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FEDERAL FACILITY AGREEMENT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

and

UNITED STATES DEPARTMENT OF THE ARMY

TOBYHANNA army DEPOT

United States Environmental Protection Agency

Region III

and the

United States Department of the Army

IN THE MATTER OF:	)	
	)	Federal Facility Agreement
Tobyhanna Army Depot	)	Under CERCLA Section 120
Tobyhanna, Pennsylvania	)	
and Impacted Environs	)	Administrative
	)	Docket Number: III-FCA-CERC-007

Based on the information available to the United States Environmental Protection Agency, Region III (EPA) and the United States Department of the Army (Army) (hereinafter referred to collectively as "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 the appropriate remedial action taken as necessary to protect the public health, welfare and the environment;

(b) Establish a procedural framework and schedule for developing, implementing and monitoring appropriate response actions at the Site in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq., as amended by the Superfund

Amendments and Reauthorization Act of 1986 and any amendments thereto (CERCLA), the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. Part 300, and any amendments thereto, CERCLA guidance and policy, the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended by the Hazardous Waste Amendments of 1984, Pub. L. No. 98-616, and any amendments thereto (RCRA), RCRA guidance and policy, and applicable or relevant and appropriate federal and state laws and regulations; and,

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

1.2 Specifically, the purposes of this Agreement are to:

(a) Identify remedial action alternatives which are appropriate at the Site prior to the implementation of remedial action(s) for the Site. Remedial alternatives shall be identified and proposed to the other Party as early as possible prior to formal proposal to EPA pursuant to CERCLA. This process is designed to promote cooperation between the Parties in identifying remedial action alternatives;

(b) Establish requirements for the performance of Remedial Investigation(s) (RI(s)) to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release and threatened release of hazardous substances, pollutants or contaminants at the Site and to establish requirements for the performance of Feasibility Studies (FSs) for the Site to identify, evaluate, and select alternatives for the appropriate remedial actions to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants or contaminants at the Site in accordance with CERCLA and the NCP;

(c) Identify the nature, objective and schedule of remedial actions to be taken at the Site. Remedial actions at the Site shall attain that degree of cleanup of hazardous substances, pollutants or contaminants mandated by CERCLA and the NCP;

(d) Implement the selected remedial action(s) in accordance with CERCLA, the NCP and applicable or relevant and appropriate state law and meet the requirements of Section 120(e)(2) of CERCLA, 42 U.S.C. Section 9620(e)(2), for an interagency agreement between the EPA and the Army;

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

(f) Coordinate response actions at the Site with the mission and support activities at Tobyhanna Army Depot;

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

(h) Afford the Commonwealth of Pennsylvania, in accordance with Section 121(d)(2) of CERCLA, 42 U.S.C. Section 9621(d)(2), the opportunity to identify State Applicable or Relevant and Appropriate Standards and Requirements (ARARs) prior to the selection of remedial actions and to participate in the planning and selection of remedial actions to be undertaken at the Site including but not limited to the review of all applicable data, studies, reports and action plans; and,

(i) Provide for operation and maintenance of the response actions selected and implemented pursuant to this Agreement.

2. DEFINITIONS

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

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

b. "Agreement" shall mean this document and shall include all attachments to this document referred to herein. All such attachments shall be appended to and made an integral and enforceable part of this Agreement.

c. "ARARs" shall mean "legally applicable" or "relevant and appropriate" standards, requirements, criteria or limitations as those terms are used in CERCLA Section 121(d)(2), 42 U.S.C. Section 9621(d)(2), and the NCP.

d. "Areas of Concern" or "AOCs" shall mean those geographical areas listed in Attachment 1 of this Agreement and any additional areas agreed to by the Parties. AOCs shall include both (a) Solid Waste Management Units (SWMUs) where releases of hazardous substances may have occurred and (b) locations where there has been a release or threat of a release into the environment of a hazardous substance, pollutant or contaminant under CERCLA. AOCs may include, but need not be limited to, former spill areas, landfills, surface impoundments, waste piles, land treatment units, transfer stations, wastewater treatment units, incinerators, container storage areas, scrap-yards, cesspools, and tanks and associated piping which satisfy the release requirements of (a) and (b) above. The Parties may agree in writing to change the geographic boundaries of a particular AOC for the purposes of this Agreement as additional information on the extent of contamination associated with the AOC becomes available.

e. "Army" shall mean the United States Department of the Army, its successors and assigns.

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

g. "Days" shall mean calendar days, unless business days are specified. Any submittal that under the terms of this Agreement would be due on a Saturday, Sunday, or federal holiday shall be due on the following business day.

h. "Depot" shall mean Tobyhanna Army Depot, located in Monroe County, Pennsylvania, including all areas identified in

Attachment 2. This definition is for the purpose of describing a geographical area and not a governmental entity.

i. "EPA" shall mean the United States Environmental Protection Agency, its successors and assigns.

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

k. "Guidance" shall mean any requirement or policy directive published by EPA which is of general applicability to environmental matters and which is otherwise applicable to work to be performed under this Agreement. Upon request, EPA shall furnish applicable guidance to the Army.

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

m. "Operable Unit" or "OU" shall mean a discrete action that comprises an incremental step toward comprehensively addressing site problems. This discrete portion of a remedial response manages migration or eliminates or mitigates a release, threat of release, or pathway of exposure. The cleanup of a site can be divided into a number of OUs, depending on the complexity of the problems associated with the site. OUs may address geographical portions of a site, specific site problems, or initial phases of an action, or may consist of any set of actions performed over time or any actions that are concurrent but located in different parts of a site.

n. "PADER" shall mean the Pennsylvania Department of Environmental Resources, its successors and assigns.

o. "Parties" shall mean the Army and EPA.

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

q. "Site" shall include the Depot and any other area where a hazardous substance, hazardous waste, hazardous constituent, pollutant, or contaminant from the Depot has been deposited, stored, disposed of, or placed, or otherwise come to be located.

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

s. "TOAD" shall mean Tobyhanna Army Depot, Tobyhanna, Pennsylvania, Department of the Army, its successors and assigns. Included within this definition are tenant activities located on the Depot as well as lessees of Depot property. This definition is not intended to limit the liability of any lessee not an agency of the Department of the Army who is a potential responsible party under Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a).

t. "To Be Considered" or "TBC" shall mean, in accordance with the NCP, any nonpromulgated advisories, criteria, or

guidance developed by EPA, other federal agencies, or states that may be useful in developing CERCLA remedies.

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

v. "Verification Study" or "VS" shall mean a study to determine whether there has been a release or there is a threat of release of hazardous waste, hazardous constituents, hazardous substances, pollutants or contaminants to the environment from an Area of Concern. The scope of each VS will be agreed to by the Parties pursuant to this Agreement. A VS may include any or all of the following, but is not limited to: review of previous studies and information; site visits; sampling and analysis.

3. PARTIES BOUND

3.0 This Agreement shall apply to and be binding upon the Parties and upon all subsequent owners, operators, and lessees of the Depot. The Army shall notify EPA of the identity and assigned tasks of each of its contractors performing work under this Agreement upon contract award (through a document such as the Contract Scopes of Work). This Section shall not be construed as an agreement to indemnify any person. The Army shall provide copies of this Agreement to all contractors performing any work called for by this Agreement. The Army shall

include in any contract for work hereunder, executed after the effective date of this Agreement, a requirement that such work be performed in accordance with the requirements of this Agreement.

4. SCOPE

4.1 This Agreement is entered into by the Parties in order to meet the provisions of CERCLA and is intended to satisfy the substantive corrective action requirements of Sections 3004(u) and (v) of RCRA, 42 U.S.C. Sections 6924(u) and (v). This Agreement addresses the investigation, development, selection, and implementation of response actions for all releases or threatened releases of hazardous substances, contaminants, hazardous waste, hazardous constituents, or pollutants from the Site, except as described in Subsection 4.2. This Agreement addresses all phases of remediation for these releases, bringing together into one agreement the requirements for remediation as well as the system the Parties will use to determine and accomplish remediation, ensuring the necessary and proper level of participation and cooperation of each Party. Although all such releases at the Site are not currently known, the Parties will establish a system for dealing with those undiscovered releases in this Agreement. To accommodate remediation of those undiscovered releases, the Parties will establish timetables and deadlines as necessary and as information becomes available and, if required, amend this Agreement as needed.

4.2 Except as provided in CERCLA and the NCP, nothing in this Agreement shall be construed to limit any obligation the Army or any other person or entity may have under RCRA or any other law or regulation to obtain a permit for the treatment, storage, or disposal of hazardous waste at the Site. This Agreement is not intended to address response to spills of hazardous substances from on-going operations unless those spills

occur in conjunction with CERCLA response actions taken pursuant to this Agreement.

4.3 The Army is presently conducting an investigation at the Area A and B Operable Unit. This investigation has so far resulted in the completion of a Remedial Investigation (RI), an Endangerment Assessment (EA), a Feasibility Study (FS), and a Focused Remedial Alternative Evaluation. EPA has provided comments to the Army regarding these studies, which comments the Army has addressed in a Workplan. The implementation of the Workplan will result in an RI Addendum, a revised EA and a revised FS for the Area A and B Operable Unit. Upon satisfactory completion of the tasks outlined in the approved Workplan, the RI Addendum, the revised EA, and the revised FS will be considered Final Documents. The Area A and B Operable Unit will follow the remedial process beginning with Subsection 20.8. The Army has completed a Community Relations Plan for the Site.

4.4 The Army agrees that it shall develop, implement and report upon Verification Studies (VSs) at the Areas of Concern listed in Attachment 1 to this Agreement. The VSs shall be subject to the review and comment procedures described in Section 8, Consultation. The VSs shall be conducted in accordance with the requirements and schedules developed pursuant to Section 20, Work To Be Performed. The VSs shall meet the purposes set forth in Section 1, Purpose.

