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Pearl Harbor Naval Complex Federal Facilities Agreement

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9
AND THE
STATE OF HAWAII
AND THE
UNITED STATES DEPARTMENT OF THE NAVY

IN THE MATTER OF: The U.S. Department of the Navy Pearl Harbor Naval Complex Oahu, Hawaii	Federal Facility Agreement Under CERCLA Section 120 Administrative Docket Number: 94-05

ENCLOSURE( )

Pearl Harbor Naval Complex Federal Facilities Agreement

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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IN THE MATTER OF:	Federal Facility Agreement Under CERCLA Section 120
The U.S. Department of the Navy	
Pearl Harbor Naval Complex Oahu, Hawaii	Administrative Docket Number: 94-05

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:

1. PURPOSE

1.1 The general purposes of this Agreement are to:

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

(c) Facilitate cooperation, exchange of information and participation of the Parties in such action; and

(d) Ensure the adequate assessment of potential injury to natural resources and the prompt notification to and cooperation and coordination with the Federal and State Natural Resource Trustees necessary to ensure the implementation of response actions achieving appropriate cleanup levels.

1.2 Specifically, the purposes of this Agreement are to:

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

(b) Identify operable unit alternatives which are

appropriate at the Site prior to the implementation of final remedial action(s) for the Site. Operable Unit (OU) alternatives shall be identified as early as possible prior to proposal of OUs to EPA and the State. This process is designed to promote cooperation among Parties in identifying OU alternatives prior to the final selection of OUs;

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

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

(e) Implement the selected remedial actions in accordance with CERCLA, RCRA, and applicable State law and meet the requirements of CERCLA section 120(e)(2). For the purposes of this Agreement, the "completion of investigation and study" referred to in CERCLA §120(e)(2) will be the date of signature of the Record Of Decision;

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

(g) Coordinate response actions at the Site with the mission and support activities at the Pearl Harbor Naval Complex;

(h) Provide for State involvement in the initiation, development, selection and enforcement of remedial actions to be undertaken at Pearl Harbor Naval Complex, including the review of all applicable data as it becomes available and the development of studies, reports, and action plans; and to identify and integrate State Applicable or Relevant and Appropriate Requirements (ARARs) into the remedial action process;

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

2. PARTIES

2.1 The Parties to this Agreement are EPA, the Navy, and the

State of Hawaii. The terms of the Agreement shall apply to and be binding upon EPA, the State of Hawaii, and the Navy. The Department of the Navy hereby agrees to ensure the Navy's performance of each of the Navy's obligations hereunder.

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

2.3 Each Party shall be responsible for ensuring that its contractors comply with the terms and conditions of this Agreement. Failure of a Party to provide proper direction to its contractors and any resultant noncompliance with this Agreement by a contractor shall not be considered a Force Majeure event or other good cause for extensions under Section 9 (Extensions), unless the Parties so agree. The Navy will notify EPA and the State of the identity and assigned tasks of each of its contractors performing work under this Agreement upon their selection.

3. JURISDICTION

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

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

(b) EPA enters into those portions of this Agreement that relate to operable units and final remedial actions pursuant to CERCLA section 120(e)(2), 42 U.S.C. § 9620(e)(2), RCRA sections 6001, 3008(h) and 3004(u) & (v), 42 U.S.C. § 6961, 6928(h), 6924(u) & (v), and E.O. 12580;

(c) The Navy enters into those portions of this Agreement that relate to the RI/FS pursuant to CERCLA section 120(e)(1), 42 U.S.C. § 9620(e)(1), RCRA sections 6001, 3008(h) and 3004(u) & (v), 42 U.S.C. § 6961, 6928(h), 6924(u) & (v), E.O. 12580, the National Environmental Policy Act, 42 U.S.C. § 4321, and DERP;

(d) The Navy enters into those portions of this Agreement that relate to operable units and final remedial actions pursuant to CERCLA section 120(e)(2), 42 U.S.C. § 9620(e)(2), RCRA sections 6001, 3008(h), and 3004(u) & (v), 42 U.S.C. § 6961, 6928(h), 6924(u) & (v), E.O. 12580 and the DERP;

and

(e) The State of Hawaii, represented by the Hawaii Department of Health (DOH), enters into this agreement pursuant to CERCLA sections 120(f) and 121, 42 U.S.C. § 9620(f) and 9621, and 3 Hawaii Revised Statutes Sections 342B-35(2), 342D-59(2) and 342J-40.

4. DEFINITIONS

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

(a) "Agreement" shall mean this document and shall include all Appendices to this document except to the extent the Parties agree that any part of any Appendix is inconsistent with this Agreement. Except to such extent, all Appendices shall be made an integral and enforceable part of this document. Copies of Appendices shall be available as part of the administrative record, as provided in subsection 26.3.

(b) "ARARs" shall mean federal and State applicable or relevant and appropriate requirements, standards, criteria, or limitations selected pursuant to section 121 of CERCLA. ARARs shall apply in the same manner and to the same extent that such are applied to any non-governmental entity, facility, unit, or site, as set forth in CERCLA section 120(a)(1), 42 U.S.C. § 9620(a)(1), subject to CERCLA section 121(d)(4), 42 U.S.C. § 9621(d)(4) and E.O. 12580 § 2(d) & (g).

(c) "Area of concern" shall mean releases, suspected releases, and potential releases of hazardous substances, pollutants, contaminants and hazardous waste.

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

(e) "Days" shall mean calendar days, unless business days are specified. Any submittal that under the terms of this Agreement would be due on Saturday, Sunday, or Federal or State holidays shall be due on the following business day. References herein to specific numbers of days shall be understood to exclude the day of occurrence.

(f) "DERP" shall mean the Defense Environmental Restoration Program as defined in 10 U.S.C §2701

(g) "Department of Defense" shall mean the U.S. Department of Defense.

(h) "DOH" shall mean the Hawaii Department of Health.

(i) "DRC" shall have the meaning given in subsection 12.5.

(j) "EPA" shall mean the Environmental Protection Agency, its successors and employees, and its duly authorized

representatives.

(k) "Facility" shall have the same definition as in CERCLA section 101(9), 42 U.S.C. § 9601(9).

(l) "Feasibility Study" or "FS" means a study conducted pursuant to CERCLA and the NCP which fully develops, screens and evaluates in detail remedial action alternatives to prevent, mitigate, or abate the migration or the release of hazardous substances, pollutants, or contaminants at and from the Site. The Navy shall conduct and prepare the FS in a manner to support the intent and objectives of Section 17 (Statutory Compliance/RCRA-CERCLA Integration).

(m) "FOIA" shall mean the Freedom of Information Act, 5 U.S.C. § 552 et seq., and any subsequent amendments thereto.

(n) "Hazardous substance" shall mean (A) any substance designated pursuant to section 1321(b)(2)(A) of Title 33, (B) any element, compound, mixture, solution, or substance designated pursuant to CERCLA section 102, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which has been suspended by Act of Congress), (D) any toxic pollutant listed under section 1317(a) of Title 33, (E) any hazardous air pollutant listed under section 112 of the Clean Air Act, and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 2606 of Title 15. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

(o) "Meeting," in regard to Project Managers, shall mean an in-person discussion at a single location or a conference telephone call of all Project Managers. A conference call will suffice for an in-person meeting at the concurrence of the Project Managers. Meetings shall be of two types: Progress meetings, and all other meetings (no formal designation). "Progress Meetings," are those that are formally required per subsection 18.3. Progress Meetings must be designated as such at least two weeks prior to the scheduled meeting date, and must be done so by the majority of the Project Managers. All other meetings may be scheduled as needed and, unless requested by a majority of the of Project Managers, do not carry the administrative reporting requirements of subsection 18.3.

(p) "Navy" shall mean the U.S. Department of the Navy and its employees, members, agents, and authorized representatives. "Navy" shall also include the U.S. Department of Defense, to the extent necessary to effectuate the terms of this Agreement, including, but not limited to, appropriations,

funding and Congressional Reporting Requirements.

(q) "National Contingency Plan" or "NCP" shall refer to the regulations contained in 40 C.F.R. § 300.1 et seq., including any amendments thereto.

(r) "Natural Resource Trustee(s)" and "Federal or State Natural Resource Trustees" shall have the same meaning and authority provided in CERCLA and the NCP.

(s) "Natural Resource Trustee(s) Notification and Coordination" shall have the same meaning as provided in CERCLA and the NCP.

(t) "On-Scene Coordinator" or "OSC" shall have the same meaning and authority as provided in the NCP.

(u) "Operable Unit" or "OU" shall have the same meaning as provided in the NCP.

(v) "Operation and maintenance" shall mean activities required to maintain the effectiveness of response actions.

(w) "Parties" shall mean the parties to this Agreement.

(x) "Project Manager" shall have the meaning given in Section 18 of this Agreement.

(y) "QAPP" shall mean a Quality Assurance Project Plan.

(z) "RCRA" or "RCRA/HSWA" shall mean the Resource Conservation and Recovery Act of 1976, Public Law 94-580, 42 U.S.C. § 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984, Public Law 98-616, and any subsequent amendments.

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

(bb) "Remedial Investigation" or "RI" means that investigation conducted pursuant to CERCLA and the NCP, as supplemented by the substantive provisions of the EPA RCRA Facilities Assessment guidance. The RI serves as a mechanism for collecting data for Site and waste characterization and conducting treatability studies as necessary to evaluate performance and cost of the treatment technologies. The data gathered during the RI will also be used to conduct a baseline risk assessment, perform a feasibility study, and support design of a selected remedy. The Navy shall conduct and prepare the RI in a manner to support the intent and objectives of Section 17 (Statutory Compliance/RCRA-CERCLA Integration).

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

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

(ee) "SARA" shall mean the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499.

(ff) "SEC" shall have the meaning given in subsection 12.6.

(gg) "Site," for purposes other than obtaining permits, shall include Pearl Harbor Naval Complex which is a geographic area and not a governmental entity, which includes for this Agreement Pearl Harbor; the Pearl Harbor Naval Shipyard; Fleet and Industrial Supply Center; Naval Station Pearl Harbor; Submarine Base Pearl Harbor; Navy Public Works Center; Naval Sea Systems Command Detachment, Naval Inactive Ship Maintenance Facility, Pearl Harbor; Naval Magazine Lualualei (West Loch Branch and Waipio Peninsula), including Aiea Laundry, Manana, Red Hill, Ewa Junction, and Pearl City Junction (shown on the attached map), the Facility (as defined above) and any area necessary for performance of remedial actions. For purposes of obtaining permits, "on-site" shall have the meaning provided in the NCP and "off-site" shall mean all locations that are not on-site.

(hh) "Site Management Plan" or "SMP" is a document that will define priorities, approaches, and long range objectives throughout the remedial action process, including RI/FS tasks, operable unit and final remedial action selection and implementation, and operation and maintenances. The SMP will be updated by the Navy at least annually, unless otherwise agreed upon by the Parties pursuant to Section 9 (Extensions). The Updates to the SMP are intended to reflect the dynamics of the remedial action process at Pearl Harbor Naval Complex and to revise priorities and tasks as appropriate. Each Update shall supersede all preceding versions of the SMP. Each Update shall include a summary denoting which provisions remain unchanged from the immediately preceding update and which provisions are being revised. The SMP and each Update to the SMP shall be prepared in a manner that fully complies with all requirements pertaining to RI/FS Workplans, except that Field Sampling Plans and QAPPs may be prepared and submitted as separate primary documents. Each Update to the SMP shall include a list of the most current deadlines for submission of draft primary documents, as agreed upon pursuant to Sections 8 (Deadlines) and 9 (Extensions) and set forth in Appendices to this Agreement.

