20.7 Upon escalation of a dispute to the Administrator of EPA pursuant to Subsection 20.6 above, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the EPA Administrator shall meet and confer with the Navy's Secretariat Representative and the Director, VDEQ to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the other Parties with a written final decision setting forth resolution of the dispute. The duties of the Administrator set forth in this Section shall not be delegated.

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

20.9 When dispute resolution is in progress, Work affected by the dispute will immediately be discontinued if the Hazardous Waste Management Division Director for EPA Region III requests, in writing, that Work related to the dispute be stopped because, in EPA's opinion, such Work is inadequate or defective, and such

inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. The Commonwealth may request the EPA Division Director to order work stopped for the reasons set out above. To the extent possible, the Party seeking a work stoppage shall consult with the other Parties prior to initiating a work stoppage request. After stoppage of work, if a Party believes that the work stoppage is inappropriate or may have potential significant adverse impacts, the Party may meet with the Party ordering a work stoppage to discuss the work stoppage. Following this meeting, and further consideration of the issues, the EPA Division Director will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the U.S. EPA Hazardous Waste Management Division Director may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the Party requesting dispute resolution.

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

20.11 Resolution of a dispute pursuant to this Section of the Agreement constitutes a final resolution to any dispute arising under this Agreement. All Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Section of this Agreement except as provided for in Section XXXIX - COMMONWEALTH RESERVATION OF RIGHTS.

20.12 The Commonwealth reserves the right to maintain an action under CERCLA Section 121(f)(3)(B), 42 U.S.C. Section 9621(f)(3)(B), to challenge the selection of a Remedial Action that does not attain a Commonwealth legally Applicable or Relevant and Appropriate Requirement, standard, criteria or limitation.

## **XXI. STIPULATED PENALTIES**

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

21.2 Upon determining that the Navy has failed in a manner set forth in Subsection 21.1, EPA or the Commonwealth shall so notify the Navy in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the Navy shall have fifteen (15) days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. The Navy shall not be liable for the stipulated penalty assessed by EPA if the failure is determined, through the dispute resolution process, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.

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

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

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

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

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

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

## XXII. FORCE MAJEURE

22.1 A Force Majeure, for the purpose of this Agreement, shall mean any event arising from causes beyond the control of the Party that causes a delay in or prevents the performance of any obligation under this Agreement, including but not limited to:

- A. Acts of God;
- B. Fire;
- C. War;
- D. Insurrection;
- E. Civil disturbance;
- F. Explosion;
- G. Unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance;
- H. Adverse weather conditions that could not be reasonably anticipated 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 XXVII - FUNDING, of this Agreement.

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

22.2 When circumstances, which may delay or prevent the completion of the Navy's obligation under this Agreement, are caused by a Force Majeure event, the Navy shall notify EPA and the Commonwealth Project Managers orally of the circumstances within forty-eight (48) hours after the Navy first became aware of these circumstances. Within fifteen (15) days of the oral

notification, the Navy shall supply to EPA and the Commonwealth in writing an explanation of the cause(s) of any actual or expected delay and the anticipated duration of any delay. The Navy shall exercise its best efforts to avoid or minimize any such delay and any effects of such delay.

### XXIII. ENFORCEABILITY

23.1 EPA and the Navy agree that:

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

B. All timetables and deadlines associated with the RI/FS shall be enforceable by any person pursuant to CERCLA Section 310, and any violation of such timetables and deadlines will be subject to civil penalties under CERCLA Sections 310(c) and 109, 42 U.S.C. Sections 9659(c) and 9609;

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

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

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

23.3 Nothing in this Agreement shall be construed as a restriction or waiver of any rights EPA or the Commonwealth may have under CERCLA, including but not limited to any rights under Sections 113, 120, 121 and 310, 42 U.S.C. Sections 9613, 9620, 9621 and 9659, or any rights or defenses the Commonwealth may have under Federal or Virginia law, including sovereign immunity.

The Navy does not waive any rights it may have under CERCLA Section 120; SARA Section 211 and Executive Order 12580.