5. JURISDICTION

5.1 The Parties enter into this Agreement pursuant to the following authorities:

(a) EPA enters into those portions of this Agreement that relate to the Remedial Investigation/Feasibility Study

(RI/FS) pursuant to Section 120(e)(1) of CERCLA, 42 U.S.C. Section 9620(e)(1), and Sections 6001, 3008(h) and 3004(u) and (v) of RCRA, 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v), and Executive Order 12580;

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

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

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

6. FINDINGS

6.1 The following constitutes a summary of the facts upon which this Agreement is based. The findings in this Section are based on information available to the Parties as of the date of execution of this Agreement. Investigations are ongoing, and information obtained as a result of such investigations may impact these findings. None of the facts related herein shall be

considered admissions by any Party. This Section shall not be admissible as evidence in any proceeding by any person (private or public), agency, or political subdivision for any purpose, except in a proceeding to enforce the terms of this Agreement.

(a) The Depot is located in Monroe County, Pennsylvania, approximately 15 miles southeast of Scranton, Pennsylvania. The Depot encompasses approximately 1293 acres.

(b) The Depot was initially established as Camp Summerall when the United States purchased 33 square miles of land in northeastern Pennsylvania in 1909. The name of the installation, as well as its mission, has changed throughout the years. Camp Summerall, later named Tobyhanna Miltary Reservation, was used by the Army and National Guard for machine gun and field artillery training beginning in 1913. From World War I through World War II, a variety of activities were carried out on the installation, including the following: machine gun and field artillery training; ambulance and tank regiment training; ordnance storage; a Civilian Conservation Corps camp; Army/Air Force Service Unit Training Center; and storage and supply of Air Service Command Equipment.

(c) In 1949, the Commonwealth of Pennsylvania purchased approximately 21,000 acres from the United States War Assets Administration; from 1949 to 1951 the property was maintained by the Pennsylvania Department of Forests and Waters and Pennsylvania Game Commission. In 1952, approximately 1418 acres were obtained by means of quit-claim deed from the Commonwealth by the United States for depot construction.

(d) In 1953, the installation was designated and established as Tobyhanna Signal Depot, a Class II installation, with an assigned supply mission. In 1962, Tobyhanna Signal Depot was transferred to the United States Army Material Command (AMC).

Since 1962, the Depot has been used for a variety of purposes including the Department of Defense household goods movement and storage and maintenance of the Army's central file of motion pictures and distribution of audio-visual materials.

(e) Presently, the Depot is designated as a communication-electronics (C-E) maintenance and supply depot under the auspices of the United States Army Depot System Command (DESCOM), a major subordinate command of AMC. The primary purpose for which the Depot is used is logistics support for C-E equipment throughout the United States Army. The installation is the largest C-E overhaul depot in the Army and is responsible for the overhaul, rebuilding, repair, conversion, inspection, testing and assembly of items such as Tactical Fire Direction Systems and Satellite Communications Systems. Since its establishment, the Depot has been a government owned, government operated depot.

(f) In 1979, the United States Army Toxic and Hazardous Materials Agency (USATHAMA) conducted a comprehensive Initial Installation Assessment (IIA) of the Depot as part of the Discovery Phase of the Tobyhanna Army Depot Installation Restoration Program. Based upon TOAD's active efforts to address several problem areas identified by the IIA, the report concluded that additional investigation by the Army was not warranted.

(g) In November 1980, TOAD submitted its RCRA Part A Application to EPA, and in 1983, it submitted its RCRA Part B Application. The Depot currently has interim status and is assigned EPA Permit No. PA 5213820892.

(h) In August 1980, the Army conducted sampling and analysis of the Depot's water supply. Low levels of trichloroethylene (TCE) were found in samples from one of the wells servicing the Depot. The Army Environmental Hygiene Agency and the United States Army Material Development and Readiness

Command (DARCOM) Surgeon General advised TOAD that the levels did not pose a significant health risk. EPA and PADER were consulted. Interim PADER policy then in effect did not require TOAD to lower the levels.

(i) In October 1986, the Army conducted an evaluation of the Depot in light of changes in environmental laws, changes in the mission of TOAD, and environmental concerns which were discovered by TOAD subsequent to the IIA. Suspected past disposal areas were identified by the Army through the use of historical aerial imagery.

(j) In 1986, PADER identified the Depot as a potential source of groundwater contamination detected in several off-Depot wells.

(k) In March 1987, USATHAMA initiated a Remedial Investigation and Feasibility Study which focused on groundwater contamination and identified an area on the Depot as a source of volatile organic compound (VOC) contamination.

(l) In May 1987, EPA completed a RCRA Facility Assessment Report which identified 52 Areas of Concern at the Depot. In March 1990, the Army conducted a SWMU evaluation at the Depot which identified 65 Areas of Concern at the Depot. Attachment 1 to this Agreement includes all AOCs identified in the above documents.

(m) Hazardous waste and hazardous substances identified at the Depot include waste fuels, oils, solvents, pesticides, paint, polychlorinated biphenyls (PCBs), and industrial waste waters, which had been generated by TOAD through industrial operations, maintenance and repair activities.

(n) In July 1989, EPA completed a Hazardous Ranking System evaluation of the Depot which resulted in a score of 37.95.

(o) Based on the Hazard Ranking System evaluation, and in accordance with EPA policy, EPA proposed the Depot for inclusion on the National Priorities List (NPL) on July 14, 1989 (54 Fed. Reg. 29,820). The Depot was promulgated to the NPL on August 30, 1990 (55 Fed. Reg. 35,502).

7. EPA DETERMINATIONS

7.1 EPA has made the following determinations necessary to establish the jurisdictional basis of this Agreement and the authorities herein. None of the determinations herein shall be considered admissions by any Party. This Section shall not be admissible as evidence in any proceeding by any person (private or public), agency, or political subdivision for any purpose, except a proceeding to enforce the terms of this Agreement.

(a) The United States is a person as defined by Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).

(b) The Depot is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).

(c) There has been a "release" and/or a substantial threat of release of "hazardous substances" at the Depot, as those terms are defined in Section 101(22) and (14) of CERCLA, 42 U.S.C. Section 9601(22) and (14), respectively.

(d) The actions provided for in this Agreement are consistent with the NCP.

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

(f) The Depot is a federal facility within the meaning of Section 120 of CERCLA, 42 U.S.C. Section 9620, and is subject to all guidelines, rules, regulations and criteria in the same manner and to the same extent as other facilities, as specified in Section 120(a) of CERCLA, 42 U.S.C. Section 9620(a).

(g) The United States, through the United States Department of the Army, is the "owner" and "operator" of the Depot as defined in Section 101(20) of CERCLA, 42 U.S.C. Section 9601(20). The Department of the Army is the agency of the United States charged with fulfilling the obligations of the owner/operator under CERCLA at the Depot.

(h) This Agreement provides for the expeditious completion of all necessary remedial actions.

8. CONSULTATION

Review and Comment Process for Draft and Final Comments

8.1. Applicability: The provisions of this Section establish the procedures that shall be used by the Parties to provide each other with appropriate notice, review, comment, and response to comments regarding documents, specified herein as either primary or secondary documents. In accordance with Section 120 of CERCLA, 42 U.S.C. Section 9620, and 10 U.S.C. Section 2705, the Army will normally be responsible for issuing Primary and Secondary Documents to EPA. As of the effective date of this Agreement, all draft, draft final and final documents identified in Subsections 8.3 and 8.4 shall be prepared,

distributed and subject to dispute in the manner and to the extent provided in Subsections 8.2 through 8.10, below. The designation of a document as "draft" or "final" is solely for purposes of consultation with EPA in accordance with this Section. Such designation does not affect the obligation of the Parties to issue documents, which may be referred to herein as "final," to the public for review and comment as appropriate and as required by law or regulations pursuant thereto.

8.2 General Process for Document Review:

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

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

8.3 Primary Documents:

(a) All Primary Documents shall be prepared in accordance with the NCP and applicable EPA guidance. The Army shall complete and transmit draft documents for the following primary documents to EPA for review and comment in accordance with the provisions of this Section:

(1) VS Workplans

(2) VS Reports

(3) RI/FS Scoping Documents

(4) RI/FS Workplans, including Sampling and Analysis Plan and Quality Assurance Project Plan (QAPP)

(5) RI Reports including RI Addendum

(6) Baseline Risk Assessments (i.e., Endangerment Assessments)

(7) FS Reports, including Focused Feasibility Study

(8) Proposed Remedial Action Plans

(9) Remedial Designs

(10) RA Workplans

(11) Supplemental Workplans

(b) Only the draft final documents for the primary documents identified above shall be subject to dispute resolution. Pursuant to this Agreement, the Army shall complete and transmit draft primary documents in accordance with the timetable and deadlines established in Section 17, Deadlines, for those documents the Parties determine are needed.

8.4 Secondary Documents:

(a) All Secondary Documents shall be prepared in accordance with the NCP and applicable EPA guidance. The Army

shall complete and transmit draft documents for the following secondary documents to EPA for review and comment in accordance with the provisions of this Section:

(1) Treatability Studies

(2) Remedial Action Reports

(3) Well Closure Plans

(4) Conceptual Design Document

(5) Draft Design Document (60 percent Design)

(6) Draft Final Design Document (90 percent Design)

(7) Sampling and Data Results

(8) Operation and Maintenance Plans

(9) Periodic Review Assessment Report

(b) Although EPA may comment on the draft documents for the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by Subsection 8.2 hereof. Pursuant to this Agreement, target dates shall be established for the completion and transmission of draft secondary documents pursuant to Section 17, Deadlines, for the documents the Parties determine are needed.

8.5 Meetings of the Project Managers on Development of Documents:

(a) The Project Managers shall meet approximately every forty-five (45) days, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the Site, including work on the primary and secondary documents. Prior to preparing any draft document specified in Subsections 8.3 and 8.4, the Project Managers shall meet to discuss the results to be presented in the document in an

effort to reach a common understanding, to the maximum extent practicable.