(ii) "State" or "State of Hawaii" shall mean the Hawaii State government in its entirety, as represented by DOH, unless otherwise specified.

5. DETERMINATIONS

5.1 This Agreement is based upon the placement of Pearl Harbor Naval Complex, Hawaii, on the National Priorities List by EPA on October 14, 1992, 57 Federal Register 47,180, 47,202.

5.2 Pearl Harbor Naval Complex is a facility under the

jurisdiction, custody, or control of the U.S. Department of Defense within the meaning of E.O. 12580, 52 Federal Register 2923, 29 January 1987. The Department of the Navy is authorized to act in behalf of the Secretary of Defense for all functions delegated by the President through E.O. 12580 which are relevant to this Agreement.

5.3 Pearl Harbor Naval Complex is a federal facility under the jurisdiction of the Secretary of Defense within the meaning of CERCLA section 120, 42 U.S.C. § 9620, and SARA section 211, 10 U.S.C. § 2701 et seq., and subject to DERP.

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

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

5.6 The actions to be taken pursuant to this Agreement are reasonable and necessary to protect the public health, welfare, or the environment.

5.7 There are areas within the boundaries of Pearl Harbor Naval Complex where hazardous substances have been deposited, stored, placed, or otherwise come to be located in accordance with 42 U.S.C. § 9601(9) & (14).

5.8 There have been releases of hazardous substances, pollutants or contaminants at or from Pearl Harbor Naval Complex into the environment within the meaning of 42 U.S.C. § 9601(22), 9604, 9606, and 9607.

5.9 With respect to these releases, the Navy is an owner, operator and/or generator subject to the provisions of 42 U.S.C. § 9607 and within the meaning of Hawaii Revised Statutes Sections 342J-2, 342J-30, 128D-1 and 128D-6(a).

5.10 Included as an Attachment to this Agreement is a map showing areas of known contamination, based on information available at the time of the signing of this Agreement.

5.11 In 1972 and 1987, the EPA issued reports of independent environmental monitoring for radioactivity associated with nuclear powered warships at Pearl Harbor Naval Shipyard and SUBASE Pearl. The EPA monitoring included analysis of samples taken from Pearl Harbor and direct radiation level measurements using sensitive detection equipment. These reports concluded

that the levels and locations of radioactivity identified and the limited media in which it was found showed that operations related to nuclear powered warship activities had not resulted in a release of radionuclides having adverse effects on public health or the environment. These EPA monitoring results confirmed those of separate Navy monitoring, reported annually (see e.g., Naval Nuclear Propulsion Program Report NT-93-1). EPA will take these reports and their conclusions into account in commenting on actions to be taken under this agreement.

6. WORK TO BE PERFORMED

6.1 The Parties agree to perform the tasks, obligations and responsibilities described in this Section in accordance with CERCLA and CERCLA guidance and policy; the NCP; pertinent provisions of RCRA and RCRA guidance and policy; E.O. 12580; applicable State laws and regulations; and all terms and conditions of this Agreement including documents prepared and incorporated in accordance with Section 7 (Consultation).

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

(a) Remedial Investigations of the Site;

(b) Federal and State Natural Resource Trustee Notification and Coordination;

(c) Feasibility Studies for the Site;

(d) All response actions, including Operable Units, for the Site; and

(e) Operation and maintenance of response actions at the Site.

6.3 The Parties agree to:

(a) Make their best efforts to expedite the initiation of response actions for the Site, particularly for Operable Units; and

(b) Carry out all activities under this Agreement so as to protect the public health, welfare and the environment.

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

6.5 The Parties recognize that any discovered release of hazardous substances determined to have originated off Pearl Harbor Naval Complex and to have been caused by a party other than the Navy, including groundwater plumes mingled with plumes originating on Pearl Harbor Naval Complex, may be addressed by a

separate agreement between the responsible parties and appropriate regulatory agencies. Nothing in this subsection 6.5 shall reduce or otherwise affect the Navy's obligations under this Agreement except as may be specifically provided in such other agreement if EPA is a party thereto and such other agreement refers to this Agreement.

6.6 The Navy shall conduct a review of existing information in order to prepare a Preliminary Assessment (PA) pursuant to CERCLA to determine if there have been any releases of radionuclides as defined by CERCLA at Pearl Harbor Naval Complex prior to the effective date of this Agreement which should be further investigated or remediated under this Agreement, and EPA will evaluate the PA according to applicable EPA guidance (including without limitation EPA Guidance on Performing Preliminary Assessments under CERCLA, EPA/540/G-91/013, September, 1991).

7. CONSULTATION: Review and Comment Process for Draft and Final Documents

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

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

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

either thirty (30) days after the period established for review of the draft final document if dispute resolution is not invoked or as modified by decision of the dispute resolution process.

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

7.3 Primary Documents:

(a) The Navy shall complete and transmit drafts of the following primary documents for each operable unit and for the final remedy to EPA and the State, for review and comment in accordance with the provisions of this Section; provided, however, that the Navy need not complete a draft primary document for an operable unit if (x) the same primary document completed or to be completed with respect to another operable unit covers all topics relevant to the operable unit at issue, and (y) the Parties agree in writing that such draft primary document need not be completed. Primary documents shall include:

(1) Site Management Plan and Updates
(2) RI/FS Workplans, including Field Sampling Plans, QAPPs, and Health and Safety Plans
(3) Community Relations Plan (May be amended as appropriate to address Operable Units. Any such amendments shall not be subject to the threshold requirements of subsection 7.10. Any disagreement regarding amendment of the CRP shall be resolved pursuant to Section 12 (Dispute Resolution).)
(4) RI Reports (including Baseline Risk Assessment)
(5) FS Reports
(6) Proposed Plans
(7) Records of Decision (RODs)
(8) Remedial Design Work Plan
(9) Preliminary Remedial Design
(10) Final Remedial Design
(11) Remedial Action Work Plan (including Health and Safety Plan, Construction Quality Assurance Plan, Construction Quality Control Plan, and Contingency Plan)
(12) Project Closeout Report
(13) Operation and Maintenance Plan (including Health and Safety Plan)

(b) Only draft final primary documents shall be

subject to dispute resolution. The Navy shall complete and transmit draft primary documents in accordance with the timetable and deadlines established in Section 8 (Deadlines).

(c) Primary documents may include target dates for subtasks as provided in subsections 7.4(b) and 18.3. The purpose of target dates is to assist the Navy in meeting deadlines, but target dates do not become enforceable by their inclusion in the primary documents and are not subject to Section 8 (Deadlines), Section 9 (Extensions) or Section 13 (Enforceability).

7.4 Secondary Documents:

(a) The Navy shall complete and transmit drafts of the following secondary documents for each operable unit and for the final remedy to EPA and the State for review and comment; provided, however, that the Navy need not complete a draft secondary document for an operable unit if (x) the same secondary document or a primary document completed or to be completed with respect to another operable unit covers all topics relevant to the operable unit at issue, and (y) the Parties agree in writing that such draft secondary document need not be completed.

(1) Site Characterization Summaries (part of RI)
(2) Sampling and Data Results
(3) Treatability Studies (only if generated)
(4) Initial Screenings of Alternatives
(5) Risk Assessments
(6) Well closure methods and procedures
(7) Detailed Analyses of Alternatives
(8) Post-Screening Investigation Work Plans
(9) Preliminary Review Report
(10) Sampling Visit Work Plan
(11) Preliminary Assessment/Site Inspection (or equivalent)(PA/SI)
(12) Interim Remedial Design(s) (as identified in the Remedial Design Work Plan)
(13) Construction Quality Assurance Plan
(14) Construction Quality Control Plan
(15) Contingency Plan

(b) Although EPA and the State may comment on the drafts of the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by subsection 7.2. Target dates for the completion and transmission of draft secondary documents shall be established by the Project Managers. The Project Managers also may agree upon additional secondary documents that are within the scope of the listed primary documents.

7.5 Meetings of the Project Managers. Meetings of the Project Managers shall be of two types as defined in subsection 4.1(m): "Progress Meetings," and all other meetings (no formal designation). Progress Meetings require that the Project

Managers meet in person or by conference call approximately every ninety (90) days to review and discuss the progress of work being performed at the Site, including progress on the primary and secondary documents. Upon agreement by the majority of the Project Managers, Progress Meetings may be held more frequently (but not more often than every thirty (30) days) or less frequently than ninety (90) days as needed. Prior to preparing any draft document specified in subsections 7.3 or 7.4 above, the Project Managers shall meet in an effort to reach a common understanding with respect to the contents of the draft document.

7.6 Identification and Determination of Potential ARARs:

(a) DOH shall identify potential State ARARs as required by CERCLA § 121(d)(2)(A)(ii), 42 U.S.C. § 9621(d)(2)(A)(ii), which are pertinent to those activities for which DOH is responsible and the document being addressed. DOH will contact in writing those State and local governmental agencies that are a potential sources of ARARs in a timely manner as set forth in NCP § 300.515(d).

(b) Prior to the issuance of a draft primary or secondary document for which ARAR determinations are appropriate, the Project Managers shall meet to identify and propose all potential pertinent ARARs, including any permitting requirements that may be a source of ARARs. At that time and within the time period described in NCP § 300.515(h)(2), the State shall submit the proposed ARARs obtained pursuant to paragraph 7.6(a) to the Navy, along with a list of agencies that failed to respond to the State's solicitation of ARARs and copies of the solicitations and any related correspondence.

(c) The Navy will contact the agencies that did not respond and again solicit their inputs.

(d) The Navy will prepare draft ARAR determinations in accordance with CERCLA section 121(d)(2), 42 U.S.C. § 9621(d)(2), the NCP and pertinent guidance issued by EPA.

(e) 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 associated with a proposed remedy and the characteristics of a site. The Parties recognize that ARAR identification is necessarily an iterative process and that potential ARARs must be identified and discussed among the Parties as early as possible, and must be reexamined throughout the RI/FS process until a ROD is issued.

7.7 Review and Comment on Draft Documents:

(a) The Navy shall complete and transmit each draft primary document to EPA and the State on or before the corresponding deadline established for the issuance of the document. The Navy shall complete and transmit the draft

secondary documents in accordance with the corresponding target dates.

(b) Review of any document by EPA and the State may concern all aspects of it (including completeness) and should include, but will not be limited to, technical evaluation of any aspect of the document and consistency with CERCLA, the NCP, applicable Hawaii law, and any pertinent guidance or policy issued by EPA or the State (except that any State guidance that is not "promulgated" (as defined in the NCP) shall constitute a "to be considered" item (as that phrase is used in the NCP)). At the request of EPA and the State, and to expedite the review process, the Navy shall make an oral presentation of the primary document to the Parties at the next scheduled meeting of the Project Managers following transmittal of the draft document, and shall do so with respect to secondary documents upon request of EPA and the State. Comments by the EPA and DOH shall be provided with adequate specificity so that the Navy may respond 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, the EPA or the DOH commenter shall provide a copy of the cited authority or reference.

(c) Unless the Parties agree to another period, all draft documents shall be subject to a sixty (60) day period for review and comment. At or before the close of the comment period, EPA and the State shall transmit their written comments to the Navy. For unusually lengthy or complex documents, EPA or the State may extend the sixty (60) day comment period for an additional thirty (30) days by written notice to the Navy prior to the end of the sixty (60) day period. In appropriate circumstances, this period may be further extended in accordance with Section 9 (Extensions).

