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FINAL VERSION

FEDERAL FACILITY AGREEMENT UNDER CERCLA SECTION 120  
BETWEEN THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
AND THE  
LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY  
AND THE  
UNITED STATES ARMY  
JANUARY 1989

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VI  
AND THE  
LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY  
AND THE  
UNITED STATES ARMY

IN THE MATTER OF:	)	FEDERAL FACILITY
	)	AGREEMENT UNDER
	)	CERCLA SECTION 120
The U.S. Department	)	
of the Army	)	Administrative
	)	Docket Number:
Louisiana Army Ammunition Plant	)	

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

I. JURISDICTION

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

- A. The U.S. Environmental Protection Agency (EPA), Region VI, enters into those portions of this Agreement that relate to the Remedial Investigation/Feasibility Study (RI/FS) pursuant to Section 120(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act

(CERCLA), 42 U.S.C. §9620(e)(1), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499 (hereinafter jointly referred to as CERCLA/SARA or CERCLA) and Sections 6001, 3004(u) and (v) and 3008(h) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§6961, 6924(u) and (v) and 6928(h), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) (hereinafter jointly referred to as RCRA/HSWA or RCRA) and Executive Order 12580;

- B. EPA, Region VI, enters into those portions of this Agreement that relate to interim remedial actions and final remedial actions pursuant to Section 120(e)(2) of CERCLA, 42 U.S.C. §9620(e)(2), Sections 6001, 3004(u) and (v) and 3008(h) of RCRA, 42 U.S.C. §§6961(u) and (v) and 6928(h) and Executive Order 12580;
- C. the U.S. Department of the Army (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. §9620(e)(1), Sections 6001, 3004(u) and (v) and 3008(h) of RCRA, 42 U.S.C. §§6961, 6924 (u) and (v) and 6928(h), Executive Order 12580, the National Environmental Policy Act, 42 U.S.C. §4321 et seq.,

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

- D. the Army enters into those portions of this Agreement that relate to interim remedial actions and final remedial actions pursuant to Section 120(e)(2) of CERCLA, 42 U.S.C §9620(e)(2), Sections 6001, 3004(u) and (v) and 3008(h) of RCRA, 42 U.S.C. §§6961, 6924(u) and (v) and 6928(h), Executive Order 12580 and the DERP;
- E. the Louisiana Department of Environmental Quality (LDEQ) enters into this Agreement pursuant to LSA R.S. 30.1051 et seq.

## II. PURPOSE

- A. The general purposes of this Agreement are to:
- (1) ensure that the environmental impacts associated with past and present activities at the Facility are thoroughly investigated and appropriate remedial action taken as necessary to protect the public health, welfare and the environment;
  - (2) establish a procedural framework and schedule for developing, implementing and monitoring appropriate response actions at the Facility in accordance with CERCLA, the National Contingency Plan (NCP), Superfund

guidance and policy, RCRA, RCRA guidance and policy; and applicable State Law.

- (3) facilitate cooperation, exchange of information and participation of the Parties in such actions.

B. Specifically, the purposes of this Agreement are to:

- (1) Identify remedial alternatives for operable units which are appropriate at the Facility prior to the implementation of final remedial action(s) for the Facility. The remedial alternatives shall be identified and proposed to the Parties as early as possible prior to formal proposal of remedial action(s) for operable units to EPA and LDEQ pursuant to CERCLA. This process is designed to promote cooperation among the Parties in identifying remedial alternatives for operable units prior to selection of the preferred remedial action(s).
- (2) Establish requirements for the performance of a RI 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 Facility and to establish requirements for the performance of a FS for the Facility to identify,



evaluate, and select alternatives for the appropriate remedial action(s) to prevent, mitigate, or abate the release or threatened release of hazardous constituents, hazardous substances, pollutants or contaminants at the Facility in accordance with CERCLA.

- (3) Identify the nature, objective and schedule of response actions to be taken at the Facility. Response actions at the Facility shall attain that degree of cleanup of hazardous constituents, hazardous substances, pollutants or contaminants mandated by CERCLA.
- (4) Implement the selected remedial action(s) in accordance with CERCLA and meet the requirements of Section 120(e)(2) of CERCLA for an Interagency Agreement between EPA and the Army.
- (5) Assure compliance, through this Agreement, with RCRA and other Federal and State hazardous waste laws and regulations for matters covered herein.
- (6) Coordinate response actions at the Facility with the mission and support activities at the Louisiana Army Ammunition Plant (LAAP).

- (7) Expedite the cleanup process to the extent consistent with protection of human health and the environment.

### III. SCOPE

This Agreement applies to all Solid Waste Management Units (SWMU) at LAAP at which both RCRA and CERCLA, including Section 211 of SARA, apply.

Under this Agreement the Army agrees it shall:

- A. Conduct remedial action(s) at operable units as described in Part X of this Agreement.
- B. Conduct a groundwater Remedial Investigation (RI) at the Facility as described in Part X of this Agreement.
- C. Conduct a groundwater Feasibility Study (FS) of the Facility as described in Part X of this Agreement. This study shall incorporate, at a minimum, the results of the groundwater RI and all of the focused RIs and FSs for remedial actions at operable units.
- D. Develop remedial action alternative(s) for the Facility and implement those remedial actions selected for the Facility in accordance with Section 120(e)(4) of CERCLA, 42 U.S.C. §9620(e)(4). These actions are set forth in more detail in Part X of this Agreement and in the attachments to the Agreement.

E. In the event of any inconsistency between Part X of this Agreement and the attachments to this Agreement, Part X of this Agreement shall govern.