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

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

#### XXIV. OTHER CLAIMS

24.1 Subject to Section VIII - STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION, nothing in this Agreement shall restrict the Parties from taking any action under CERCLA, RCRA, Commonwealth law, or other environmental statutes for any matter not specifically part of the Work performed under CERCLA, which is the subject matter of this Agreement.

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

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

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

24.5 The Navy shall notify the appropriate federal and Commonwealth 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 Commonwealth and federal law, including any claim for damages for destruction of, or loss of, natural resources.

24.6 This Agreement does not bar any claim for:

- A. natural resources damage assessments, or for damage to natural resources; or
- B. liability for disposal of any Hazardous Substances or waste material taken from WPNSTA-Yorktown.

#### **XXV. RESERVATION OF RIGHTS**

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

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

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

#### **XXVI. PROPERTY TRANSFER**

26.1 No change or transfer of any interest in the Facility or any part thereof shall in any way alter the status or responsibility of the Parties under this Agreement. The Navy agrees to give EPA and the Commonwealth sixty (60) days notice prior to the sale or transfer by the United States of America of any title, easement, or other interest in the real property affected by this Agreement. The Navy agrees to comply with Section 120(h) of CERCLA, 42 U.S.C. Section 9620(h), including the Community Environmental Response Facilitation Act (CERFA), and any additional amendments thereof, and with 40 C.F.R. Part 373, if applicable.

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

#### XXVII. FUNDING

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

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

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

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

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

#### XXVIII. REIMBURSEMENT OF COMMONWEALTH SERVICES

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

#### XXIX. RECOVERY OF EPA EXPENSES

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

#### XXX. QUALITY ASSURANCE

30.1 The Navy shall use quality assurance, quality control, and chain of custody procedures throughout all field investigation, sample collection and laboratory analysis activities. A Quality Assurance/Quality Control (QA/QC) Project Plan shall be submitted as a component of each SSP, RI, FS, RD, and RA Work Plan(s), as appropriate. These work plans will be reviewed as Primary Documents pursuant to Section X - CONSULTATION, of this Agreement. QA/QC Plans shall be prepared in accordance with applicable EPA Guidance.

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

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

#### XXXI. RECORD PRESERVATION

31.1 Despite any document retention policy to the contrary, EPA and the Navy shall preserve, during the pendency of this Agreement and for a minimum of seven (7) years after its termination or for a minimum of seven (7) years after implementation of any additional action taken pursuant to Section XIX - PERIODIC REVIEW, all records and documents in their

possession which relate to actions taken pursuant to this Agreement. The Commonwealth shall preserve all records and documents in its possession that relate to actions taken pursuant to this Agreement in accordance with Commonwealth law and Commonwealth policy. After the seven (7) year period, or for the Commonwealth 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 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, which is the subject of this Agreement.

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

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

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. Each Party shall notify the other Parties by telephone not less than fourteen (14) days in advance of any scheduled sample collection activity unless otherwise agreed upon by the Parties. The Party shall provide written confirmation within three (3) days of the telephonic notification.

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

#### **XXXIII. PROTECTED INFORMATION**

33.1 The Navy may assert a confidentiality claim for information to which it would be entitled to claim an exemption pursuant to the Freedom of Information Act, 5 U.S.C. Section 552(b), covering information requested pursuant to this



Agreement. Information claimed to be confidential by the Navy pursuant to the Freedom of Information Act shall be afforded the protection specified therein by EPA and the Commonwealth

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 Navy refuses to comply with an EPA request for information, it shall identify the document and summarize the contents of such document.

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

33.5 If no claim of exemption under FOIA accompanies the information when it is submitted to EPA and the Commonwealth, the information may be made available to the public without further notice to the Navy.

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

33.7 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 Commonwealth of a request to meet with the classifying officer regarding access to classified information, the Navy shall, within ten (10) calendar days of such request, notify the requesting Party of the identity of the classifying officer and the level of classification of the information sought. If the document was classified by the Navy, the classifying officer and the representative of the requesting Party shall meet within twenty-one (21) calendar days following receipt of the request. The purpose of the meeting shall be to seek a means to accommodate the requesting Party's request for access to information without compromising national security or violating security regulations. If no resolution is reached at the meeting, the Navy shall notify the requesting Party of the classifying officer's decision within fourteen (14) calendar days following the meeting. Failure to render a timely decision shall

be construed as a denial. Failure to respond is subject to dispute resolution under this Agreement.