8.6 Identification and Determination of Potential ARARs:

(a) For those primary documents or secondary documents that consist of or include ARAR determinations, the Project Managers shall meet prior to the issuance of a draft document to identify and propose, to the best of their ability, all potential ARARs pertinent to the document being addressed. PADER shall identify all potential state ARARs as early in the remedial process as possible consistent with the requirements of Section 121 (d)(2) of CERCLA, 42 U.S.C. Section 9621(d)(2), and the NCP. The Army shall consider any written interpretations of ARARs provided by PADER. Draft ARAR determinations shall be prepared by the Army in accordance with Section 121(d)(2) of CERCLA, 42 U.S.C. Section 9621(d)(2), the NCP and pertinent guidance issued by EPA that is not inconsistent with CERCLA and the NCP.

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

8.7 Review and Comment on Draft Documents:

(a) The Army shall complete and transmit each draft primary document to EPA on or before the deadline established for the issuance of such document pursuant to Section 17, Deadlines. The Army shall complete and transmit each draft secondary

document in accordance with the target dates to be established for the issuance of such documents, pursuant to Section 17.

(b) Unless the Parties agree to another time period, all draft documents shall be subject to a sixty (60) day period for EPA review and comment. Review of any document by EPA may concern all aspects of the document (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document and consistency with CERCLA, the NCP and any pertinent guidance or policy issued by EPA, and with applicable state law. Comments by EPA shall be sufficiently specific to enable the Army to respond to the comment and, if appropriate, make changes to the draft document. Comments shall refer to any pertinent sources of authority or reference upon which the comments are based, and, upon request of the Army, EPA shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy documents, EPA may extend the sixty (60) day comment period for an additional twenty (20) days by written notice to the Army prior to the end of the sixty (60) day period. On or before the close of the comment period, EPA shall transmit its written comments to the Army.

(c) Representatives of both Parties shall make themselves readily available during the comment period for the purpose of informally responding to questions and comments on draft documents. Oral comments made during such discussions need not be the subject of a written response by the Army on the close of the comment period.

(d) In commenting on a draft document which contains a proposed ARAR determination, EPA shall include a reasoned statement of whether it objects to any portion of the proposed ARAR determination. To the extent that EPA 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.

(e) Following the close of the comment period for a draft document, the Army shall give full consideration to all written comments on the draft document submitted during the comment period. The Army is under no obligation under this Agreement to give full consideration to comments received from EPA after the comment period. Within sixty (60) days of the close of the comment period on a draft secondary document, the Army shall transmit to EPA its written response to comments received within the comment period. Within thirty (30) days of the close of the comment period on a draft primary document, the Army shall transmit to EPA a written response to comments received within the comment period. The Army's response may include an identification of EPA's comments which require clarification. After receipt by EPA of the Army's response to comments, at the request of either Party, the Parties will meet, within forty-five (45) days of such request, to discuss EPA's comments. Within forty-five (45) days of this meeting, or if no meeting is held, within seventy-five (75) days of the close of the comment period, the Army shall transmit to EPA the draft final primary document, which shall include the Army's response to all written comments received within the comment period. While the resulting draft final document shall be the responsibility of the Army, it shall be the product of consensus to the maximum extent possible.

(f) The Army may extend the period for either responding to comments on a draft document or for issuing the draft final primary document for an additional twenty (20) days by providing notice to EPA in accordance with Section 13, Notice.

8.8. 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 16, Dispute Resolution.

(b) When dispute resolution is invoked on a draft primary document, work required by this Agreement may be stopped in accordance with the procedures set forth in Section 16, Dispute Resolution.

8.9 Finalization of Documents:

(a) The draft final primary document shall serve as the final primary document if no Party invokes dispute resolution regarding the document in accordance with Subsection 8.2(a), or, if Dispute Resolution is invoked, at completion of the dispute resolution process should the Army's position be sustained. If the Army's determination is not sustained in the dispute resolution process, the Army shall submit, within not more than thirty-five (35) days, a revision of the draft final document which conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Section 18, Extensions.

8.10 Subsequent Modifications of Final Documents:

(a) Except as provided in Subsections 9.4(d) and 18.1, following finalization of any primary document pursuant to Subsection 8.9 above, either 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 Subsection 8.10(b).

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

(c) If the Party receiving the request for modification agrees to the request, such Party shall submit a draft modified document by an agreed-upon deadline. Draft modified documents shall be subject to the procedures of Subsections 8.7 to 8.9 of this Agreement.

(d) In the event that a consensus is not reached by the Project Managers on the deadline or need for a modification, either Party may invoke dispute resolution. Modification of a document shall be required only upon a showing that:

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

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

(e) Nothing in this Subsection shall alter EPA's ability to request the performance of additional work which was not contemplated by this Agreement. The Army's obligation to perform

such work must be established by either a modification of a document or report or by amendment to this Agreement.

8.11 The Army intends to provide copies of all primary and secondary documents to the Commonwealth of Pennsylvania at the same time such documents are transmitted to EPA to provide Pennsylvania an opportunity to comment. EPA and the Army intend to confer with the Commonwealth of Pennsylvania with respect to those documents and during the implementation of this Agreement.

9. PROJECT MANAGERS

9.1 On or before the effective date of this Agreement, the Parties shall each designate a Project Manager and may designate an Alternate Project Manager. The Project Manager shall be responsible on a daily basis for representing his Party in assuring proper implementation of all work performed under the terms of this Agreement. In addition to the formal notice provisions set forth in Section 13, Notice to the Parties, communications between the Parties regarding documents, comments, and other correspondence concerning the activities performed pursuant to this Agreement, shall, to the maximum extent practicable, be directed through the Project Managers. The Alternate Project Manager shall be authorized to exercise the power of the Project Manager in the Project Manager's absence.

9.2 Either Party may change its respective Project Manager or Alternate Project Manager. Such changes shall be accomplished by notifying the other Party, in writing, within five (5) days prior to the exercise of authority under this Agreement by the new Project Manager, except in emergencies in which case such notification shall be made verbally, with written confirmation as soon as practicable.

9.3 The Project Managers shall confer informally as provided in Sections 8 and 20. Either Party may request additional Project Manager conferences. Such a request will not be unreasonably refused. Although the Army has ultimate responsibility for meeting its respective deadlines or schedules, the Project Managers shall endeavor to assist in this effort by scheduling meetings to review documents, overseeing the performance of all environmental monitoring at the Site, reviewing RI/FS or RD/RA progress, attempting to resolve disputes informally, and making necessary and appropriate adjustments to deadlines or schedules in accordance with Sections 18, Extensions, and 34, Amendments.

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

(a) Taking samples and ensuring that the types, quantities, and locations of the samples taken by the Army are in accordance with the terms of any final Workplan;

(b) Observing, taking photographs of and making reports on the progress of the Army in carrying out the terms of this Agreement as the Project Managers deem appropriate subject to the limitations set forth in Section 11, Access;

(c) Reviewing records, files and documents relevant to the work being performed, subject to Section 33, Preservation of Records; and,

(d) Verbally agreeing to minor modifications of requirements of documents generated pursuant to this Agreement to accommodate field conditions, provided that any such verbal agreement must be confirmed in writing within fifteen (15) days of such verbal agreement.

9.5 Each Project Manager shall be responsible for assuring that all communications, including but not limited to reports, documents, oral and written notices, received from the other Project Manager are appropriately disseminated to and processed by the Party that each Project Manager represents. The absence of the EPA Project Manager from the Site shall not be cause for the stoppage of work, unless agreed to by the Parties.

10. QUALITY ASSURANCE

10.1 The Army shall use quality assurance, quality control, and chain of custody procedures throughout all field investigation, sample collection and laboratory analysis activities. A Quality Assurance Project Plan (QAPP) shall be submitted as a component of each Workplan that requires sample collection and analysis activities and reviewed as a Primary Document pursuant to Subsection 8.2. QAPPs shall be prepared in accordance with applicable EPA guidance.

10.2 In order to demonstrate quality assurance and maintain quality control regarding all samples collected pursuant to this Agreement, the Army shall submit all protocols to be used for sampling and analysis to EPA for review and comment as part of each Workplan that requires sample collection and laboratory analysis activities. The Army shall also ensure that any laboratory used for analysis is a participant in a quality assurance/quality control program that is consistent with EPA guidance.

10.3 The Army shall also ensure that appropriate EPA personnel or their authorized representatives, with prior coordination with the Army, will be allowed access to any laboratory used by the Army in implementing this Agreement within a reasonable period of time after requesting such access. Such

access shall be for the purpose of validating sample analyses, protocols and procedures required by the Remedial Investigation and Quality Assurance Project Plan.

11. ACCESS

11.1 Without limitation on any authority conferred on EPA by statute or regulation, EPA and its authorized representatives shall have the authority to enter the Depot at all reasonable times for purposes consistent with the provisions of this Agreement. Such authority shall include, but not be limited to: inspecting records, operating logs, or contracts related to the investigative and response work at the Site; reviewing the progress of the Army in carrying out the terms of this Agreement; conducting such tests as the Project Managers deem necessary; and verifying data submitted to EPA. The Army shall provide an escort whenever EPA requires access to restricted areas of the Depot for purposes consistent with the provisions of this Agreement. EPA shall provide reasonable notice to the Army Project Manager to request any necessary escorts. Before using any camera, sound, or other electronic recording device subject to security restrictions at the Depot, EPA shall, with the assistance of the Army Project Manager, obtain authorization from the TOAD Security Force.

11.2 The rights to access by EPA granted in Subsection 11.1 shall be subject to those regulations as may be necessary to protect national security or mission essential activities. The Army shall impose no greater or stricter restrictions upon EPA than are imposed upon contractors performing work under this Agreement. Upon denying any aspect of access, the Army shall provide an immediate explanation of the reason for the denial and, where possible, provide a recommendation for accommodating the requested access in an alternate manner. Within forty-eight

(48) hours, the Army shall also provide a written explanation for the denial if alternate access has not been provided at the time of the request. The Parties also agree that this Agreement is subject to CERCLA Section 120(j), 42 U.S.C. Section 9620(j), regarding the issuance of Site Specific Presidential Orders as may be necessary to protect national security.