(d) Representatives of the Parties shall make themselves readily available 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.

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

(f) Following the close of the comment period for a draft document, the Navy shall give full consideration to all written comments. If the Navy requests, the Parties shall hold a meeting to discuss such comments within fifteen (15) days of the close of the comment period on a draft secondary document or draft primary document. On a draft secondary document, the Navy

shall, within sixty (60) days of the close of the comment period, transmit to the EPA and the State its written response to the comments received. On a draft primary document, the Navy shall, within sixty (60) days of the close of the comment period, transmit to EPA and the State a draft final primary document, which shall include the Navy's response to all written comments received within the comment period. While the resulting draft final document shall be the responsibility of the Navy, it shall be the product of consensus to the maximum extent possible.

(g) The Navy may extend the sixty (60) day period for either responding to comments on a draft document or for issuing the draft final primary document for an additional thirty (30) days by providing written notice to EPA and the State prior to the end of the sixty (60) day period. In appropriate circumstances, this time period may be further extended in accordance with Section 9 (Extensions).

7.8 Availability of Dispute Resolution for Draft Final Primary Documents:

(a) Dispute resolution shall be available to the Parties for draft final primary documents as set forth in Section 12 (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 subsection 12.10 regarding dispute resolution.

7.9 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 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 sixty (60) days of resolution of the dispute, 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 9 (Extensions).

7.10 Subsequent Modification of Final Documents: Following finalization of any primary document pursuant to subsection 7.9 above, any Party may seek to modify the document including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in paragraphs 7.10(a) and (b) below. (These restrictions do not apply to the Community Relations Plan.)

(a) Any Party may seek to modify a document after finalization 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

appropriate under subparagraphs 7.10(b)(1) and (2) below.

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

(1) The requested modification is based on information that is new (i.e., information that becomes available or known after the document was finalized) and significant; and

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

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

8. DEADLINES

8.1 All deadlines agreed upon before the effective date of this Agreement shall be made an Appendix to this Agreement. To the extent that deadlines have already been mutually agreed upon by the Parties prior to the execution of this Agreement, they will satisfy the requirements of this Section and remain in effect, shall be published in accordance with subsection 8.3, and shall be incorporated into the appropriate work plans. Deadlines established pursuant to this section shall be documented in the Site Management Plan or Update. Nothing in this section shall be construed to limit any parties' rights with respect to requests for extensions, amendment to the agreement or the invocation of force majeure.

8.2 Within 60 days of the effective date of this Agreement, and no later than October 30 for each succeeding fiscal year, the Navy shall propose deadlines for all operable units and areas of concern at the Site, as provided in this section.

(a) For all operable units and areas of concern for which remedial investigations are to commence in the current year and the budget year, or within the current year and the budget year for each succeeding fiscal year, the Navy shall propose deadlines for completion of the following draft primary documents:

(1) RI/FS Workplans, including Field Sampling Plans, and Health and Safety Plans
(2) QAPPs
(3) Community Relations Plan

(4) RI Reports (including Baseline Risk Assessment)
(5) FS Reports
(6) Proposed Plans
(7) Records of Decision (RODs)

(b) For all PA/SIs which are to commence within the current year and the budget year, or within the current year and the budget year for each succeeding fiscal year for Updates, the Navy shall propose deadlines, including any such interim milestones as are necessary, for completion of the PA/SI.

(c) EPA and DOH shall review and provide comments to the Navy regarding the proposed deadlines under (a) and (b) in accordance with the provisions for review of the Site Management Plan and Updates in Section 7 (Consultation).

(d) For all remedial investigations and PA/SIs which do not begin in the current year or budget year, or in the current year or budget year for each succeeding fiscal year for Updates, the Navy shall propose draft deadlines for the initiation of the remedial investigation and PA/SI. EPA and DOH shall review and provide comments to the Navy regarding the proposed draft deadlines in accordance with the provisions for review of the Site Management Plan and Updates in Section 7 (Consultation). Any deadlines for initiation of a remedial investigation or PA/SI which shall not begin in the current year or the budget year, or in the current year or the budget year for each succeeding fiscal year for an Update, shall not be subject to stipulated penalties unless and until such remedial investigation or PA/SI has been scheduled in a Site Management Plan Update no greater than two fiscal years prior to the initiation date.

(e) For purposes of this section, the current year shall mean the current fiscal year and the budget year shall mean the following fiscal year. The fiscal year runs from October 1 through September 30 of the following calendar year.

8.3 Within twenty-one (21) days of issuance of the Record of Decision for any operable unit or for the final remedy, the Navy shall propose deadlines for completion of the following draft primary documents:

(a) Remedial Design Work Plan
(b) Preliminary Remedial Design
(c) Final Remedial Design
(d) Remedial Action Work Plan (including Health and Safety Plan)
(e) Construction Quality Assurance Plan
(f) Construction Quality Control Plan
(g) Contingency Plan
(h) Project Closeout Report

Within fifteen (15) days of receipt, EPA, and DOH shall review

and provide comments to the Navy regarding the proposed deadlines. Within fifteen (15) days following receipt of the comments the Navy shall, as appropriate, make revisions and reissue the proposal. The Parties shall meet as necessary to discuss and finalize the proposed deadlines. All agreed-upon deadlines shall be incorporated into the appropriate work plans. If the Parties fail to agree within thirty (30) days on the proposed deadlines, the matter shall immediately be submitted for dispute resolution pursuant to Section 12 (Dispute Resolution). The final deadlines established pursuant to this subsection shall be published by EPA, in conjunction with the State, and shall be documented in the Site Management Plan and Updates.

8.4 For any operable units not identified as of the effective date of this Agreement, the Navy shall propose deadlines for all documents listed in subsection 7.3(a)(1) through (7) (with the exception of the Community Relations Plan and any document that comes within the proviso to such subsection) within twenty-one (21) days of agreement on the proposed operable unit by all Parties. These deadlines shall be proposed, finalized and published using the procedures set forth in subsection 8.2. The Parties may agree to establish deadlines for newly identified operable units in the annual Update, initiated on October 30 of each fiscal year.

8.5 The deadlines set forth in this Section, or to be established as set forth in this Section, may be extended pursuant to Section 9 (Extensions). The Parties recognize that one possible basis for extension of the deadlines for completion of the Remedial Investigation and Feasibility Study Reports is the identification of significant new Site conditions during the performance of the remedial investigation.

9. EXTENSIONS

9.1 Timetables, deadlines and schedules shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension. Any request for extension by a Party shall be submitted to the other Parties 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) The extent to which any related timetable and deadline or schedule would be affected if the extension were granted.

9.2 Good cause exists for an extension when sought in regard

to:

(a) An event of Force Majeure;
(b) A delay caused by another Party's failure to meet any requirement of this Agreement;
(c) A delay caused by or resulting from 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 an extension (including an extension under subsection 7.7(c) and/or 7.7(g)) in regard to a related timetable and deadline or schedule;
(e) A delay caused by public comment periods or hearings required under State law in connection with the State's performance of this Agreement or by receipt of unusually extensive public comments under the NCP in connection with the Navy's performance of this Agreement;
(f) Any work stoppage within the scope of Section 11 (Emergencies and Removals); or
(g) Any other event or series of events mutually agreed to by the Parties as constituting good cause.

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

9.4 Within seven days of receipt of a request for an extension of a timetable, deadline or schedule, each receiving Party shall advise the requesting Party in writing of the receiving Party's position on the request. Any failure by a receiving Party to respond within the seven-day period shall be deemed to constitute concurrence with the request for extension. If a receiving Party does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

9.5 If there is consensus among the Parties that the requested extension is warranted, the Navy 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.

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

9.7 A 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.

10. FORCE MAJEURE

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

(a) acts of God;
(b) fire;
(c) war or national emergency declared by the President or Congress and affecting the Navy;
(d) insurrection;
(e) civil disturbance;
(f) explosion;
(g) unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance;
(h) adverse weather conditions that could not be reasonably anticipated;
(i) unusual delay in transportation;
(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 Department of the Navy (for purposes of this section, the Navy does not include the Corps of Engineers);
(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 which have been diligently sought. In order for Force Majeure based on insufficient funding to apply to the Navy, the Navy shall have made timely request for such funds as part of the budgetary

process as set forth in Section 15 (Funding).

A Force Majeure shall also include any strike or other labor dispute, whether or not within the control of the Party affected thereby. Force Majeure shall not include increased costs or expenses of response actions, unless (i) such increase could not reasonably have been anticipated at the time the estimate thereof was made and (ii) funding for such increase has been diligently sought and is not available.

11. EMERGENCIES AND REMOVALS

11.1 Discovery and Notification

If any Party discovers or becomes aware of an emergency or other situation that endangers public health or safety or the environment at or near the Site, which is related to or may affect the work performed under this Agreement, that Party shall immediately orally notify all other Parties. If the emergency arises from activities conducted pursuant to this Agreement, the Navy shall then take immediate action to notify the appropriate State and local agencies and affected members of the public.

11.2 Work Stoppage

In the event any Party determines that activities conducted pursuant to this Agreement will cause or otherwise be threatened by a situation described in subsection 11.1, the Party may propose the termination of such activities. If the Parties mutually agree, the activities shall be stopped for such period of time as is required to abate the danger. In the absence of mutual agreement, the activities shall be stopped in accordance with the proposal, and the matter shall be immediately referred to the EPA Hazardous Waste Management Division Director for a work stoppage determination in accordance with Section 12.10.

11.3 Removal Actions

(a) The provisions of this Section shall apply to all removal actions as defined in CERCLA section 101(23), 42 U.S.C. § 9601(23), and Hawaii Revised Statutes Section 128D-1, including all modifications to, or extensions of, the ongoing removal actions, and all new removal actions proposed or commenced following the effective date of this Agreement.

(b) Any removal actions conducted at the Site shall be conducted in a manner consistent with this Agreement, CERCLA, the NCP and E.O. 12580.

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

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

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

(f) If a Party determines that there is an endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance, pollutant or contaminant at or from the Site, the Party may request that the Navy take such response actions as may be necessary to abate such danger or threat and to protect the public health or welfare or the environment. Such actions might include provision of alternative drinking water supplies or other response actions listed in CERCLA section 101(23) or (24), or such other relief as the public interest may require.

11.4 Notice and Opportunity to Comment

(a) The Navy shall provide the other Parties with timely notice and opportunity to review and comment upon any proposed removal action for the Site, in accordance with 10 U.S.C. § 2705(a) and (b). The Navy agrees to provide the information described below pursuant to such obligation.

(b) For emergency response actions, the Navy shall provide EPA and the State with notice in accordance with subsection 11.1. Such oral notification shall, except in the case of extreme emergencies, include adequate information concerning the Site background, threat to the public health and welfare or the environment (including the need for response), proposed actions and costs (including a comparison of possible alternatives, means of transportation of any hazardous substances off-site, and proposed manner of disposal), expected change in the situation should no action be taken or should action be delayed (including associated environmental impacts), any important policy issues, and the Navy On-Scene Coordinator recommendations. Within forty-five (45) days of completion of the emergency action, the Navy will furnish EPA and the State with an Action Memorandum addressing the information provided in the oral notification, and any other information required pursuant to CERCLA and the NCP, and in accordance with pertinent EPA guidance, for such actions.