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

#### XXXIV. COMMUNITY RELATIONS

34.1 The Navy has developed and is implementing a Community Relations Plan. This plan responds to the need for an interactive relationship with all interested community elements, both on and off the WPNSTA-Yorktown, 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 Commonwealth for review and comment.

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

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

34.4 The Parties agree that Work conducted under this Agreement and any subsequent proposed remedial action alternatives and subsequent plans for remedial action at the Site arising out of this Agreement shall comply with all the Administrative Record and public participation requirements of CERCLA, including Sections 113(k) and 117, 42 U.S.C. Sections 9613(k) and 9617, the NCP, and all applicable guidance developed and provided by EPA. This shall be achieved through implementation of the Community Relations Plan.

34.5 The Navy has established and is maintaining an Administrative Record at or near WPNSTA-Yorktown available to the public, and another copy at a central location, in accordance with CERCLA Section 113(k), 42 U.S.C. Section 9613(k), Subpart I of the NCP, and applicable guidance issued by EPA. The Administrative Record developed by the Navy shall be periodically updated and a copy of the Index will be provided to EPA and the Commonwealth. The Navy will provide to the EPA and the Commonwealth on request any document in the Administrative Record.

34.6 Pursuant to 10 U.S.C. Section 2705(c) and Section XXXVI - TECHNICAL REVIEW COMMITTEE of this Agreement, the Navy has established a Technical Review Committee (TRC) for WPNSTA-Yorktown. The purpose of the TRC is to afford a forum for cooperation between the Parties, local community representatives, and natural resource trustees on action and proposed actions at the Site.

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

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

35.2 If the Parties agree that the Agreement shall be made effective without any modifications, and if the Parties agree on the Responsiveness Summary, EPA shall transmit a copy of the signed Agreement to the 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.

35.3 If the Parties agree that modifications are needed and agree upon the modifications and amend the Agreement by mutual consent within sixty (60) days after the expiration of the public comment period, EPA and the Commonwealth, 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 Commonwealth 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 Navy and the Commonwealth 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 Commonwealth 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 Navy and the Commonwealth and shall notify them that the modified Agreement is effective. In either case, the Effective Date of the modified Agreement shall be receipt by the Navy from EPA of notification that the modified Agreement is effective.

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

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

- A. whether modifications to the Agreement are needed; or
- B. what modifications to the Agreement should be made; or
- C. any language, any provisions, any deadlines, any work to be performed or any content of the Agreement or any Attachments to the Agreement; or
- D. whether additional public notice and comments are required; or
- E. the contents of the responsiveness summary,

then the matters which are in dispute shall be resolved by the dispute resolution procedures of Section XX - DISPUTE RESOLUTION, above. For the purposes of this Section, the Agreement shall not be effective while the dispute resolution proceedings are underway. After these proceedings are completed, the Final Written Decision shall be provided to the Parties indicating the results of the dispute resolution proceedings. Each Party reserves the right to withdraw from the Agreement by providing written notice to the other Parties within twenty (20) days after receiving from EPA the Final Written Decision of the resolution of the matters in dispute. If the Commonwealth 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 a written notice of withdrawal to EPA within this twenty (20) day period shall act as a waiver of the right of that Party to withdraw from the Agreement, and EPA shall thereafter send a copy of the final Agreement to 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.

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

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

#### XXXVI. TECHNICAL REVIEW COMMITTEE

36.1 Pursuant to 10 U.S.C. Section 2705(c), the Navy has established a Technical Review Committee (TRC). The Parties shall participate in the TRC as follows:

- A. A WPNSTA-Yorktown representative who shall chair the TRC;
- B. An EPA representative,
- C. A Commonwealth representative, and
- D. The Navy Project Manager.