11.3 All Parties with access to the Depot pursuant to this Section shall comply with all applicable Health and Safety Plans and Regulations for the Depot.

11.4 To the extent that activities undertaken pursuant to this Agreement must be carried out on property not owned or controlled by the Army, the Army shall use its best efforts to obtain access agreements from the person(s) who owns or controls such other property. These agreements shall provide reasonable access for all Parties for the purposes of effectuating this Agreement. In the event that the Army is unable to obtain such access agreements, the Army shall notify EPA within five (5) days of access denial.

11.5 The Army shall request the assistance of EPA if it encounters problems obtaining access required by this Agreement. If requested, EPA may take reasonable steps to assist the Army in gaining site access. Should the Parties fail to obtain adequate Site access, any affected Workplan shall be modified to accommodate such inability to obtain access.

12. DATA AND DOCUMENT AVAILABILITY

12.1 Each Party shall make all sampling results, test results or other data or documents, not protected from disclosure by law or court order, generated through the implementation of this Agreement available to the other Party.

12.2 At the request of either Party, a Party shall allow, to the extent practicable, split or duplicate samples to be taken by the requesting Party, or its authorized representatives, of any samples collected pursuant to the implementation of this Agreement. Each Party shall notify the other Party not less than fourteen (14) days in advance of the initiation of each scheduled sample collection activity unless otherwise agreed upon by the Parties.

13. NOTICE TO THE PARTIES

13.1 All Parties shall transmit all documents, and all notices required herein by certified mail, next day mail, or hand delivery, except in the case of extension requests which may be transmitted by facsimile, with subsequent written confirmation within seven (7) days. Any time limitations for action required under this Agreement shall commence upon receipt of the document or notice relating to such action.

13.2 Unless otherwise specified in writing, notice to the individual Parties shall be provided under this Agreement to the following addresses:

(a) For the Army: Commander
USATHAMA
ATTN: CETHA-IR-A(OBER)
Aberdeen Proving Ground, MD 21010

(b) For the EPA: U.S. EPA Region III
Attn: TOAD Project Manager (3HW26)
841 Chestnut Building
Philadelphia, PA 19107

14. PERMITS

14.1 The Parties recognize that under Section 121(e)(1) of CERCLA, 42 U.S.C. Section 9621(e)(1), no federal, state or local permit shall be required for the portion of any removal or remedial action conducted entirely within the Site, where such action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. Section 9621. However, the Army must satisfy all ARARs which would have been included in any such permit, pursuant to Section 121(d) of CERCLA. This Section does not apply to activities outside the scope of this Agreement.

14.2 When the Army proposes a response action to be conducted entirely on Site other than an emergency removal action, which, in the absence of the permit waiver described in Subsection 14.1, would require a federal, state or local permit, the Army shall include in a submittal to EPA:

(a) Identification of each permit which would otherwise be required;

(b) Identification of the ARARs which would have had to have been met to obtain each such permit;

(c) Explanation of how the response action proposed will meet the ARARs identified in Subsection 14.2(b), or why an exemption from such ARARs, pursuant to CERCLA and the NCP, should be applied.

Upon request of the Army, EPA will provide a written response with respect to Subsections 14.2(b) and 14.2(c), in accordance with Section 8, Consultation.

14.3 This Section is not intended to relieve the Army of any regulatory requirement including but not limited to requirements to obtain manifests or requirements to ship to a permitted facility whenever the Army proposes a response action involving the shipment or movement off-Site of a hazardous substance or waste or undertakes any activities beyond the Site.

14.4. The Army shall notify EPA in writing of any permits or other authorizations required for off-Site activities conducted pursuant to this Agreement, as soon as it becomes aware of the requirement. Upon request, the Army shall provide EPA copies of all such permit applications and other documents related to the permit or authorization process.

14.5 With respect to off-Site activities, if a permit or other authorization which is necessary for implementation of this Agreement is not issued or is issued or renewed in a manner which is materially inconsistent with requirements of this Agreement, the Army shall notify EPA of its intention to propose modifications to this Agreement to obtain conformance with the permit (or lack thereof). Notification by the Army of its intention to propose modifications shall be submitted within seven (7) calendar days of receipt by the Army of notification that: (1) a permit will not be issued; (2) a permit has been issued or reissued; or (3) a final determination with respect to any appeal related to the issuance of a permit has been entered. Within thirty (30) days from the date the Army submits its notice of intention to propose modifications to this Agreement, the Army shall submit to EPA its proposed modifications to this Agreement with an explanation of its reasons in support thereof.

14.6 EPA shall review the Army's proposed modifications to this Agreement in accordance with Section 34, Amendment or Modification of Agreement. If the Army submits a proposed modification prior to a final determination of a final appeal

taken on any permit needed to implement this Agreement, EPA may elect to delay review of the proposed modification until after such final determination is made. If EPA elects to delay review, the Army shall continue implementation of this Agreement as provided in Subsection 14.7.

14.7 During any appeal of any permit required to implement this Agreement, or during review of any of the Army's proposed modifications as provided in Subsection 14.6, the Army shall use its best efforts to continue to implement those portions of this Agreement which can reasonably be implemented pending final resolution of the permit appeal or proposed modification.

14.8 Except as otherwise provided in this Agreement, the Army shall comply with all state, federal and local laws and regulations to which the Army is subject at the Site.

15. EMERGENCY RESPONSE ACTIONS

15.1 Notwithstanding any other provisions of this Agreement, the Army and EPA retain their respective rights, consistent with E.O. 12580, to conduct such emergency actions as may be necessary to alleviate immediate threats to human health or the environment from the release or threat of release of hazardous substances, pollutants or contaminants at or from the Depot. Such actions may be conducted at any time, either before or after the issuance of a ROD.

15.2 A Party conducting an emergency response action shall provide the other Party with oral notice as soon as possible after determining that an emergency action is necessary. In addition, within seven (7) days of such determination, the Party conducting the response shall provide written notice to the other Party explaining why such action is or was necessary. Promptly

thereafter, the responding Party shall provide the other Party with the written bases (factual, technical, and scientific) for such action and any available documents supporting such action. Upon completion of an emergency action, the responding Party shall notify the other Party in writing that the emergency action has been implemented. Such notice shall state whether, and to what extent, the emergency action varied from the description of the action in the written notice provided pursuant to the second sentence of this Subsection. When appropriate, EPA will respond on Site to monitor response activities and to provide technical and material assistance where necessary.

16. DISPUTE RESOLUTION

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

16.2 Within thirty (30) days after: (1) issuance of a draft final primary document pursuant to Section 8, Consultation, or (2) any action which leads to or generates a dispute, the disputing Party shall elevate the dispute to the Dispute Resolution Committee (DRC) by submitting to the other Party, as provided in Section 13, Notice, 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 upon which the disputing Party is relying to support its position.

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

16.4 The DRC will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (SES or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. EPA's representative on the DRC is the Associate Director, Office of Superfund, EPA Region III. The Army's designated member is the Depot Installation Commander. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to the other Party pursuant to the procedures of Section 13, Notice.

16.5 Following elevation of a dispute to the DRC, the DRC shall have twenty-one (21) days to unanimously resolve the dispute and issue a written decision. Elevation of the dispute occurs upon receipt by the Parties of a written statement of dispute pursuant to the procedures of Section 13, Notice. 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 by the DRC to the Senior Executive Committee (SEC) for resolution, within seven (7) days after the close of the twenty-one (21) day resolution period.

16.6 The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. EPA's representative on the SEC is the Regional Administrator of

EPA Region III (Regional Administrator). The Army's representative on the SEC is the Deputy Assistant Secretary of the Army for Environment, Safety, and Occupational 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 of elevation to the SEC, the Regional Administrator shall issue a written position on the dispute. The Army may, within fourteen (14) days of the Regional Administrator's issuance of EPA's position, issue a written notice elevating the dispute to the Administrator of EPA for resolution in accordance with all applicable laws and procedures. In the event that the Army elects not to elevate the dispute to the Administrator within the designated twenty-one (21) day escalation period, the Army shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.

16.7 Upon elevation of a dispute to the Administrator of EPA pursuant to Subsection 16.6, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the EPA Administrator shall meet and confer with the Deputy Assistant Secretary of the Army for Environment, Safety, and Occupational Health to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the Army with a written final decision setting forth resolution of the dispute. The duties of the Administrator set forth in this Section shall not be delegated.

16.8 The pendency of any dispute under this Section shall not affect any Party's responsibility for timely performance of the work required by this Agreement, except that the time period for completion of work affected by such dispute shall be extended for a period of time usually not to exceed the actual time taken

to resolve any good faith dispute in accordance with 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 schedule.

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

16.10 Within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this Section, the Army 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.

16.11 Resolution of a dispute pursuant to this Section of the Agreement 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 of the Agreement.

17. DEADLINES

17.1 The following deadlines have been established by the Parties for the submittal of the draft Primary Documents pursuant to this Agreement.

17.2 Within thirty (30) days of the effective date of this Agreement, the Army shall propose deadlines for submission of the draft VS Workplans (WPs) for completion of the VSs for the AOCs listed in Attachment I to this Agreement. The VS WPs shall contain a proposed deadline for VS Report submission.

17.3 Pursuant to Subsection 20.4, the need for an additional RI/FS(s) will be determined. If it is determined that an additional RI/FS is needed, within thirty (30) days of that determination the Army shall propose a deadline for submission of either the RI Scoping Document, or the RI/FS Workplan, as appropriate. Each scoping document will contain a deadline for submittal of an associated Workplan or other appropriate Primary Document.

17.4 In each RI/FS Workplan, the Army shall propose deadlines for expeditious completion of the following documents:

(a) RI Reports;
(b) FS Reports;
(c) Baseline Risk Assessments; and,
(d) Proposed Remedial Action Plans.

17.5 Within fifteen (15) days after the close of the public comment period on the Proposed Remedial Action Plan, the Army shall propose a deadline for submission of the Draft Record of Decision to EPA.