(c) For other removal actions, the Navy will provide EPA and the State with any information required by CERCLA or the NCP, and in accordance with pertinent EPA guidance, such as the Action Memorandum, the Engineering Evaluation/Cost Analysis (when required under the NCP) and, to the extent it is not otherwise included, all information required to be provided in accordance with paragraph 11.4(b). Such information shall be furnished at least forty-five (45) days before the response action is to

begin.

(d) All activities related to ongoing removal actions shall be reported by the Navy in the progress reports described in Section 18 (Project Managers).

11.5 Any dispute between the Parties as to whether a proposed non-emergency response action is (a) properly considered a removal action, as defined by 42 U.S.C. § 9601(23), or (b) consistent, to the extent deemed practicable under CERCLA section 104(a)(2), with any remedial action shall be resolved pursuant to Section 12 (Dispute Resolution). Such dispute may be brought directly to the DRC or the SEC (each as defined in Section 12) at any Party's request.

11.6 Alternative Dispute Resolution for Subsection 11.3(f)

(a) The following procedures shall apply only to disputes as to whether the Navy will take any removal action requested under subsection 11.3(f). Such disputes shall be submitted to the DRC, which shall have ten (10) days to unanimously resolve the dispute. The DRC shall forward an unresolved dispute to the SEC within four (4) days of the end of the ten-day period.

(b) The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The EPA representative on the SEC is the Hazardous Waste Management Division (HWMD) Director, Region 9. The Department of the Navy's representative on the SEC is Commander, Naval Base Pearl Harbor Facilities/Environment. The State's representative on the SEC is the Deputy Director for Environmental Health, Department of Health. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision. If unanimous resolution of the dispute is not reached within seven (7) days, the Department of the Navy SEC representative shall issue a written position on the dispute. EPA or the State may, within four (4) days of the such representative's issuance of the Department of the Navy's position, issue a written notice elevating the dispute to the Department of the Navy's Secretariat Representative for resolution in accordance with all applicable laws and procedures. In the event EPA or the State elects not to elevate the dispute to the Secretariat Representative within the designated four (4) day escalation period, EPA and the State shall be deemed to have agreed with the Department of the Navy SEC representative's written position with respect to the dispute.

(c) Upon escalation of a dispute to the Department of the Navy's Secretariat Representative pursuant to subsection 11.6(b) above, the Secretariat Representative will review and resolve the dispute within seven (7) days. Before resolving the dispute, the Secretariat Representative shall, upon request, meet and confer with the EPA Regional Administrator and the Deputy

Director for Environmental Health, Department of Health, to discuss the issue(s) under dispute. The Secretariat Representative shall provide the EPA and the State with its final decision in writing. If EPA or the State does not concur with such decision, the nonconcurring party must transmit indication thereof to the Secretariat Representative within fourteen (14) days of receipt of such decision. Failure to transmit such nonconcurrence will be presumed to signify concurrence. If EPA or the State does not concur, such agency will retain any right it possesses with regard to the issue raised in the dispute under this subsection.

12. DISPUTE RESOLUTION

12.1 The Parties agree to work cooperatively as a team to avoid disputes in the implementation of this Agreement.

12.2 Except as specifically set forth in subsection 11.6 or elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Section shall apply. Any Party may invoke this dispute resolution procedure. All Parties to this Agreement shall make best 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.

12.3 Within thirty (30) days after: (a) receipt by EPA and the State of a draft final primary document pursuant to Section 7 (Consultation), or (b) any action or inaction which leads to or generates a dispute, the disputing Party shall submit to the Dispute Resolution Committee (DRC) a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute and the technical, legal or factual information the disputing Party is relying upon to support its position.

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

12.5 The DRC will serve as a forum for resolution of dispute for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy

level Senior Executive Service (SES) or equivalent or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The EPA representative on DRC is the Director of the Federal Facilities Cleanup Office in the Hazardous Waste Management Division, EPA Region 9. The Department of the Navy's designated member is the Director, Environmental Division, Pacific Division, Naval Facilities Engineering Command. The State's representative is the Manager, Hazard Evaluation and Emergency Response Office, Department of Health. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Section 21 (Notification).

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

12.7 The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The EPA representative on the SEC is the Hazardous Waste Management Division (HWMD) Director, Region 9. The Department of the Navy's representative on the SEC is the Commander, Naval Base Pearl Harbor Facilities/Environment. The State's representative on the SEC is the Deputy Director for Environmental Health, Department of Health. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision. If unanimous resolution of the dispute is not reached within twenty-one (21) days, the HWMD Director, Region 9 shall issue a written position on the dispute. The Department of the Navy or the State may, within fourteen (14) days of the HWMD Director, Region 9's issuance of EPA's position, issue a written notice elevating the dispute to the Regional Administrator of EPA Region 9 for resolution in accordance with all applicable laws and procedures. In the event the Department of the Navy or the State elects not to elevate the dispute to the Regional Administrator within the designated fourteen (14) day escalation period, the Department of the Navy and the State shall be deemed to have agreed with the HWMD Director, Region 9's written position with respect to the dispute.

12.8 Upon escalation of a dispute to the Regional Administrator of EPA, Region 9, pursuant to subsection 12.6 above, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to

resolving the dispute, the EPA Regional Administrator shall meet and confer with the Department of the Navy's Secretariat Representative and the Deputy Director for Environmental Health to discuss the issue(s) under dispute. Upon resolution, the Regional Administrator shall provide the Department of the Navy and the State with a written decision setting forth resolution of the dispute. The duties of the Regional Administrator set forth in this Section shall not be delegated.

12.9 Any dispute may be elevated to the Administrator of EPA for final resolution upon request of the Secretary of Navy within 21 days of the Regional Administrator's decision. The request for elevation shall identify the issue warranting review by the Administrator and shall be addressed to the Administrator of EPA. The Administrator may request additional briefing from the parties to this agreement to assist in resolution of the dispute. It is the parties' intention that the Navy would only elevate issues of national significance or similar importance to the Administrator.

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

12.11 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 9 requests, in writing, that work related to the dispute be stopped because, in EPA's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. DOH may request the EPA Hazardous Waste Management 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 work stoppage, if a Party believes that the work stoppage is inappropriate or may have potential significant adverse impacts, the Party may meet with the other Parties to discuss the work stoppage. Following this meeting and further considerations of this issue, the EPA Hazardous Waste Management Division Director will issue, in writing, a final decision with respect to the work stoppage. The

final written decision of the EPA Hazardous Waste Management Division Director may immediately be subject 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.

12.12 Within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this Section (or before such later date as is agreed by the Parties), the Navy shall incorporate the resolution and final determination into the appropriate plan, schedule or procedures and proceed to implement this Agreement according to the amended plan, schedule or procedures. The deadline set forth above may in appropriate circumstances be extended in accordance with Section 9 (Extensions).

12.13 Except as set forth in Section 31 (Covenant Not to Sue and Reservation of Rights), resolution of a dispute pursuant to this Section (as it may be modified pursuant to subsection 11.6) constitutes a final resolution of any dispute arising under this Agreement. All Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Section.

13. ENFORCEABILITY

13.1 The Parties agree that:

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

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

(c) All terms and conditions of this Agreement which relate to remedial actions, including corresponding timetables, deadlines or schedules, and all work associated with 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 12 (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 terms, condition, timetable, deadline or schedule will be subject to civil penalties under CERCLA sections 310(c) and 109.

13.2 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).

13.3 Nothing in this Agreement shall be construed as a restriction or waiver of any rights the EPA or the State may have under CERCLA, including but not limited to any rights under sections 113, 121, and 310, 42 U.S.C. § 9613, 9621, and 9659, and/or applicable state law. The Navy does not waive any rights it may have under CERCLA sections 120 and 121, SARA section 211 and E.O. 12580.

13.4 The Parties agree to exhaust their rights under Section 12 (Dispute Resolution) prior to exercising any rights to judicial review that they may have.

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

14. STIPULATED PENALTIES

14.1 In the event that the Navy (a) fails to submit a primary document listed in Section 7 (Consultation) to EPA and the State pursuant to the appropriate timetable or deadline in accordance with the requirements of this Agreement, or (b) fails to comply with a term or condition of this Agreement which relates to an operable unit or final remedial action (unless excused under this Agreement), EPA may assess a stipulated penalty against the Navy. The State may recommend to EPA that a stipulated penalty 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. If the State recommends assessment of a stipulated penalty and EPA does not assess the penalty, the State may invoke dispute resolution procedures under this Agreement.

14.2 Upon determining that an event described in subsection 14.1(a) or 14.1(b) has occurred, EPA or the State shall 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 whether

such event has in fact occurred. The Navy shall not be liable for the stipulated penalty assessed by EPA if the event 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.

14.3 The annual reports required by CERCLA section 120(e)(5), 42 U.S.C. § 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 federal facility responsible for the failure;

(b) A statement of the facts and circumstances giving rise to the failure;

(c) A statement of any administrative or other corrective action taken at the relevant federal facility, or a statement of why such measures were determined to be inappropriate;

(d) A statement of any additional action taken by or at the federal 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.

14.4 (a) Unless and until it is subsequently determined under subparagraph (c) that the Navy may pay stipulated penalties to the State for violations of this Agreement, the State reserves all rights to seek penalties for violations of this Agreement under applicable law.

(b) In the event that it is subsequently determined under subparagraph (c) that the Navy may pay stipulated penalties to the State for violations of this Agreement, then the Navy shall pay stipulated penalties assessed pursuant to the Agreement to EPA and the State in the following manner: the Navy shall pay each to EPA and the State fifty percent (50%) of any penalty assessed pursuant to Section 14.1.

(c) The Parties agree that the Navy may pay stipulated penalties to the State for violations of this Agreement in the event: (i) the Navy agrees to pay such penalties in another federal facilities agreement entered into in whole or in part under CERCLA section 120, (ii) there is a final determination by a court of competent jurisdiction that it is lawful for a federal agency to pay stipulated penalties for violations of an agreement entered into in whole or in part under CERCLA section 120, (iii) there is a determination by the Attorney General of the United States that it is lawful for a federal agency to pay stipulated penalties for violations of an agreement entered into in whole or in part under CERCLA section 120, or (iv) by any other means mutually agreeable to the Navy and the State.

14.5 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. § 9609.

14.6 This Section shall not affect the Navy's ability to obtain an extension of a timetable, deadline or schedule pursuant to Section 9 (Extensions).

14.7 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.

14.8 Stipulated penalties assessed pursuant to this Section shall be payable only in the manner and to the extent expressly provided for in acts authorizing funds for, and appropriations to, the Department of Defense.

15. FUNDING

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

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

15.3 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. § 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.

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

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

16. EXEMPTIONS

16.1 The obligation of the Navy to comply with the provisions of this Agreement may be relieved by:

(a) A Presidential order of exemption issued pursuant to the provisions of CERCLA section 120(j)(1), 42 U.S.C. § 9620(j)(1), or RCRA section 6001, 42 U.S.C. § 6961; or

(b) The order of an appropriate court.

16.2 The State reserves any statutory right it may have to challenge any Presidential order relieving the Navy of its obligations to comply with this Agreement.

17. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

17.1 The Parties intend to integrate into this comprehensive Agreement the Navy's CERCLA response obligations with the Navy's (a) RCRA corrective action obligations, and (b) State corrective/remedial action obligations, in each case relating to releases of hazardous substances, hazardous wastes, pollutants or contaminants covered by this Agreement and which have been or will be adequately addressed by the remedial actions provided for under this Agreement. Therefore, the Parties intend that activities covered by this Agreement will achieve compliance with CERCLA, 42 U.S.C. § 9601 et seq.; satisfy the corrective action requirements of RCRA section 3004(u) & (v), 42 U.S.C. § 6924(u) & (v), for a RCRA permit, and RCRA section 3008(h), 42 U.S.C. § 6928(h), for interim status facilities; and meet or

exceed all applicable or relevant and appropriate federal and State laws and regulations, to the extent required by CERCLA section 121, 42 U.S.C. § 9621.