The Parties shall encourage representatives from the following organizations to serve as members of the TRC:

- E. A representative from York Co., Virginia local government.
- F. A York County public representative.
- G. Natural Resource Trustees
- H. A representative from James City County, Virginia
- I. A representative from the City of Newport News, Virginia

36.2 The chairman shall schedule quarterly meetings of the TRC unless the Parties agree to meet less frequently. If possible, meetings shall be held in conjunction with the meetings of the Project Managers. Meetings of the TRC shall be for the purpose of reviewing progress under the Agreement. Special meetings of the TRC may be held at the request of the members.

**XXXVII. EFFECTIVE DATE**

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

**XXXVIII. AMENDMENT OF AGREEMENT**

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

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

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

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

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

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

### XXXIX. COMMONWEALTH RESERVATION OF RIGHTS

39.1 Notwithstanding any other Section of this Agreement, the Commonwealth shall retain any statutory right it may have to obtain judicial review of any final decision of EPA including, without limitation, any authority the Commonwealth may have under CERCLA Sections 113, 121(e)(2), 121(f)(3), and 310, 42 U.S.C. Sections 9613, 9621(e)(2), 9621(f)(3), and 9659, Section 7002 of RCRA, Section XXIII - ENFORCEABILITY of this Agreement, and Commonwealth law, except that the Commonwealth expressly agrees to exhaust any applicable remedies provided in Section X - CONSULTATION and Section XX - DISPUTE RESOLUTION of this Agreement, prior to exercising any such rights.

39.2 Notwithstanding anything in this Agreement, the Commonwealth reserves the right to initiate any administrative, legal, or equitable remedies available to it in the event that the Navy fails or refuses to comply with any requirement of Commonwealth laws or regulations required under this Agreement.

39.3 In the event that the Navy's obligations under this Agreement are not fulfilled for six (6) consecutive months, the Commonwealth shall have the option of terminating all provisions of the Agreement affecting the Commonwealth's rights and responsibilities, and the Commonwealth may thereafter seek any appropriate relief. The Commonwealth will provide the other Parties with ten (10) days notice of its intent to terminate.

### XXXX. SEVERABILITY

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

### XXXXI. TERMINATION AND SATISFACTION

41.1 The provisions of this Agreement shall be deemed satisfied upon a consensus of the Parties that the Navy has completed its obligations under the terms of this Agreement. Following EPA Certification of all the response actions at the Site pursuant to Subsection 9.16 of Section IX - WORK TO BE PERFORMED, any Party may propose in writing the termination of this Agreement upon a showing that the requirements of this Agreement have been satisfied. The obligations and objectives of this Agreement shall be deemed satisfied and terminated upon receipt by the Navy of written notice from EPA, with concurrence of the Commonwealth, that the Navy has demonstrated that all the requirements of this Agreement have been satisfied. A Party opposing termination of this Agreement shall provide a written statement of the basis for

its denial and describe the actions necessary to grant a termination notice to the proposing Party within ninety (90) days of receipt of the proposal.

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

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

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



**AUTHORIZED SIGNATURES**

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

IT IS SO AGREED:

By

*Elsie L. Munsell* Date *7/29/94*  
ELSIE L. MUNSELL  
Deputy Assistant Secretary of the Navy  
(Environment and Safety)

By

*Peter W. Schmidt* Date *8/10/94*  
PETER W. SCHMIDT  
Director, Department of Environmental Quality  
Commonwealth of Virginia

\*(See Below)

By

*Peter H. Kostmayer* Date *8/31/94*  
PETER H. KOSTMAYER  
Regional Administrator  
Environmental Protection Agency, Region III

\*Mr. Schmidt signs this agreement only as a statement of the intentions of the Commonwealth. The Commonwealth does not consider this agreement to be a contract, and as to the Commonwealth, this agreement creates no third-party beneficiaries.

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*Peter W. Schmidt* Date *8/12/94*  
PETER W. SCHMIDT  
Director, Department of Environmental Quality  
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PETER H. KOSTMAYER  
Regional Administrator  
Environmental Protection Agency, Region III

\*Mr. Schmidt signs this agreement only as a statement of the intentions of the Commonwealth. The Commonwealth does not consider this agreement to be a contract, and as to the Commonwealth, this agreement creates no third-party beneficiaries.