17.6 Within thirty (30) days of issuance of each Record of Decision, the Army shall propose a schedule for completion of the following draft primary documents:

(a) Remedial Design (RD)
(b) Remedial Action (RA) Workplan.

The RA Workplan shall propose deadlines for completion of the Remedial Action. EPA shall publish the finalized deadlines in accordance with CERCLA Section 120(e)(1), 42 U.S.C. Section 9620(e)(1).

17.7 The deadlines set forth in this Section, or to be established as set forth in this Agreement, may be extended pursuant to Section 18, Extensions. The Parties recognize that one possible basis for extension of the deadlines for completion of the RI/FS Reports is the identification of significant new Site conditions during the performance of the remedial investigation.

17.8 Proposed deadlines pursuant to this Agreement shall be finalized as follows:

Within thirty (30) days of receipt of proposed deadlines from the Army, EPA shall review and provide comments to the Army regarding the proposed deadlines. Within thirty (30) days following receipt of comments, the Army shall, as appropriate, make revisions and reissue the proposal. The Parties shall meet as necessary to discuss and finalize the proposed deadlines. If the Parties fail to agree within thirty (30) days of the Army's

receipt of EPA's comments on the proposed deadlines, the matter shall immediately be submitted for dispute resolution pursuant to Section 16, Dispute Resolution.

EPA shall publish the final deadlines established pursuant to this Section in accordance with CERCLA Section 120(e)(1), 42 U.S.C. Section 9620(e)(1).

18. EXTENSIONS

18.1 Either a timetable and deadline or a schedule shall be extended upon receipt of a timely request for extension in accordance with Section 13, Notice, and when good cause exists for the requested extension. Any request for extension by either Party shall be submitted in writing and shall specify:

(a) The timetable and deadline or the schedule that is sought to be extended;

(b) The length of the extension sought;

(c) The good cause(s) for the extension and steps taken by that Party to mitigate, limit, or remedy the delay; and

(d) Any related timetable and deadline or schedule that would be affected if the extension were granted.

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

(a) An event of force majeure;

(b) A delay caused by another Party's failure to meet any requirement of this Agreement;

(c) A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;

(d) A delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and deadline or schedule; and

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

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

18.4 Within seven (7) days of receipt of a request for an extension of a timetable and deadline or a schedule, the receiving Party shall advise the requesting Party, in writing, of its position on the request. Any failure by the receiving Party to respond within the seven (7) day period shall be deemed to constitute concurrence in the request for extension. If the receiving Party does not concur in the requested extension, the Party shall include in its statement of nonconcurrence an explanation of the basis for its position.

18.5 If there is consensus between the Parties that the requested extension is warranted, the Army 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.

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

18.7 A timely and good faith request for an extension shall toll any assessment of stipulated penalties or application for judicial enforcement of the affected timetable and 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.

19. FORCE MAJEURE

19.0 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, acts of God; fire; war; insurrection; civil disturbance; explosion; unanticipated breakage or accident to machinery, equipment, or lines of pipe despite reasonably diligent maintenance; adverse weather conditions that could not be reasonably anticipated; unusual delay in transportation; restraint by court order or order of public authority; inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits, or licenses due to action or inaction of any governmental agency or authority other than the Army; delays caused by compliance with applicable statutes or regulations governing contracting, procurement, or acquisition procedures, despite the exercise of reasonable diligence; and

insufficient availability of appropriated funds, if the Army shall have made timely request for such funds as part of the budgetary process as set forth in Section 29, Funding. A Force Majeure shall also include any strike or other labor dispute, whether or not within the control of the Parties affected thereby. Force Majeure shall not include increased costs or expenses of Response Actions, whether or not anticipated at the time such Response Actions were initiated.

20. WORK TO BE PERFORMED

20.1 The Parties recognize that a significant amount of background information exists, and must be reviewed prior to developing the Scoping Documents and Workplans required by this Agreement. The Army need not halt currently ongoing work but may be obligated to modify or supplement work previously done to produce a final product which meets the requirements of this Agreement. It is the intent of the Parties to this Agreement that work done and data generated prior to the effective date of this Agreement be retained and utilized as elements of the RI/FS to the maximum extent feasible without violating ARARs or guidelines and without risking significant technical errors.

20.2 Any Party may propose that a portion of the Site be designated as a distinct Operable Unit. This proposal must be in writing to the other Party, and must stipulate the reasons for such a proposal. Dispute Resolution may be invoked if the Parties cannot agree on the proposal of a specific Operable Unit. If Dispute Resolution is not invoked within thirty (30) days of the receipt of such a proposal by the Parties or if the need for an Operable Unit is established through Dispute Resolution, the portion of the Site proposed shall be an Operable Unit as that term is defined in Section 2, Definitions, and used throughout this Agreement.

Area A and B Operable Unit

20.3 The Army has previously submitted an RI/FS Workplan that has addressed EPA's comments regarding Area A and B Operable Unit. In accordance with the approved Workplan and deadlines therein, the Army shall develop and submit a draft RI Addendum, a draft Endangerment Assessment and a draft Feasibility Study for Area A and B Operable Unit. These Documents shall be Primary Documents as described in Section 8, Consultation.

Areas Of Concern

20.4 There are currently sixty-five (65) Areas of Concern (AOCs) that were identified at the Depot which are listed in Attachment 1 of this Agreement. Within thirty (30) days of the effective date of this Agreement, the Army shall submit proposed deadlines to EPA for submission of a Workplan for expeditious completion of a Verification Study (VS) at each AOC. The deadlines shall be approved in accordance with Section 17, Deadlines. The Army shall conduct VSs to determine if there have been releases of hazardous substances, pollutants or contaminants to the environment from the AOCs. The scope of each VS shall be determined by the Parties and specified in the VS Workplan.

(a) The Army shall conduct the VSs in accordance with the VS Workplan. Upon finalization of each VS, the Parties intend to classify each AOC as either a No Action AOC or a Further Action AOC. All AOCs shall be documented in a Record of Decision.

(1) No Action AOCs shall be those AOCs from which no release of hazardous substances, pollutants or contaminants has occurred or from which a release of hazardous waste or hazardous substances, pollutants or contaminants has occurred that does not

pose a threat to public health, welfare or the environment such that remedial action is not required.

(2) Further Action AOCs shall be those AOCs from which a release or a threat of release of hazardous substances, pollutants or contaminants has occurred or may occur resulting in a threat to the public health, welfare or the environment.

(b) The Army agrees to notify EPA of any additional AOCs of which the Army becomes aware. Either Party may submit a written proposal to the other Party to incorporate additional AOCs, on the basis of additional information, into this Agreement. Such proposed additional AOCs may be incorporated in accordance with the procedures of Sections 34 or 16 of this Agreement.

(c) Based on the review of the VSs, the Parties shall, within forty-five (45) days following finalization of the VSs, determine which, if any, of the AOCs will proceed to the RI/FS process. If the Parties cannot agree on the determination, Dispute Resolution may be invoked in accordance with Section 16. If a new RI/FS is required, the Army shall, within thirty (30) days of notification by EPA of the requirement, submit to EPA a schedule for expeditious completion of the RI/FS process outlined below.

(d) The Parties may agree, after review of initial documents, that an RI/FS Scoping Document is not required and proceed with the development of an RI/FS WP in accordance with Subsection 20.5. If the Parties determine that an RI/FS Scoping Document is necessary, each RI/FS Scoping Document shall describe an RI/FS which meets the requirements of all relevant laws and requirements and RI/FS guidance issued by EPA, and contains enough specificity for EPA to determine that all major elements of an RI/FS are provided for. The RI/FS Scoping Document shall

contain a schedule for completion of the RI/FS Workplan. Each RI/FS Scoping Document shall be a Primary Document as described in Section 8, Consultation.

Workplans

20.5 The Army shall develop and submit to EPA a WP for the completion of an RI/FS for each operable unit as determined by the Parties. The WP shall provide for the performance of an RI/FS which meets the requirements of all relevant laws and requirements including RI/FS guidance documents issued by EPA and shall contain enough specificity for EPA to determine that the subject RI/FS will be adequately performed. The WP shall contain a schedule for the expeditious completion of the RI/FS. The WP shall be a Primary Document as described in Section 8, Consultation.

Remedial Investigation

20.6 For each Operable Unit at the Site, as agreed to by the Parties, the Army shall develop, implement and report upon an RI which is in accordance with the requirements and time schedules set forth in the approved Workplan. Each RI Report shall be a Primary Document as described in Section 8, Consultation.

Feasibility Study

20.7 For each Operable Unit at the Site, the Army shall design, propose, undertake and report upon an FS which is in accordance with the requirements and time schedules set forth in the approved WP for such Operable Unit. Each FS shall be a Primary Document as described in Section 8, Consultation.

Remedial Action Selection

20.8 Following finalization of the RI and the FS for each Operable Unit, and in accordance with the deadline as approved in the Workplan for such Operable Unit, the Army shall, after consultation with EPA, publish its Proposed Remedial Action Plan for forty-five (45) days of public review and comment. Within fifteen (15) days following the close of the public comment period on the Proposed Remedial Action Plan, the Army shall propose a deadline for submission of a draft Record of Decision (ROD). Pursuant to Section 120(e)(4)(A) of CERCLA, 42 U.S.C. Section 9620(e)(4)(A), the Parties shall review the alternative remedial actions in the draft ROD and jointly select a remedial action(s). If the Army and EPA are unable to reach agreement, the EPA Administrator shall make the final selection. The selection of remedial action(s) by the EPA Administrator shall be final and not subject to dispute by the Army. Within thirty (30) days following issuance of the ROD, the Army shall submit to EPA a proposed schedule for submission of the Remedial Design in accordance with Section 17, Deadlines. If EPA disagrees with this proposal, the date will be established through dispute resolution. A dispute arising under this Section, on any matter other than EPA's final selection of a remedial action, shall be resolved pursuant to Section 16, Dispute Resolution. Nothing in this Agreement shall limit EPA's discretion to delegate final selection authority to the Regional Administrator.