17.2 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 or otherwise applicable State hazardous waste or water quality protection laws (i.e., no further corrective action shall be required). The Parties agree that with respect to releases of hazardous waste covered by this Agreement, RCRA and such State laws shall be considered an applicable or relevant and appropriate requirement pursuant to CERCLA section 121, 42 U.S.C. § 9621.

17.3 The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided in CERCLA and the NCP. The Parties further recognize that ongoing hazardous waste management activities at Pearl Harbor Naval Complex may require the issuance of permits under federal and State laws. This Agreement does not affect the requirements, if any, to obtain such permits. However, if a permit is issued to the Navy for ongoing hazardous waste management activities at the Site, the issuing party shall reference and incorporate in a permit condition any appropriate provision, including appropriate schedules (and the provision for extension of such schedules), of this Agreement into such permit. The Parties intend that any judicial review of any permit condition which references this Agreement shall, to the extent authorized by law, only be reviewed under the provisions of CERCLA.

17.4 Releases of Petroleum

(a) The purpose of this subsection is to coordinate site investigations and response actions for releases of petroleum with activities conducted under this Agreement.

(b) Unless the Parties determine that the investigation and response actions for releases of petroleum should be included in the work to be performed pursuant to §17.4(c), such work will remain outside the scope of this Agreement.

(c) Under the following circumstances, releases of petroleum will be handled pursuant to the terms of this Agreement:

(1) Releases of petroleum identified in Appendix B;

(2) Releases of petroleum which, based on analytical data, have commingled with CERCLA hazardous substances, pollutants or contaminants or RCRA hazardous waste; or

(3) Any investigation or response action to a release of petroleum requiring the removal of free product or groundwater treatment, where removal of such free product or groundwater will create a hydraulic zone of influence that, based on analytical data, includes any portion of an area of contamination subject to this Agreement.

(d) For releases of petroleum not covered by this Agreement, where implementation of applicable federal or state operational and/or corrective action requirements (including applicable federal and state UST requirements) will have an adverse impact on work conducted pursuant to this Agreement, other than creating a hydraulic zone of influence, implementation of such requirements will be completed on a timeline and in a manner which the Parties determine to be compatible with work conducted pursuant to this Agreement. Adverse impacts include, but are not limited to, removal of underground storage tanks or soils where such removal would interfere with ongoing RI/FS operations or impede access to an area of contamination subject to this Agreement.

(e) Determinations under §17.4 will be subject to Section 12 (Dispute Resolution) of this Agreement.

(f) The Parties may agree that any release of petroleum identified in subsection 17.4 (c) may be addressed outside this Agreement.

(g) The Navy and the State shall use their best efforts to enter into an agreement to address releases of petroleum that are not addressed by this Agreement, no later than one year from the signature date of this Agreement. EPA reserves its rights to be a party to that agreement.

18. PROJECT MANAGERS

18.1 Within ten (10) days after the date of execution of this Agreement, EPA, the Navy, and DOH shall each designate a Project Manager and an alternate (each hereinafter referred to as Project Manager), for the purpose of overseeing the implementation of this Agreement. The Project Managers shall be responsible on a daily basis for assuring proper implementation of the RI/FS and the RD/RA in accordance with the terms of the Agreement. In addition to the formal notice provisions set forth in Section 21 (Notification), to the maximum extent possible, communications among the Navy, EPA, and the State on all documents, including reports, comments, and other correspondence concerning the activities performed pursuant to this Agreement, shall be directed through the Project Managers. A contractor may not serve as Project Manager, unless the other Parties shall consent in writing.

18.2 The Navy, EPA, and DOH may change their respective Project Managers. The other Parties shall be notified in writing within five days of the change.

18.3 The Project Managers shall meet to discuss progress through meetings formally designated as "Progress Meetings." These meetings are defined in subsection 4.1(m) and are further described in subsection 7.5. Although the Navy has ultimate responsibility for meeting its respective deadlines or schedule, the Project Managers shall assist in this effort by consolidating the review of primary and secondary documents whenever possible, and by scheduling Progress Meetings to review reports, evaluate the performance of environmental monitoring at the Site, review RI/FS or RD/RA progress, discuss target dates for elements of the RI/FS to be conducted in the following one hundred and eighty (180) days, resolve disputes, and adjust deadlines or schedules. At least one week prior to each scheduled Progress Meeting, the Navy will provide to the other Parties a draft agenda and summary of the status of the work subject to this Agreement. Unless the Project Managers agree otherwise, the minutes of each progress meeting, the meeting agenda and all documents discussed during the meeting that were not previously provided shall constitute a progress report. The Navy will send to all Project Managers (a) within ten business days after the meeting, all such documents not previously provided and (b) within twenty-one calendar days after the meeting, the minutes and agenda. If an extended period occurs between Progress Meetings, the Project Managers may agree that the Navy shall prepare an interim progress report and provide it to the other Parties. The report shall include the information that would normally be discussed in a Progress Meeting. All other meetings as defined in subsection 4.1(m) shall not carry any of the administrative requirements of this subsection, unless specifically agreed to by the majority of the Project Managers.

18.4 The authority of the Project Managers shall include, but is not limited to:

(a) Taking samples and ensuring that sampling and other field work is performed in accordance with the terms of any final work plan and QAPP;

(b) Observing, and 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 25 (Access to Pearl Harbor Naval Complex) hereof;

(c) Reviewing records, files and documents relevant to the work performed, subject to the limitations set forth in subsection 23.1 hereof;

(d) Determining the form and specific content of the Project Manager meetings and of progress reports based on such meetings; and

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

18.5 Any minor field modification proposed by any Party pursuant to this Section must be approved orally by all Parties' Project Managers to be effective. The Navy Project Manager will make a contemporaneous record of such modification and approval in a written log, and a copy of the log entry will be provided as part of the next progress report. Even after approval of the proposed modification, no Project Manager will require implementation by a government contractor without approval of the appropriate Government Contracting Officer.

18.6 The Project Manager for the Navy shall be responsible for day-to-day field activities at the Site. The Navy Project Manager or other designated representative of Pearl Harbor Naval Complex shall be present at the Site or reasonably available to supervise work during all hours of work performed at the Site pursuant to this Agreement. For all times that such work is being performed, the Navy Project Manager shall inform the Environmental Restoration Branch head at Pearl Harbor Naval Complex of the name and telephone number of the designated representative responsible for supervising the work.

18.7 The Project Managers shall be reasonably available to consult on work performed pursuant to this Agreement and shall make themselves available to each other for the pendency of this Agreement. The absence of EPA, DOH, or Navy Project Managers from the Facility shall not be cause for work stoppage of activities taken under this Agreement.

19. PERMITS

19.1 The Parties recognize that under sections 121(d) and 121(e)(1) of CERCLA, 42 U.S.C. § 9621(d) and 9621(e)(1), and the NCP, portions of the response actions called for by this Agreement and conducted entirely on-site are exempted from the procedural requirement to obtain a federal, State, or local permit but must satisfy all the promulgated (as defined in NCP § 300.400(g)(4)) applicable or relevant and appropriate federal and State substantive standards, requirements, criteria, or limitations which would have been included in any such permit.

19.2 This Section is not intended to relieve the Navy from any applicable regulatory requirements, including obtaining a permit, whenever it proposes a response action involving either the movement of hazardous substances, pollutants, or contaminants

off-site, or the conduct of a response action off-site.

19.3 The Navy shall notify EPA and the State in writing of any permit required for off-site activities as soon as it becomes aware of the requirement. The Navy agrees to obtain any permits necessary for the performance of any work under this Agreement. Upon request, the Navy shall provide EPA and the State copies of all such permit applications and other documents related to the permit process. Copies of permits obtained in implementing this Agreement shall be appended to the appropriate submittal or progress report. Upon request by the Navy Project Manager, the Project Managers of EPA and the State will assist Pearl Harbor Naval Complex to the extent feasible in obtaining any required permit.

20. QUALITY ASSURANCE

20.1 In order to provide quality assurance and maintain quality control regarding all field work and sample collection performed pursuant to this Agreement, the Navy agrees to designate a Quality Assurance Officer (QAO) who will ensure that all work is performed in accordance with approved work plans, sampling plans and QAPPs. The QAO shall maintain for inspection a log of quality assurance field activities and provide a copy to the Parties upon request.

20.2 To ensure compliance with the QAPP, the Navy shall, upon request by EPA or the State, use its best efforts to obtain access for EPA or the State to all laboratories performing analysis on behalf of the Navy pursuant to this Agreement. If such lack of access jeopardizes data quality, and subject to dispute resolution by the Navy, EPA or the State may reject all or portions of the data generated by such laboratory and require the Navy to have the same or comparable data analyzed by a laboratory that will grant such access.

21. NOTIFICATION

21.1 All Parties shall transmit primary and secondary documents, and comments thereon, and all notices required herein by next day mail, hand delivery, or facsimile, or by certified mail if transmitted sufficiently ahead of the applicable deadline. Notifications shall be deemed effective upon receipt.

21.2 Notice to the individual Parties pursuant to this Agreement shall be sent to the addresses specified by the Parties. Initially these shall be as follows:

EPA:

Lewis Mitani, Project Manager,
U.S. Environmental Protection Agency, Region 9
Hazardous Waste Management Division, H-9-2
75 Hawthorne Street
San Francisco, CA 94105

State:

Pierrette Arroyo
Hawaii Department of Health
HEER Office
5 Waterfront Plaza
500 Ala Moana Boulevard, Suite 250
Honolulu, HI 96813

Navy:

Darlene Ige
Pacific Division
Naval Facilities Engineering Command
Pearl Harbor, HI 96860

21.3 All routine correspondence may be sent via first class mail to the above addresses.

22. DATA AND DOCUMENT AVAILABILITY

22.1 Each Party shall make all sampling results, test results or other data or documents generated through the implementation of this Agreement available to the other Parties. All quality assured data shall be supplied within sixty (60) days of its collection. If the quality assurance procedure is not completed within sixty (60) days, raw data or results shall be submitted within the sixty (60) day period and quality assured data or results shall be submitted as soon as they become available. The procedures of Section 9 (Extensions) shall apply to the sixty-day period referred to herein.

22.2 The sampling Party's Project Manager shall notify the other Parties' Project Managers not less than 10 days in advance of any sample collection. If it is not possible to provide 10 days prior notification, the sampling Party's Project Manager shall notify the other Project Managers as soon as possible after becoming aware that samples will be collected. Each Party shall allow, to the extent practicable, split or duplicate samples to be taken by the other Parties or their authorized representatives. Other Parties desiring to collect split or duplicate samples shall inform the sampling Party before the time of sample collection. Each Party receiving split or duplicate

samples shall on request provide the sampling Party with its chain of custody documents relating to such sample.

23. RELEASE OF RECORDS

23.1 The Parties may request of one another access to or a copy of any record or document relating to this Agreement or the Installation Restoration Program. If the Party that is the subject of the request (the originating Party) has the record or document, that Party shall provide to the requesting Party access to or a copy of the record or document; provided, however, that no such access or copy need be provided if the record or document is identified as confidential and is subject to a claim of confidentiality because of attorney-client privilege or attorney work product or under the following provisions of FOIA: deliberative process, enforcement confidentiality, or properly classified for national security under law or executive order.