## Naval Weapons Station - Yorktown

### Site Screening Areas

#### Appendix A

<u>Site-Screening Area #</u>	<u>Former Unit Designation</u>	<u>Unit Name Description</u>
1	EPIC Site 37 (CERCLA)	Building 428/Teague Road Disposal Area
2	EPIC Site 54	Former EOD Burning/Disposal Area
3	SWMU 56, 57, 58, & 59	Fire Training Pits and vicinity
4	SWMU 102	Weapons Casing/Drum Disposal Area
5	SWMU 101	Bypass Road Landfill
6	Navy site 14, SWMU 28, (EPIC 25)	Aviation Field/Excavation Area
7	SWMU 25, AOC A, EPIC 22 & EPIC 23	Building 373 - Rocket Plant/Mag Group 18/Main Rd. Disposal Area
8	SWMU 122, SWMU 123	Building 350 - Rail Roundhouse Maintenance Area and Trench Outfall
9	SWMU 80 & 81	Bldg 1751 - NEDED Chemistry Lab Neutralization Unit & Drain Fields
10	SWMU 107	X-Ray Facility Drain Field
11	SWMU 113	Building 3 Neutralization Unit
12	SWMU 133, 144 (EPIC 41 & 42)	PW Storage Yard and Bldg. 683 Storage Area
13	AOC R	Building 529 Battery Drainage Area
14	SWMU 72	Building 537 Discharge to Felgates Creek

**Naval Weapons Station - Yorktown**

**Site Screening Areas**

**Appendix A -continued**

<u>Site-Screening Area #</u>	<u>Former Unit Designation</u>	<u>Unit Name Description</u>
15	SWMU 127	<b>STP # 1 Sludge Drying Beds &amp; Discharge Areas</b>
16	SWMU 69, EPIC Figure 5	<b>Building 402 - Metal Disposal Area</b>
17	SWMU 74	<b>MK-46 Waste Otto Tank - Building 1456</b>
18	SWMU 87	<b>MK-48 Waste Otto Tank - Building 1816</b>
19	SWMU 31 & 32, AOC B	<b>Beaver Road/Ponds 11 &amp; 12 drainage areas</b>

## Naval Weapons Station - Yorktown

### Areas of Concern

#### Appendix B

<u>Area of Concern #</u>	<u>Former Unit Designation</u>	<u>Unit Name Description</u>
1	AOC O	Building 350 - Rail Roundhouse Transformer Pad
2	SWMU 128	Building 372 - PW Vehicle Maintenance O/W Separator
3	AOC J	Blasting Grit Spill Area
4	AOC S	Paint Shop Grit Disposal Area
5	SWMU 162	STP # 2 Sludge Drying Beds
6	SWMU 175	STP # 3 Sludge Drying Beds
7	SWMU 177	STP # 4 Sludge Drying Beds
8	SWMU 37	Building 118 Waste Oil O/W Separator
9	SWMU 147 & 148	Building 683 O/W Separator
10	EPIC site 45	Stoney Point Rd Disposal Area [STP # 2]
11	SWMU 174	Building 710 Waste O/W Separator
12	SWMU 71	Building 457 O/W Separator

## Naval Weapons Station - Yorktown

### Areas of Concern

#### Appendix B - continued

<u>Area of Concern #</u>	<u>Former Unit Designation</u>	<u>Unit Name Description</u>
13	SWMU 98	Building 370 O/W Separator
14	SWMU 160	Building 1811 - Supply Storage Yard (EPIC photos/RCRA narrative are concerned with field behind the Supply Storage Yard [west & north])
15		Building 1744 Explosive Burning Silo
16	SWMU 107	X-Ray Facility Tank
17	SWMU 29, EPIC Site 34	Dredge Material Disposal Areas
18	AOC M	Code 17 Contaminated Soil Runoff Drainageways
19	SWMU 104	Code 17 Storage Compound
20	SWMU 72	NEDED Discharge areas to Felgates Creek
21	SWMU 181, 97, & 168	West Road Coal Storage Area/Bldgs. 370 & 708 Coal Storage Piles