Remedial Design and Remedial Action (RD/RA)

20.9 Where appropriate, the Army shall develop the Conceptual Design Document (at approximately thirty (30) percent completion of the design work), a Draft Design Document (at approximately sixty (60) percent completion of the design work), a Draft Final Design Document (at approximately ninety (90)

percent completion of the design work) and the final Remedial Design for the remedial action in accordance with this Agreement and applicable EPA guidance.

20.10 The Army shall submit a draft of each of the above mentioned secondary documents, as listed in Section 8, Consultation, to EPA for review and comment.

20.11 Following receipt of EPA's comments on the Draft Final Design Document, the Army shall prepare a final Remedial Design. The final Remedial Design shall be a Primary Document as described in Section 8, Consultation.

20.12 Thirty (30) days after the Remedial Design is approved, pursuant to Section 8, Consultation, the Army shall propose a deadline for submittal of the RA Workplan. The RA Workplan shall contain a schedule for completion of the Remedial Action. The RA Workplan shall be a Primary Document and be prepared in accordance with applicable EPA guidance. The Army shall perform the Remedial Action in accordance with the approved Remedial Design and the approved RA Workplan.

Finalization of Remedial Action(s)

20.13 Within thirty (30) days after completion of the Remedial Action, the Army shall propose a deadline to EPA for submission of the Remedial Action Report. The Remedial Action Report shall summarize the Remedial Action and shall detail any activities that were not conducted in accordance with the final Remedial Design. If applicable, the Remedial Action Report may include an Operation and Maintenance Plan for that particular Remedial Action.

Accelerated Operable Units

20.14 Accelerated Operable Units (AOUs), as defined in Section 2, will follow a streamlined remedial process as set forth below. Any Party may propose in writing that an Operable Unit (OU) be conducted as an AOU. The Party proposing an AOU shall be responsible for drafting an Accelerated Operable Unit proposal which shall clearly define the purpose, scope and goals of the AOU.

20.15 The Army shall evaluate all proposed AOUs, unless it is decided by agreement of the Parties or through dispute resolution that the proposed AOU should not be considered. Within thirty (30) days following proposal of an AOU by either Party, or within thirty (30) days following resolution of any dispute regarding the need to evaluate a proposed AOU, the Army shall submit a proposed schedule for expeditious completion of the draft Focused Feasibility Study (FFS), draft Proposed Remedial Action Plan, and draft Operable Unit ROD. Following finalization of the proposed schedule as provided in Subsection 17.8, the Army shall implement the schedule and complete a draft Focused Feasibility Study, a draft Proposed Remedial Action Plan, and a draft Record of Decision in accordance with the finalized schedule and this Agreement.

20.16 Following finalization of the FFS and the Proposed Remedial Action Plan as provided in Subsection 8.9, the Proposed Remedial Action Plan shall be published for public review and comment. AOUs shall follow the procedures described in Subsections 20.8 through 20.14. A dispute arising under this Subsection on any matter other than EPA's final selection of a remedial action shall be resolved pursuant to Section 16, Dispute Resolution. Nothing in this Agreement shall limit EPA's discretion to delegate final selection authority to the Regional Administrator.

Certification

20.17 When the Army determines that any remedial action has been completed in accordance with the requirements of this Agreement, it shall so advise EPA in writing, and shall request certification by EPA that the remedial action has been completed in accordance with the requirements of this Agreement. Within ninety (90) days of EPA receipt of a request for certification, EPA shall advise the Army in writing that:

(a) EPA certifies that the remedial action has been completed in accordance with this Agreement; or

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

20.18 If EPA denies the Army's request for certification that a remedial action has been completed in accordance with this Agreement, the Army may invoke dispute resolution to review EPA's determination. If a denial of certification is upheld in dispute resolution, EPA shall provide to the Army a written description of the additional work needed to bring the remedial action into compliance with the requirements of this Agreement. The Army shall, within thirty (30) days from receipt of EPA's written description of additional work, provide to EPA a schedule for expeditious completion of the additional work. After performing the additional work, the Army may resubmit a request for certification to EPA. EPA shall then grant or deny certification pursuant to the process set forth in this and the previous Subsection.

21. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

21.1 The Parties intend to integrate the Army's CERCLA response obligations and RCRA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes or constituents, pollutants or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this agreement will achieve compliance with CERCLA, 42 U.S.C. Section 9601 et seq.; satisfy the corrective action requirements of Sections 3004(u) and (v) of RCRA, 42 U.S.C. Sections 6924(u) and (v), for a RCRA permit, and RCRA Section 3008(h), 42 U.S.C. Section 6928(h), for interim status facilities; and meet or exceed all applicable or relevant and appropriate federal and state laws and regulations to the extent required by Section 121 of CERCLA, 42 U.S.C. Section 9621.

21.2 Based upon the foregoing, the Parties intend that any remedial action selected, implemented, and completed under this Agreement will be protective of human health and the environment such that remediation of releases covered by this Agreement shall obviate the need for further corrective action under RCRA (i.e. no further corrective action shall be required). The Parties agree that with respect to releases of hazardous wastes and constituents, hazardous substances, pollutants or contaminants covered by this Agreement, as provided in Section 4, Scope, RCRA shall be considered an applicable or relevant and appropriate requirement pursuant to Section 121 of CERCLA. Releases or other hazardous waste activities not covered by this Agreement remain subject to all applicable state and federal environmental requirements.

21.3 The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The

Parties further recognize that ongoing hazardous waste management activities at the Depot 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 Army for ongoing hazardous waste management activities at the Site, EPA shall reference and incorporate any appropriate provisions, including appropriate schedules (and the provision for extension of such schedules), of this Agreement into such permit. The Parties intend that the judicial review of any permit conditions which reference this Agreement shall, to the extent authorized by law, only be reviewed under the provisions of CERCLA.

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

22. PERIODIC REVIEW

22.1 If any remedial action selected results in any hazardous substances, pollutants or contaminants remaining at the Site, the Army shall review such remedial action no less often than each five (5) years after initiation of such remedial action to assure that human health and the environment are being protected by the Remedial Action being implemented. The periodic review shall be conducted in accordance with CERCLA Section 121(c), 42 U.S.C. Section 9621(c), and any applicable law, regulation or guidance issued by EPA that is not inconsistent with CERCLA and the NCP. Upon completion of this review, the Army shall submit the review in the Periodic Review Assessment Report to EPA. This report shall be a Secondary Document as described in Section 8, Consultation.

22.2 The assessment and selection of any additional response action determined necessary in the course of a periodic review shall be in accordance with Section 23, Supplemental Response Actions. Except for emergency response actions, which shall be governed by Section 15, Emergency Response Actions, such response action shall be implemented as a supplemental response action in accordance with Section 23, Supplemental Response Actions.

23. SUPPLEMENTAL RESPONSE ACTIONS

23.1 The Parties recognize that subsequent to finalization of a ROD, a need may arise for one or more supplemental response actions to remedy continuing or additional releases or threats of releases of hazardous substances, pollutants or contaminants at or from the Site. If such a release or threat of release presents an immediate threat to human health or the environment, it shall be addressed pursuant to Section 15, Emergency Response Actions. If such release or threat of release does not present an immediate threat to human health or the environment, it shall be addressed pursuant to Subsections 23.2 through 23.6, regardless of whether the determination of the need for such supplemental response action is based on a Periodic Review conducted pursuant to Section 22, Periodic Review, or on some other source of information.

23.2 A supplemental response action shall be undertaken only when:

(a) A determination is made that:

(1) As a result of the release or threat of release of a hazardous substance, pollutant or contaminant at or from the

Site, an additional response action is necessary and appropriate to assure the protection of human health and the environment; or,

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

(b) Either of the following conditions is met for any determination made pursuant to Subsection 23.2(a):

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

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

23.3 If, after finalization of the ROD, either Party concludes that a supplemental response action is necessary, based on the criteria set forth in Subsection 23.2, such Party shall promptly notify the other Party of its conclusion in writing. The Project Managers shall confer and attempt to reach consensus on the need for such an action within thirty (30) days of the receipt of such notice. If within that thirty (30) day period, the Project Managers have failed to reach consensus, any Party may notify the other Party in writing that it intends to invoke dispute resolution. If the Project Managers are still unable to reach consensus within fourteen (14) days of the issuance of such

notice of dispute, the question of the need for the supplemental response action shall be resolved through dispute resolution.

23.4 If the Project Managers agree or if it is determined through dispute resolution that a supplemental response action is needed based on the criteria set forth in Subsection 23.2, the Army shall, within thirty (30) days, provide a Scoping Document containing a proposed deadline for the Supplemental Workplan.

23.5 The Army shall submit the Supplemental Response Action Workplan in accordance with the approved deadline in the Scoping Document.

23.6 After finalization of the Supplemental Workplan, the Army shall conduct a supplemental response action RI/FS, based on the approved Supplemental Workplan. After finalization of the supplemental RI/FS and consultation with EPA, and in accordance with the deadline as approved in the Supplemental Response Action Workplan, the Army shall publish its supplemental Proposed Remedial Action Plan for forty-five (45) days of public review and comment pursuant to CERCLA Section 117(a), 42 U.S.C. Section 9617(a) and the NCP. Within fifteen (15) days following the close of the public comment period on the supplemental Proposed Remedial Action Plan, the Army shall propose a deadline for submission of a draft supplemental Record of Decision (ROD). Pursuant to Section 120(e)(4)(A) of CERCLA, 42 U.S.C. Section 9620(e)(4)(A), the Parties shall jointly select a remedial action(s) for each Supplemental Response Action. If the Army and EPA are unable to reach agreement, the EPA Administrator shall make the final selection. The selection of remedial action(s) by the EPA Administrator shall be final and not subject to dispute by the Army. Within thirty (30) days following issuance of the supplemental ROD, the Army shall submit to EPA a proposed schedule for submission of the supplemental Remedial Design in accordance with Section 17, Deadlines. If EPA disagrees with

this proposal, the date will be established through dispute resolution. A dispute arising under this Section, on any matter other than EPA's final selection of a remedial action, shall be resolved pursuant to Section 16, Dispute Resolution. Nothing in this Agreement shall limit EPA's discretion to delegate final selection authority to the Regional Administrator. In accordance with Section 17, Deadlines, within thirty (30) days after EPA's approval of the final design document, the Army shall propose to EPA a deadline for submittal of the Response Action Workplan for implementation of the Remedial Action addressed in the final design document. The Response Action Workplan shall be a Primary Document as described in Section 8, Consultation, and shall provide a schedule and target dates for expeditious completion of the Response Action. The Army shall perform the Response Action in accordance with the approved Workplan.