23.2 Records or documents identified by the originating Party as confidential pursuant to (a) non-disclosure provisions of FOIA other than those listed in subsection 23.1 above, or (b) Chapter 92F of the Hawaii Revised Statutes (Uniform Information Practices Act), shall be released to the requesting Party if the requesting Party states in writing that it will not release the record or document to the public without first consulting with the originating Party and either (x) receiving the originating Party's prior approval or (y) if the originating Party does not approve, giving the originating Party opportunity to contest, in accordance with applicable statutes and regulations, the preliminary decision to release. Records or documents which are provided to the requesting Party and which are not identified as confidential may be made available to the public without further notice to the originating Party.

23.3 The Parties will not assert one of the above exemptions, including any available under FOIA or Chapter 92F of the Hawaii Revised Statutes (Uniform Information Practices Act), even if available, if no governmental interest (including the interest established by law in protecting confidential business information) would be jeopardized by access or release as determined solely by the asserting Party.

23.4 Subject to section 120(j)(2) of CERCLA, 42 U.S.C. § 9620(j)(2), any documents required to be provided by Section 7 (Consultation) and analytical data showing test results will not be subject to subsection 23.2 or the proviso to subsection 23.1.

23.5 This Section does not change any requirement regarding press releases in Section 26 (Public Participation and Community

Relations).

23.6 Disputes between EPA and the Navy concerning matters covered by this Section 23 shall be subject to Section 12 (Dispute Resolution). Disputes between (a) DOH and (b) EPA or the Navy shall not be subject to Section 12 and shall instead be pursued through the originating Party's standard procedures concerning releasability of documents under FOIA or Hawaii law.

24. PRESERVATION OF RECORDS

24.1 Notwithstanding any document retention policy to the contrary, during the pendency of this Agreement and for a minimum of ten years after its termination, (a) the Navy shall preserve all records and documents that were at any time in its possession or in the possession of its contractors and (b) each other Party shall preserve all records and documents it prepared or to which it substantially contributed, in each case that relate to (x) the implementation of the Installation Restoration Program at the Site, or (y) the actions carried out pursuant to this Agreement. After this ten-year period, each Party shall notify the other Parties at least 45 days prior to destruction of any such records or documents. Upon request by any party, the requested party shall make available such records or copies of any such record, unless withholding is authorized and determined appropriate by law.

25. ACCESS TO PEARL HARBOR NAVAL COMPLEX

25.1 Without limitation of any authority conferred on EPA or the State by statute or regulation, EPA, the State or their authorized representatives shall be allowed to enter Pearl Harbor Naval Complex at reasonable times for purposes consistent with the provisions of the Agreement, subject to any statutory and regulatory requirements necessary to protect national security or mission essential activities. Such access shall include, but not be limited to, reviewing the progress of the Navy in carrying out the terms of this Agreement; ascertaining that the work performed pursuant to this Agreement is in accordance with approved work plans, sampling plans and QAPPs; and conducting such tests as EPA, the State, or the Project Managers deem necessary.

25.2 The Navy shall honor all reasonable requests for access by the EPA or the State, conditioned upon presentation of proper credentials. 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.

25.3 EPA and the State shall provide reasonable notice (which shall, if practical, be 48 hours' advance notice) to the Navy Project Manager to request any necessary escorts. EPA and the State shall not use any camera, sound recording or other recording device at Pearl Harbor Naval Complex without the permission of the Navy Project Manager. The Navy shall not unreasonably withhold such permission.

25.4 The access by EPA and the State granted in subsection 25.1 shall be subject to those regulations necessary to protect national security or mission essential activities. Such regulation shall not be applied so as to unreasonably hinder EPA or the State from carrying out their responsibilities and authority pursuant to this Agreement. In the event that access requested by either EPA or the State is denied by the Navy, the Navy shall provide an explanation within 48 hours of the reason for the denial, including reference to the applicable regulations, and, upon request, a copy of such regulations. The Navy shall expeditiously make alternative arrangements for accommodating the requested access. The Parties agree that this Agreement is subject to CERCLA section 120(j), 42 U.S.C. § 9620(j), regarding the issuance of Site Specific Presidential Orders as may be necessary to protect national security.

25.5 If EPA or the State requests access in order to observe a sampling event or other work being conducted pursuant to this Agreement, and access is denied or limited, the Navy agrees to reschedule or postpone such sampling or work if EPA or the State so requests, until such mutually agreeable time when the requested access is allowed. The Navy shall not restrict the access rights of the EPA or the State to any greater extent than the Navy restricts the access rights of its contractors performing work pursuant to this Agreement.

25.6 All Parties with access to Pearl Harbor Naval Complex pursuant to this Section shall comply with all applicable health and safety plans.

25.7 To the extent the activities pursuant to this Agreement must be carried out on other than Navy property, the Navy shall use its best efforts, including its authority under CERCLA section 104, to obtain access agreements from the owners which shall provide reasonable access for the Navy, EPA, and the State and their representatives. The Navy may request the assistance of the State in obtaining such access, and upon such request, the State will use its best efforts to obtain the required access. In the event that the Navy is unable to obtain such access agreements, the Navy shall promptly notify EPA and the State.

25.8 With respect to non-Navy property on which monitoring wells, pumping wells, or other response actions are to be located, the Navy shall use its best efforts to ensure that any access agreements will provide for the continued right of entry for all Parties to this Agreement for the performance of such remedial activities, and that no conveyance of title, easement, or other interest in the property will be consummated without the continued right of entry.

25.9 Nothing in this Section shall be construed to limit EPA's and the State's full right of access as provided in 42 U.S.C. § 9604(e) and Hawaii Revised Statutes sections 342D-8(a) and (b), 342B-6, 342J-6 and 128D-4(b), except as that right may be limited by 42 U.S.C. § 9620(j)(2), E.O. 12580, or other applicable national security regulations or federal law.

26. PUBLIC PARTICIPATION AND COMMUNITY RELATIONS

26.1 The Parties agree that any proposed removal actions and remedial action alternative(s) and plan(s) for remedial action at the Site arising out of this Agreement shall comply with the administrative record and public participation requirements of CERCLA sections 113(k) and 117, 42 U.S.C. § 9313(k) and 9617, relevant community relations provisions in the NCP, EPA guidances, and, to the extent they may apply, State statutes and regulations. The State agrees to inform the Navy of all State requirements which it believes pertain to public participation. The provisions of this Section shall be carried out in a manner consistent with, and shall fulfill the intent of, Section 17 (Statutory Compliance/RCRA-CERCLA Integration).

26.2 The Navy shall develop and implement a community relations plan (CRP) addressing the environmental activities and elements of work undertaken by the Navy, except as provided in Section 11 hereof.

26.3 The Navy shall establish and maintain an administrative record at a place, at or near the federal facility, which is freely accessible to the public, which record shall provide the documentation supporting the selection of each response action. The administrative record shall be established and maintained in accordance with relevant provisions in CERCLA, the NCP, and EPA guidances. A copy of each document placed in the administrative record, not already provided, will be provided by the Navy to the other Parties. The administrative record developed by the Navy shall be updated and new documents supplied to the other Parties on at least a quarterly basis. An index of documents in the administrative record will accompany each update of the administrative record.

26.4 Communications among the Parties regarding press releases, press inquiries and other contacts with the media shall be coordinated through EPA's Public Affairs Specialist, the Navy's Public Affairs Officer, and the Hawaii Department of Health Communications Director.

26.5 Except in case of an emergency, any Party issuing a press release with reference to any of the work required by this Agreement shall advise the other Parties of such press release at least 48 hours prior to issuance.

27. FIVE-YEAR REVIEW

27.1 Consistent with 42 U.S.C. § 9621(c), E.O. 12580 §2(d), (e), and (g), and applicable EPA guidance (e.g., OSWER Directives 9320.2-03A, 9320.2-03B, and 9355.7-02) and in accordance with this Agreement, if the selected remedial action results in any hazardous substances, pollutants or contaminants remaining at the Site, the remedial action program shall be reviewed 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.

27.2 If, upon such review, any of the Parties proposes additional work or modification of work, such proposal shall be handled under subsection 7.10 of this Agreement.

27.3 To synchronize the five-year reviews for all operable units and final remedial actions, the following procedure will be used: Review of operable units will be conducted every five years counting from the initiation of the first operable unit, until initiation of the final remedial action for the Site. At that time a separate review for all operable units shall be conducted. Review of the final remedial action (including all operable units) shall be conducted every five years thereafter.

27.4 Prior to termination of this Agreement, the Parties may develop a Memorandum of Understanding to implement five-year reviews subsequent to termination, if appropriate, based on forthcoming EPA guidance.

28. TRANSFER OF REAL PROPERTY

28.1 Except as may be provided in a separate agreement between EPA and a fee simple transferee who is a Potentially Responsible Party, the Navy shall retain liability in accordance with CERCLA notwithstanding any change in ownership or possession of the property interests comprising the federal facility. The

Navy shall not transfer any of the property interests comprising the federal facility except in compliance with Section 120(h) of CERCLA, 42 U.S.C. §9620(h), as amended by CERFA.

28.2 Prior to any transfer (whether or not it is conveyed by deed) of any portion of the property comprising the federal facility where any release of hazardous substances has come to be located and meets the threshold requirements stated in regulations promulgated pursuant to CERCLA Section 120(h)(2), or which is necessary for investigation or the performance of response action under this Agreement, the Navy will make provision for the following:

(a) Written notice to the transferee (including lessee, sublessee or other recipient) of the investigation and cleanup effort that the Navy is engaged in at the Pearl Harbor Naval Complex, of the existence of this Agreement, and of the availability of the administrative record file;

(b) Using its best efforts to give all of the Parties at least thirty (30) days notice of such transfer, of any provisions made for continued implementation of this Agreement (including, but not limited to, any additional response actions if required), and of how the property is to be used after the transfer is complete;

(c) Using its best efforts to give all of the Parties notice of any activity by any subsequent transferee that may affect the RI/FS or any response action.

28.3 Prior to any non-deed transfer, the Navy agrees to provide for the following to be included in documents evidencing such transfers:

(a) That the Parties to this Agreement have continuous rights of access to and over such property, in accordance with Section 25;

(b) That such transferee will not make subsequent transfers without the approval of the Navy and that the Navy will provide copies of such subsequent transfers to each of the Parties to this Agreement by certified mail within fourteen (14) days after the effective date of such subsequent transfer;

(c) That such transferee will not impede activities associated with the RI/FS or any response action taken under this Agreement;

(d) That such a transfer will not alter the rights and obligations of the Parties under this Agreement.

28.4 The Parties may agree that "all remedial action necessary to protect human health and the environment with respect to any hazardous substances has been taken" based upon completion of removal action(s) after consultation pursuant to Section 7 of this Agreement.

28.5 Nothing in this section shall be construed to alter the terms or conditions of any previously executed agreement for transfer of all or any portion of Manana or Pearl City Junction to the City and County of Honolulu.

29. AMENDMENT OR MODIFICATION OF AGREEMENT

29.1 This Agreement can be amended or modified solely upon written consent of all Parties. Such amendments or modifications may be proposed by any Party and shall be effective the third business day following the day the last Party to sign the amendment or modification sends its notification of signing to the other Parties. The Parties may agree to a different effective date.

29.2 In the event EPA and the Navy subsequently negotiate new national model provisions for inclusion in federal facility agreements under CERCLA § 120, the parties to this agreement agree to use their best efforts to agree on amendments to this agreement which incorporate those model provisions.

30. TERMINATION OF THE AGREEMENT

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

30.2 This Section shall not affect the requirements for periodic review at maximum five-year intervals of the efficacy of the remedial actions.

31. COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

31.1 In consideration for the Navy's compliance with this Agreement, and based on the information known to the Parties or reasonably available on the effective date of this Agreement,

EPA, the Navy, and the State agree that compliance with this Agreement shall stand in lieu of any administrative, legal, and equitable remedies against the Navy available to them regarding the releases or threatened releases of hazardous substances including hazardous wastes, pollutants or contaminants at the Site which are the subject of any RI/FS conducted pursuant to this Agreement and which have been or will be adequately addressed by the remedial actions provided for under this Agreement. The above notwithstanding, EPA and the State reserve all rights each may have with regard to the Navy's taking any removal action requested under subsection 11.3(f) after exhaustion of the alternative dispute resolution process set forth in subsection 11.6.

31.2 Notwithstanding this Section or any other Section of this Agreement, the State shall retain any statutory right it may have to obtain judicial review of any final decision of the EPA on selection of remedial action pursuant to any authority the State may have under CERCLA, including sections 121(e)(2), 121(f), 310, and 113.

31.3 Notwithstanding any other provision of this Agreement, the EPA and the State do not waive any rights they may have under any provision of law with respect to releases of petroleum which are not the subject of investigation and response action pursuant to the Agreement.

32. OTHER CLAIMS

32.1 Nothing in this Agreement shall constitute or be construed as a bar or release from any claim, cause of action or demand in law or equity by or against any person, firm, partnership or corporation not a signatory to this Agreement for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous waste, pollutants, or contaminants found at, taken to, or taken from the federal facility. Unless specifically agreed to in writing by the Parties, EPA and the State shall not be held as a party to any contract entered into by the Department of the Navy (including the Navy) to implement the requirements of this Agreement.

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

33. RECOVERY OF EPA EXPENSES

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

34. STATE SUPPORT SERVICES

34.1 Compensation for State support services rendered in connection with this Agreement are governed by the Defense/State Memorandum of Agreement, executed on March 13, 1991, between DOH on behalf of the State and the Department of Defense. In the event such Memorandum of Agreement is terminated or no longer in effect for any reason, subsections 34.2 through shall 34.12 shall apply.

34.2 The Navy agrees to request funding and reimburse the State, subject to the conditions and limitations set forth in this Section and subject to Section 15 (Funding), for all reasonable costs it incurs in providing services in direct support of the Navy's environmental restoration activities pursuant to this Agreement at the Site. The reasonable costs shall include but not be limited to personnel costs, which shall include employee related expenses and indirect labor charges; travel costs and State per diem allowances; supplies; and contractor costs. The indirect rate shall be the then current Federal rate.

34.3 Reimbursable expenses shall consist only of actual expenditures required to be made and actually made by the State in providing the following assistance to Pearl Harbor Naval Complex:

(a) Timely technical review and substantive comment on reports or studies which the Navy prepares in support of its response actions and submits to the State.

(b) Identification and explanation of unique State requirements applicable to military installations in performing response actions, especially State ARARs.

(c) Field visits to ensure investigations and cleanup activities are implemented in accordance with agreed upon conditions between the State and the Navy that are established in the framework of this Agreement.

(d) Support and assistance to the Navy in the conduct of public participation activities in accordance with federal and State requirements for public involvement.

(e) Participation in the review and comment functions of Navy Technical Review Committees.

(f) Other services specified in this Agreement.

34.4 Within ninety (90) days after the end of each quarter of the federal fiscal year, the State shall submit to the Navy an accounting of all State costs actually incurred during that quarter in providing direct support services under this Section. Such accounting shall be accompanied by cost summaries and be supported by documentation which meets federal auditing requirements. The summaries will set forth employee-hours and other expenses by major type of support service. All costs submitted must be for work directly related to implementation of this Agreement and not inconsistent with either the National Contingency Plan (NCP) or the requirements described in OMB Circulars A-87 (Cost Principles for State and Local Governments) and A-128 (Audits for State and Local Cooperative Agreements with State and Local Governments) and Standards Forms 424 and 270. The Navy has the right to audit cost reports used by the State to develop the cost summaries. Before the beginning of each fiscal year, the State shall supply a budget estimate of its anticipated activities in the next year.

34.5 Except as allowed pursuant to subsections 34.6 or 34.7 below, within ninety (90) days of receipt of the accounting provided pursuant to subsection 34.3 above, the Navy shall reimburse the State in the amount set forth in the accounting.

34.6 In the event the Navy contends that any of the costs set forth in the accounting provided pursuant to subsection 34.4 above are not properly payable, the matter shall be resolved through the process set forth in subsection 34.10 below.

34.7 The Navy shall not be responsible for reimbursing the State for any costs actually incurred in the implementation of this Agreement in excess of one percent (1%) of the Navy's total lifetime project costs incurred through construction of the remedial action(s). Circumstances could arise whereby fluctuations in the Navy estimates or actual final costs through the construction of the final remedial action creates a situation where the State receives reimbursement in excess of one percent of these costs. Under these circumstances, the State remains entitled to payment for services rendered prior to the completion of a new estimate if the services are within the ceiling applicable under the previous estimate. This Section does not cover the cost of services rendered prior to October 17, 1986; services and properties not owned by the federal government; and activities funded from sources other than Defense Environmental Restoration Account appropriations.

(a) Funding of support services must be constrained so as to avoid unnecessary diversion of the limited Defense Environmental Restoration Account funds available for the overall

cleanup, and

(b) Support services should not be disproportionate to overall project costs and budget.

34.8 Either the Navy or the State may request, on the basis of significant upward or downward revisions in the Navy's estimate of its total lifetime costs through construction used in subsection 34.7 above, a renegotiation of the cap. Failing an agreement, either the Navy or the State may initiate dispute resolution in accordance with 34.10 below.

34.9 The State agrees to seek reimbursement for its expenses solely through the mechanisms established in this Section, and reimbursement provided under this Section shall be in settlement of any claims for State response costs relative to the Navy's environmental restoration activities at the Site.

34.10 Section 12 (Dispute Resolution) notwithstanding, this subsection shall govern any dispute between the Navy and the State regarding the application of this Section or any matter controlled by this Section including, but not limited to, allowability of expenses and limits on reimbursement. While it is the intent of the Navy and the State that these procedures shall govern resolution of disputes concerning State reimbursement, informal dispute resolution is encouraged.

(a) The Navy and the State Project Managers shall be the initial points of contact for coordination of dispute resolution under this Subsection.

(b) If the Navy and the State Project Managers are unable to resolve a dispute, the matter shall be referred to the Manager, Hazard Evaluation and Emergency Response Office, Department of Health and the Director, Environmental Division, Pacific Division, Naval Facilities Engineering Command as soon as practicable, but in any event within five (5) working days after the dispute is elevated by the Project Managers.

(c) If the persons listed in paragraph 34.10(b) above are unable to resolve the dispute within ten (10) working days, the matter shall be elevated to the Department of the Navy's Secretariat representative and the Deputy Director for Environmental Health, Department of Health.

(d) In the event persons listed in paragraph 34.10(c) above are unable to resolve a dispute, the State retains any legal and equitable remedies it may have to recover its expenses. In addition, the State may withdraw from this Agreement by giving sixty (60) day notice to the other Parties.

34.11 Nothing herein shall be construed to limit the ability of the Navy to contract with the State for technical services that could otherwise be provided by a private contractor including, but not limited to:

(a) Identification, investigation, and cleanup of any contamination beyond the boundaries of Pearl Harbor Naval Complex;
(b) Laboratory analysis; or
(c) Data collection for field studies.

34.12 Nothing in this Agreement shall be construed to constitute a waiver of any claims by the State for any expenses incurred prior to the effective date of this Agreement, except to the extent those claims are waived or satisfied by payment under or by the DSMOA.

35. STATE PARTICIPATION CONTINGENCY

35.1 If the State fails to sign this Agreement within thirty (30) days of notification of the signature by both EPA and the Navy, this Agreement will be interpreted as if the State were not a Party and any reference to the State in this Agreement will have no effect.

35.2 If subsection 35.1 applies;
(a) the Navy agrees to transmit all primary and secondary documents to DOH at the same time such documents are transmitted to EPA; and
(b) EPA intends to consult with DOH with respect to the above documents and during implementation of this Agreement.

36. EFFECTIVE DATE AND PUBLIC COMMENT

36.1 The provisions of this Section shall be carried out in a manner consistent with, and shall fulfill the intent of Section 17 (Statutory Compliance/RCRA-CERCLA Integration).

36.2 Within fifteen (15) days of the date of the execution of this Agreement, the Navy shall announce the availability of this Agreement to the public for a forty-five (45) day period of review and comment, including publication in at least two major local newspapers of general circulation. Comments will be sent to the other Parties so that they are received within seven (7) days after the end of the comment period. The Parties shall review such comments within fourteen (14) days after such seven-day period and shall meet within seven (7) days after such 14-day period to determine whether this Agreement should be made effective in its present form.
(a) If the Parties determine that this Agreement should be made effective in its present form, the Navy shall, within thirty (30) days after the second seven (7) day period set forth above, as determined necessary by the Parties, prepare a

37. BASE CLOSURE

37.1 The Navy does not currently plan to close Pearl Harbor Naval Complex. However, in the event that part of Pearl Harbor Naval Complex is closed, such closure, except as is otherwise specifically provided by law, will not affect the Navy's obligation to comply with the terms of this Agreement and to specifically ensure the following:

(a) Continuing rights of access for EPA and the State in accordance with the terms and conditions of Section 25 (Access to Pearl Harbor Naval Complex);

(b) Availability of a Project Manager to fulfill the terms and conditions of the Agreement;

(c) Designation of alternate DRC members as appropriate for the purposes of implementing Section 12 (Dispute Resolution); and

(d) Adequate resolution of any other problems identified by the Project Managers regarding the effect of base closure on the implementation of this Agreement.

37.2 Base closure will not of itself constitute a Force Majeure under Section 10 (Force Majeure), nor will it constitute good cause for extensions under Section 9 (Extensions), unless agreed by the Parties.

38. PARTNERING

The Parties agree to foster the partnership established among the Parties by the development of mutual goals and objectives and the successful and timely remediation of Pearl Harbor Naval Complex.

39. APPENDICES AND ATTACHMENTS

39.1 Appendices shall be an integral and enforceable part of this Agreement. They shall include the most current versions of:

(a) Outline for Site Management Plan.
(b) Releases of Petroleum.

39.2 Attachments shall be for information only and shall not be enforceable parts of this Agreement. The information in these attachments is provided to support the initial review and comment upon this Agreement, and they are only intended to reflect the conditions known at the signing of this Agreement. None of the facts related therein shall be considered admissions by, nor are they legally binding upon, any Party with respect to any claims unrelated to, or persons not a Party to, this Agreement. They shall include:

(a) Map(s) of Pearl Harbor Naval Complex (see also subsection 5.10).