23.7 Following issuance of the Supplemental Response Action ROD, the Supplemental Response Action shall be implemented pursuant to that ROD in accordance with Subsections 20.9 through 20.13.

24. ENFORCEABILITY

24.1 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 Section 310 of CERCLA, and any violation of such standard, regulation, condition, requirement, or order will be subject to civil penalties under Sections 310(c) and 109 of CERCLA, 42 U.S.C. Sections 9659(c) and 9609; and

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

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

(d) Any final resolution of a dispute pursuant to Section 16, which establishes a term, condition, timetable, deadline, or schedule shall be enforceable by any person pursuant to Section 310(c) of CERCLA, and any violation of such term, condition, timetable, deadline or schedule will be subject to civil penalties under Sections 310(c) and 109 of CERCLA.

24.2 Nothing in this Agreement shall be construed as authorizing any person to seek judicial review of any action or work where review is barred by any provision of CERCLA, including Section 113(h) of CERCLA, 42 U.S.C. Section 9613(h).

24.3 The Parties agree that each Party shall have the right to enforce the terms of this Agreement.

25. STIPULATED PENALTIES

25.1 In the event that the Army fails to submit a Primary Document (as listed in Subsection 8.3) to EPA in accordance with the appropriate timetable or deadline or requirements of this

Agreement, or fails to comply with a term or condition of this Agreement which relates to a remedial action, EPA may assess a stipulated penalty against the Army. 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 Section occurs.

25.2 Upon determining that the Army has failed in a manner set forth in Subsection 25.1, EPA shall so notify the Army in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the Army shall have fifteen (15) days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. The Army shall not be liable for any stipulated penalty assessed by EPA if the failure is determined, through the dispute resolution procedures, 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.

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

(a) The facility responsible for the failure;

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

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

(d) A statement of any additional action taken by or at the facility to prevent recurrence of the same type of failure; and

(e) The total dollar amount of the stipulated penalty assessed for the particular failure.

25.4 Stipulated penalties assessed pursuant to this Section shall be payable to the Hazardous Substances Superfund (EPA) only in the manner and to the extent expressly provided for in Acts authorizing funds for, and appropriations to, the Department of Defense.

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

25.6 This Section shall not affect the Army's ability to obtain an extension of a timetable, deadline, or schedule pursuant to Section 18, Extensions.

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

26. PROTECTION OF THE PUBLIC

26.0 In the event that EPA determines that activities conducted pursuant to this Agreement are creating an imminent and substantial endangerment to the public health or welfare or to the environment, EPA may order the Army to halt further activity for such period of time as needed to take appropriate action. The Army shall arrange to have individuals with Emergency Response Training, Hazardous Materials Training, and Contracting

Officer's powers reasonably available at any time that work pursuant to this Agreement is being carried out by Army contractors at the Site.

27. NATURAL RESOURCE DAMAGE CLAIM

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

28. RESERVATION OF RIGHTS

28.1 The Parties shall exhaust their rights under this Agreement, including Section 16, Dispute Resolution, prior to exercising any rights to judicial review that they may have under CERCLA.

28.2 Nothing in this Agreement shall be construed as a restriction of rights EPA may have under CERCLA, including but not limited to any rights under Sections 113 and 310, 42 U.S.C. Sections 9613 and 9659.

28.3 Nothing in this Agreement shall be construed as a restriction of rights the Army may have under CERCLA, including but not limited to any rights under CERCLA Section 120, 42 U.S.C. Section 9620, SARA Section 211, 10 U.S.C. Chapter 160, and Executive Order 12580.

28.4 The Parties reserve any and all rights they may have under any other law where those rights are not inconsistent with the provisions of this Agreement.

28.5 Nothing in this Agreement shall limit the discretion of EPA, consistent with Section 120(e)(6) of CERCLA, 42 U.S.C. Section 9620(e)(6), to enter into an agreement with any other potentially responsible party for the performance of a remedial investigation, feasibility study, or remedial action at or in the vicinity of the Site.

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

29. TERMINATION AND SATISFACTION

29.0 The provisions of this Agreement shall be deemed satisfied upon a consensus of the Parties that the Army has completed its obligations under the terms of this Agreement. If the Parties do not reach consensus, the issue shall be resolved through the dispute resolution process, Section 16 of this Agreement.

30. FUNDING

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

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

30.3 Any requirement for the payment or obligation of funds, including stipulated penalties, by the Army established by the terms of this Agreement shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted in accordance with Section 18, Extensions. Nothing in this Subsection shall be interpreted as excusing performance by the Army under this Agreement; this Subsection only allows delay of performance due to unavailability of funds, and then only after compliance with the requirements of Section 18 of this Agreement.

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

30.5 Funds authorized and appropriated annually by Congress under the "Environmental Restoration, Defense" appropriation in the Department of Defense Appropriation Act and allocated by the Deputy Assistant Secretary of Defense (Environment) to the Army will be the source of funds for activities required by this Agreement consistent with Section 211 of Superfund Amendments and Reauthorization Act of 1986, 10 U.S.C. Chapter 160. However, should the Environmental Restoration, Defense appropriation be inadequate in any year to meet the total Army CERCLA implementation requirements, the DOD shall employ and the Army shall follow a standardized DOD prioritization process which allocates that year's appropriations in a manner which maximizes the protection of human health and the environment. A standardized DOD prioritization model shall be developed and utilized with the assistance of EPA and the states.

31. COMMUNITY RELATIONS

31.1 The Parties shall coordinate any statements to the press with respect to this Agreement or any aspect of the processes set forth in this Agreement. Except in case of an emergency requiring the release of necessary information, a Party issuing a press release with reference to any of the work required by this Agreement shall advise the other Party of such press release, and the contents thereof, at least 48 hours prior to issuance.

31.2 The Parties agree to comply with all relevant EPA policy and guidance on community relations programs which are in accordance with CERCLA and consistent with the NCP.

31.3 The Army has developed a Community Relations Plan (CRP) (i.e., Public Involvement and Response Plan) which responds

to the need for an interactive relationship with all interested community elements, both on the Depot and off, regarding environmental activities conducted pursuant to this Agreement by the Army. The present CRP complies with CERCLA and relevant EPA guidance documents. The Army shall periodically revise the CRP in order to address any new or changing community concerns. The revised CRP shall be submitted to EPA for review and comment.

31.4 In accordance with Sections 113(k) and 117(d) of CERCLA, 42 U.S.C. Sections 9613(k) and 9617(d), and the NCP, the Army shall establish and maintain identical Administrative Records at two (2) locations, one on the Depot and the other at a location near the Depot and convenient to the public. The Army shall provide a copy of the Administrative Record Index to EPA. A copy of each document placed in the Administrative Record, if requested, will be provided to EPA. Pursuant to the NCP, the Army shall periodically update the Administrative Record and supply new indices to EPA. The Army shall include in the Administrative Record any document which EPA provides to the Army and requests to have included in the Administrative Record. If information which forms the basis for the selection of a response action is included only in a document containing classified, confidential, or privileged information and is not otherwise available to the public, the information, to the extent feasible, shall be summarized in such a way as to make it disclosable and placed in the publicly available portion of the Administrative Record. The confidential or privileged document itself shall be placed in the confidential portion of the Administrative Record. If information, such as confidential business information, cannot be summarized in a disclosable manner, the information shall be placed only in the confidential portion of the Administrative Record. All documents contained in the confidential portion of the Administrative Record shall be listed in the index to the file.

32. PUBLIC COMMENT

32.1 Public comment on this Agreement shall be conducted in accordance with this Section.

32.2 Within fifteen (15) days after the execution of this Agreement, the date on which EPA signs, EPA shall publish notice in at least one major local newspaper of general circulation that this Agreement is available for a forty-five (45) day period of public review and comment. EPA shall provide a copy of such notice to the Army prior to publication.

32.3 Within seven (7) days of completion of the public comment period, EPA shall transmit copies of all comments received within the comment period to the Army.

32.4 The Parties shall review the comments and shall either:

(a) Determine that the Agreement should be made effective in its present form, in which case the EPA shall notify the Army in writing, and this Agreement shall become effective on the date the Army receive such notification; or,

(b) Determine that modification of the Agreement is necessary, in which case the Parties shall meet to discuss and agree upon any proposed changes. Upon agreement of any proposed changes, the Agreement, as modified, shall be re-executed by the Parties, with EPA signing last, and shall become effective on the date that the Army receives the signed Agreement from EPA. If agreement is not obtained within ten (10) days, the matter shall be referred to the persons representing the Parties on the Senior Executive Committee who shall attempt to reach a consensus.

32.5 In the event of significant revision or public comment under Subsection 32.2, notice procedures of Section 117 of CERCLA, 42 U.S.C. Section 9617, shall be followed and a responsiveness summary shall be published by EPA.

32.6 Existing records maintained by the Army which will be included in the Administrative Record such as reports, plans, and schedules shall be made available by the Army for public review during the public comment period. The public notices announcing the public comment period shall include information advising the public as to availability and location of these records.

33. PRESERVATION OF RECORDS

33.1 Despite any document retention policy to the contrary, the Parties shall preserve, during the pendency of this Agreement, and for a minimum of seven (7) years after its termination, all records and documents, including sampling results, test results or other data, in their possession which relate to the actions carried out pursuant to this Agreement. After this seven (7) year period, each Party shall notify the other Party at least thirty (30) days prior to destruction of any such documents.