Pearl Harbor Naval Complex Federal Facilities Agreement

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

UNITED STATES DEPARTMENT OF THE NAVY

10 March 1994
DATE

Elsie Munsell
ELSIE MUNSELL
Deputy Assistant Secretary of the Navy
(Environment and Safety)

3-17-94
DATE

W. A. RETZ
Rear Admiral, U.S. Navy
Commander, Naval Base
Pearl Harbor

U.S. ENVIRONMENTAL PROTECTION AGENCY

3-17-94
DATE

FELICIA MARCUS
Regional Administrator
U.S. Environmental Protection Agency
Region 9

STATE OF HAWAII

3-17-94
DATE

JOHN C. LEWIN, M.D.
Director of Health
State of Hawaii

Pearl Harbor Naval Complex Federal Facilities Agreement

APPENDIX A

PEARL HARBOR NAVAL COMPLEX SITE MANAGEMENT OUTLINE

The following outline lists topics to be included, at a minimum, in the Pearl Harbor Naval Complex Site Management Plan (SMP). The SMP will is a planning tool that incorporates elements of a workplan. The SMP shall also include additional topics and tasks, as appropriate, set forth in the Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA (OSWER Directive 9355.3-01, Interim Final, October 1988) and applicable State Law. All tasks shall be performed in accordance with the National Contingency Plan (NCP), current EPA guidance and applicable State Law.

1.0 INTRODUCTION

Introduction stating the purposes and objectives of the Site Management Plan (SMP) and how it guides the RI/FS process at the Pearl Harbor Naval Complex. The SMP and the RI/FS process will have the following objectives:

- Confirm, characterize, and define the lateral and vertical extent of chemicals of concern at each site or potential release location known or suspected to be a source of contaminant release;
- Supplement and refine the existing geological, geochemical, hydrogeological, and chemical data base for the study sites;
- Evaluate the chemical migration pathways, and specifics of groundwater movement that influence the migration of chemicals known or suspected to be related to a confirmed site or potential release location;
- Evaluate potential risks and hazards to public health and the environment;
- Identify federal and state applicable or relevant and appropriate requirements (ARARs);
- Address RCRA action, if applicable;
- Identify and evaluate remedial alternatives in accordance with EPA RI/FS guidance;
- Identify PRPs and coordinate remedial alternative selection; and
- Modify this workplan based on new information received during the course of the investigation.

2.0 Pearl Harbor Naval Complex CERCLA RESPONSE STRATEGY

Relationship between the Navy Installation Restoration Program and federal and state cleanup programs

-Role of Federal and State Agencies

Navy
State
EPA

-- Role Federal & State Resource Trustees in Ecological Assessments. Navy shall provide documents to appropriate trustee for review. Navy shall consult with trustees in the development of such documents.

-- Pearl Harbor Naval Complex shall provide the Agency for Toxic Substances and Disease Registry (ATSDR) with all necessary environmental investigation results, including that of the remedial investigation. The ATSDR will conduct a health assessment for Pearl Harbor Naval Complex.

2.1 The Approach to the Pearl Harbor Naval Complex CERCLA Response Strategy

- Overview of the CERCLA Remedial Response Process (as applied at Pearl Harbor Naval Complex)

  -- NPL listing

  -- Pearl Harbor Response Actions
  IRP
  RCRA
  UST
  Subsurface Oil Contamination Program
  Other?

2.1.1 Remedial Investigation

Remedial Investigations (RIs) will be performed for both operable units and for the final remedy. The final remedy RI will consider site-wide (Pearl Harbor Naval Complex) conditions and use information collected from operable units RIs.

Project Management

- Review existing data

  --Data evaluation/validation
  In accordance with EPA guidelines and specifications
  --- Quality Assurance/Quality Control (QA/QC) of data
  --- QA/QC standard operating procedures (SOP)
  --- Specific QA/QC procedures
  --- Data validation package
  --- Interference check sample analysis
  --- Laboratory audits

- Preliminary Assessments and Location Files

- Site Inspection

  Scoping Tasks

- Site Planning

  Pearl Harbor Naval Complex Conceptual Model

  -- Background, Setting, Site Description, History

  -- Studied Sites
  --- Confirmed sites
  --- Partially Studied Potential Release Locations

  -- Removal Actions

  -- Actions Completed Under IRP

  -- Operable Units

  -- CERCLA/RCRA Integration

Site Management Plan

-- Purpose and objective Within the CERCLA Process

-- Annual Update

-- Site Management

-- Agency Coordination

-- Reporting
  --- Monthly progress reports
  --- Quarterly reports
  --- Data results

-- Administrative Record

  In accordance CERCLA Section 113(k) and EPA guidelines
  --- Listing of Administrative Record
  --- Location(s) or repository

- Project Planning

-- Remedial action objectives
  --- Removal Actions
  --- Interim remedial actions

-- Identify operable units

-- Identify removal actions

-- Identify remedial actions

-- Applicable or Relevant and Appropriate Requirements (ARARs)

ARARs will be identified on an operable unit basis. ARARs are to be identified at the following points in the remedial planning process:

  --- During scoping of the RI/FS
  --- During the site characterization phase
  --- During a development of remedial alternatives in Operable Unit (OU) Feasibility Studies and the FS
  --- During screening of alternatives
  --- During detailed analysis of alternatives
  --- When alternative(s) is (are) selected
    - Identify ambient or chemical-specific ARARs
    - Identify performance, design, or action-specific ARARs
    - Identify location-specific ARARs

-- Initial Data Quality Objectives

-- Prepare Project Plans

--- Health & Safety Plan
- Facility background
- Key personnel and responsibilities
- Job hazard analysis
- Risk assessment summary
- Air monitoring plan
- Personal protective equipment
- Work zones and security measures
- Decontamination procedures
- General safe work practices
- Emergency response plans
- Training requirements
- Medical surveillance program
- Documentation
- Regulatory requirements

--- Quality Assurance Project Plan (QAPP)
- Title page with provisions for approval signatures
- Table of contents

Project description
Project organization and responsibility
Quality assurance objectives for measurement of data in terms of precision,accuracy, completeness, representativeness, and comparability
Sample procedures
Sample chain-of-custody procedures Field sampling operation Lab operation
Calibration procedures and frequency for field and lab equipment
Analytical procedures
Data reduction. validation, and reporting
Internal quality control checks and frequency
Performance and system audits
Internal audits
External audits

Preventative maintenance
Schedule of equipment, maintenance, internal, and critical spare parts
Specific routine procedures used to assess data
Precision, accuracy, and completeness Corrective action
Quality assurance report to management

--- Risk Assessment Protocol
--- Data Management Plan

Description of the storage and retrieval system used for data/information gathered during the RI/FS investigation

- Data Management System
  - Hardware
  - Software
  - Quality control
  - Data security
- Data Processing Procedures
  - Field collection procedures
  - Site description
- Numbering methodology
  - Site identification number
  - Sample type and identification number
  - Other codes
  - QA/QC sample identification code

--- Sampling and Analysis Plans

Discuss interrelationships among existing RI tasks

- Preliminary Pathways Assessment
- Groundwater Pathways Preliminary Assessment
- Preliminary Groundwater Operable Unit
- Solid Waste Assessment Test (Air)

Each Sampling and Analysis Plan will include the following:

- Objective of sampling effort
- Site background
- Maps of all pertinent locations and sampling points
- Rationale for sampling locations and numbers of samples
- Request for analysis
- Field methods and procedures
- Site safety plan

--- Community Relations Plan (RI/FS)

This task includes, but may not be limited to:

- Revisions and additions to the CRP
- Analysis of community attitudes toward proposed action(s)
- Preparation and dissemination of information
- Establishment of a community information center
- Arrangement for briefings, press conferences
- Technical Review Committee (TRC)

Site Characterization

- Field Investigation
- Define nature and extent of contamination
- Identify receptors
- Redefine Operable Units
- Assessment of Risk

A Baseline Risk Assessment involves an ecological study and the following steps which cover a range of complexity, quantification, and levels of effort.

STEP 1: Selection of Indicator Chemicals

--- Develop initial list of indicator chemicals

--- Select final indicator chemicals

STEP 2: Estimation of Exposure Point Concentrations of Indicator Chemicals
- --- Identify exposure pathway
- --- Estimate exposure point concentrations
- --- Compare to requirements, standards, and criteria

STEP 3: Estimation of Chemical Intakes
- --- Calculate air intakes
- --- Calculate groundwater intakes
- --- Calculate surface water intakes
- --- Calculate intakes from other exposure pathways
- --- Combine pathway-specific intakes to yield total oral and total inhalation intakes

STEP 4: Toxicity Assessment

STEP 5: Risk Characterization
- --- Noncarcinogenic effects
- --- Potential carcinogenic effects
- --- Uncertainties

Supplemental Survey(s) and Investigation(s)

- Site Investigation
  - -- Collection of additional data for site characterization
  - -- Data management, validation, and evaluation
- Treatability Studies
  - -- Collection of additional data for feasibility studies and remedial design and evaluation
  - -- Data management, validation, and evaluation

Final RI Report(s)

- Operable Unit

  Summary of site conditions and conclusions
  - -- Data management, validation, and evaluation

-- Identifying volumes and areas of media to which treatment or containment action may be applied.

-- Developing response actions for each medium.

-- Assembling technologies into alternatives.

-- Detailed analysis of alternatives.

-- Reporting and communication during development of alternatives.

- Screening of alternatives

  In accordance with EPA guidelines

  -- Evaluate process options based on:
     --- Effectiveness
     --- Implementability
     --- Cost

  -- Reporting and communication during screening of alternatives.

- Detailed Analysis of Alternatives

  Detailed analysis is used to assess each alternative against evaluation criteria. The detailed analysis consists of analysis and presentation of relevant information, including treatability studies, needed to select a remedy for the site. Tasks include, but are not limited to

  -- Individual analysis of alternatives against evaluation criteria

     -- Evaluation criteria for detailed analysis of alternatives
        --- Short-term effectiveness

        --- Long-term effectiveness
        --- Reduction of toxicity, mobility, or volume
        --- Implementability
        --- Cost
        --- Compliance with ARARs
        --- Overall protection of human health and environment

--- State acceptance

--- Community acceptance

-- Assessment of risk
--- Re-evaluate indicator chemicals
--- Identify potential exposure pathways
--- Determine target concentrations at human exposure points
--- Estimate target release rates
--- Assess chronic risk for noncarcinogens
--- Assess potential short-term health effects of each remedial alternative

-- Final Feasibility Study Report (s)

The FS shall be consistent with CERCLA, the NCP, EPA Guidance on Conducting RI/FSs Under CERCLA, and other applicable EPA guidance.

-- Operable unit

-- Site-wide (Pearl Harbor Naval Complex)

3.0 POST RI/FS SUPPORT

- Proposed Plan

  -- Selection of preferred alternative

- Responsiveness Summary

- Record of Decision

4.0 REMEDIAL DESIGN

- Operable Unit

- Site-Wide

5.0 RESPONSE ACTION

- Remedial Action

- Removal Action

- Operable Unit Basis

- -- Construction
- -- Operation and Maintenance
- -- Remedial Action Workplan
- -- Five-Year Review

- Site-Wide Bases
  - -- Construction
  - -- Operation and Maintenance
  - -- Remedial Action Workplan
  - -- Five-Year Review

Pearl Harbor Naval Complex Federal Facilities Agreement

APPENDIX B

APPENDIX B

SUBSURFACE OIL INVESTIGATION SITES

Reclamation Facility, Oily Waste Pit (IAS Site No. 21)

Past Sludge Disposal Areas, Upper & Middle Tank Farms (IAS Site No. 21)

Canyon Fill Area (IAS Site No. 23)

Abandoned Tank (IAS Site No. 24)

Building 60, Sludge Disposal Pit (IAS Site No. 25)

Oily Waste Pit, Bldg. 12535, EPMU-6

Building 8, Shipyard

PWC Gas Station