33.2 Upon request of either Party, the requested Party shall, within thirty (30) days of such request, make available such records or copies of any such records, unless withholding is authorized and determined appropriate by law. The Party withholding such records shall, within thirty (30) days of request of such records, identify any documents withheld and the legal basis for withholding such records. No records withheld shall be destroyed until thirty (30) days after the final decision by the highest court or administrative body requested to review the matter.

34. AMENDMENT OR MODIFICATION OF AGREEMENT

34.1 This Agreement can be amended or modified solely upon written consent of both Parties. Such amendments or modifications shall have as the effective date that date on which they are signed by both Parties and notice thereof is received by each Party pursuant to Section 13, Notice.

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

(a) Applicable statutes and regulations shall be applied as amended or changed regardless of the time of amendment or change. However, the Parties shall endeavor to apply them in such a way as to avoid as much as possible the need for repeating work already accomplished.

(b) Other rules such as applicable policy or guidance shall be applied as they exist at the time of initiation of the work in issue.

(c) Other rules such as applicable policy or guidance which are changed after the initiation of the work in issue or after its completion shall be applied subject to Section 16, Dispute Resolution. The Party proposing application of such changed rules shall have the burden of proving the appropriateness of the application of such changed rules. In any case, the Parties shall endeavor to apply any changed rules in such a way as to avoid as much as possible the need for repeating work already accomplished.

35. PROPERTY TRANSFER

35.0 No change or transfer in real property interest of any part of the Depot shall in any way alter the status of responsibility of the Parties under this Agreement. To the extent practicable, the Army agrees to give EPA sixty (60) days notice prior to the sale or transfer by the United States of any title, easement, or other interest in the real property affected by this Agreement. In addition, the Army shall include notice of this Agreement in any document transferring ownership or operation of the Depot to any subsequent owner and/or operator of any portion of the Depot.

36. PROGRESS REPORTS

36.0 The Army shall submit to the EPA quarterly written progress reports which describe the actions which the Army has taken during the previous quarter to implement the requirements of this Agreement. Progress reports shall also describe the activities scheduled to be taken during the upcoming quarter. Progress reports shall be submitted on a quarterly basis or within five (5) days of the Quarterly Water Meeting-Technical Review Committee meeting to commence with the first meeting subsequent to the effective date of this Agreement, or within three (3) months from the effective date of this Agreement, whichever is earlier. The progress reports shall include a statement of the manner and extent to which the requirements and time schedules set out in this Agreement and approved Workplans are being met. In addition, the progress reports shall identify any anticipated delays in meeting time schedules, the reason(s) for the delay and actions taken to mitigate the delay.

37. RECOVERY OF EXPENSES

37.0 The Parties agree to amend this Agreement at a later date in accordance with any subsequent national resolution of the issue of EPA cost reimbursement for CERCLA response costs incurred by EPA.

38. EFFECTIVE DATE

38.0 This Agreement is effective between the Parties immediately upon fulfillment of the requirements of Section 32, Public Comment.

IT IS SO AGREED:

By: Lewis D. Walker

Lewis D. Walker, Deputy Assistant Secretary of the Army for Environment, Safety, and Occupational Health Department of the Army Date 9/26/90

By:

Colonel Rex M. Isley, Commander Tobyhanna Army Depot 28 SEP 90 Date

By:

Edwin B. Erickson, Regional Administrator **U.S. Environmental Protection Agency Region III** NOV 19 1990 Date

ATTACHMENT 1

AREAS OF CONCERN

Land Disposal Areas:

1. Inactive Sanitary Landfill
2. Landfill Area
3. Ash Pits
4. Burning Areas
5. Original Burning Areas
6. Borrow Pits
7. Area B, Staging Area
8. Oakes Swamp Disposal Area

Metal Finishing Pretreatment Plant:

9. Cyanide Sump
10. Cyanide Oxidation Tanks
11. Chromium Sump
12. Chromium Reduction Tank
13. Acid/Alkali Sump
14. Surge Tank
15. Sulfide Precipitation Pretreatment
16. Acid/Alkali Surge Tank
17. Chromium Surge Tank
18. Overflo/Excess Backwask Tank

Sewage Treatment Plant:

19. Original STP
20. STP Bar Screen
21. STP Parshall Flume
22. STP Primary Settling Tank
23. STP Dosing Tank
24. STP Secondary Settling Tank
25. STP Recirculation Pit
26. Flash Mix/Flocculation Tank
27. Final Settling Tank
28. Sludge Thickener
29. Sand Filter
30. STP Chlorine Contact Chamber
31. STP Digesters
32. Sewage Drying Beds
33. Dewatered Sludge Pile/Sludge Storage Site
34. Equalization Basin
35. Sewage Sludge Roll-off
36. Drum/Dumpster Storage Area

Container Storage Area:

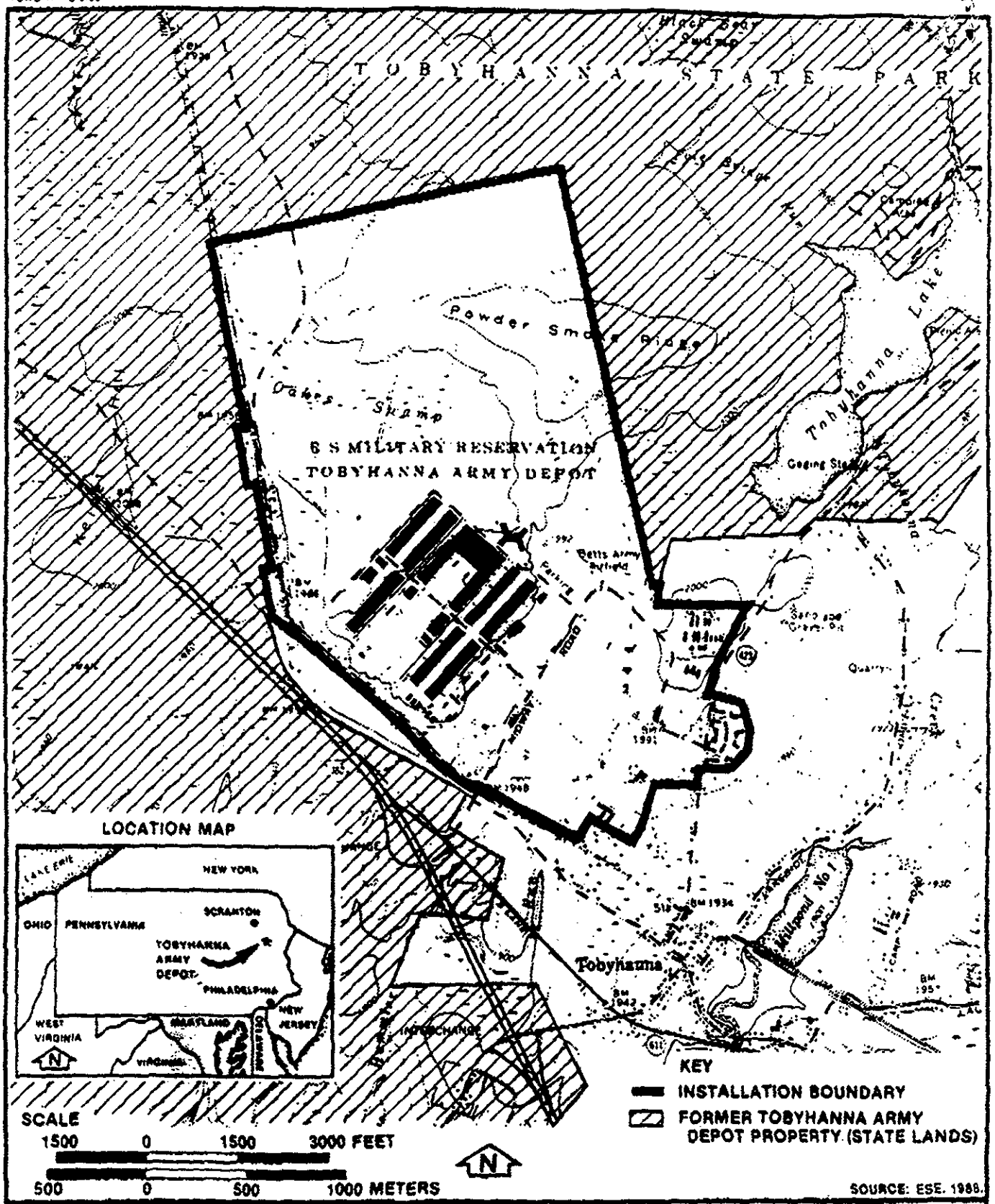
37. Bldg. 10-C
38. Bldg. S-90
39. Bldg. S-91
40. Bldg. 9
41. Banned Pesticide Storage Area
42. Waste Motor Oil Storage Area/Drum Storage-Bldg. 15
43. Bldg. 86
44. Drum Staging Area/Drum Storage -Bldg. 1A
45. Pesticide Shop
46. Radioactive Waste Shelters
47. DRMO HW Storage Facility
48. Drum Storage-Bldg. 700
49. Drum Storage-Bldg. 702
50. Drum Storage-Bldg. 703
51. Drum Storage-Bldg. 10-C
52. Drum Storage-Bldg. 23

Miscellaneous SWMUs:

53. Battery Acid Neutralization/Battery Shop
54. Siver Reclamation System
55. UXO Area
56. Facility Sanitary Sewers
57. Incinerator
58. Firefighting Training Area

Other Areas of Concern:

59. Inactive Ranges/Range Disposal Pits
60. Radioactive Storage Areas
61. Barney's Lake/Hummler Run
62. NPDES Outfalls
63. PCB Tranformers
64. Coal Pile/Heating Plant
65. Sandblasting Unit



LOCATION AND CURRENT BOUNDARIES OF TOBYHANNA ARMY DEPOT

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