F. EPA and LDEQ agree to provide the Army with guidance and timely response to requests for guidance to assist the Army in the performance of the requirements under this Agreement.

#### IV. DEFINITIONS

Terms used in this Agreement, and as applied to the investigatory and remedial work to be incorporated herein and completed by the Army shall have the same meaning as used in CERCLA or RCRA except as defined or added below:

- (a) "Administrative Record" shall mean all documents on which the decision for the proposed remedial action was based.
- (b) "Army" shall include the U.S. Department of the Army, the Louisiana Army Ammunition Plant, and their employees, agents, successors, and assigns.
- (c) "Authorized representative" may include contractors acting by and for EPA and/or the LDEQ relative to functions associated with this Agreement.

- (d) "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499.
- (e) "Days" shall mean calendar days, unless business days are specified.
- (f) "Deadline" shall be the time limitation applicable to a discrete and significant portion of the RI,FS, RD, and RA specifically established under the terms of this Agreement.
- (g) "Decision Document" or "DD" shall mean a document submitted by the Army that describes the evaluation of Interim Remedial Action alternatives at Area P.
- (h) "Documents" shall mean any records, reports, correspondence, or retrievable information of any kind relating to treatment, storage, disposal, investigation, and remediation of hazardous substances, contaminants, pollutants, or hazardous constituents at or migrating from LAAP. Such terms shall be construed broadly to

reflect a clear preference to share and disclose information concerning this Agreement among all Parties.

- (i) "EPA" shall mean the United States Environmental Protection Agency, its employees and authorized representatives.
- (j) "Facility" shall include LAAP and all contiguous property and all other areas affected by the migration of hazardous substances, pollutants, contaminants or hazardous constituents released from LAAP.
- (k) "Feasibility Study" or "FS" shall be defined as set forth in 40 C.F.R. §300.6 (1987).
- (l) "Federal Facility Agreement" or "Agreement" shall refer to this document and shall include all Attachments to this Agreement. All such Attachments shall be appended to and made an integral part of this Agreement.
- (m) "Remedial Action(s) for Operable Units" shall mean all discrete remedial actions, except removal actions under Section 104 and 121 of CERCLA and Section 2 of E.O. 12580, implemented prior to or apart from a final remedial action which are consistent

with the final remedial action and which are taken to prevent or minimize the release of hazardous substances, pollutants, contaminants or hazardous constituents so that they do not migrate or endanger public health or welfare or the environment. All remedial actions shall be undertaken in accordance with CERCLA, the NCP, RCRA, and all applicable EPA guidance.

- (n) "LAAP" shall mean the Louisiana Army Ammunition Plant located in Bossier and Webster Parishes in Louisiana.
- (o) "LDEQ" shall mean the Louisiana Department of Environmental Quality, its employees and authorized representatives.
- (p) "Operable Unit" shall mean a discrete part of the entire response action that decreases a release, threat of release, or pathway of exposure.
- (q) "Parties" shall mean the EPA, LDEQ and Army.
- (r) "Proposed Plan" shall mean the document which describes the preferred remedial action and reviews the screening of alternatives which have been considered.

- (s) "RCRA" shall mean the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended, including the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub L. 98-616.
- (t) "Record of Decision" or "ROD" shall be the public document that explains which cleanup alternative(s) will be implemented, and includes the bases for the selection of remedy. The bases include information and technical analysis generated during the RI and FS and consideration of public comments and community concerns.
- (u) "Remedial Action" or "RA" shall be defined as set forth in 40 C.F.R. §300.6 (1987).
- (v) "Remedial Action Workplan" shall mean the plan for construction and implementation of the remedial action. It shall include, but is not limited to schedules, the project organization, and the Safety, Health and Emergency Response Plan.
- (w) "Remedial Design" or "RD" shall mean the technical specifications and drawings developed for the subsequent remedial action. The RD shall include, but is not limited to: the project background, Spill Prevention Control

and Countermeasure Plan, and Quality Assurance Project Plan (QAPP).

- (x) "Remedial Investigation" or "RI" shall be defined as set forth in 40 C.F.R. §300.6 (1987).
- (y) "Responsiveness Summary" shall mean the summary of oral and/or written public comments received during a comment period on primary remedial documents and responses to those comments.
- (z) "Schedule" shall mean the time limitations established for the completion of remedial actions at the Facility.
- (1) "Site" shall mean any area at the LAAP at which hazardous substances, pollutants, contaminants, or hazardous constituents are released or suspected to have been released which could endanger human health or the environment.
- (2) "Solid Waste Management Unit" or "SWMU" includes any unit at LAAP from which hazardous constituents might migrate, irrespective of whether the units were intended for the management of solid and/or hazardous wastes.
- (3) "Submittal" shall mean any written communications submitted to EPA, LDEQ, or the Army.



- (4) "Timetable" shall be the collective term for all the "Deadlines" established for the RI, FS, RD and RA.

#### V. FINDINGS OF FACT

For the purposes of this Agreement, the following constitutes a summary of the facts upon which this Agreement is based. None of the facts related herein shall be considered admissions by any Party.

A. The LAAP is owned by the U.S. Army.

B. On October 15, 1984, the LAAP was proposed for inclusion on the National Priorities List (NPL) under CERCLA because of groundwater contamination from the Area P Lagoons. 49 Fed. Reg. 40320. LAAP was repropoed for inclusion on the NPL on July 22, 1987. 52 Fed. Reg. 27643.

C. On June 16, 1987, LAAP, LDEQ, and EPA established a Technical Review Committee (TRC).

D. The EPA, LDEQ, and the Army have mutually agreed that measures to remediate the Area P Lagoons shall be developed and approved pursuant to CERCLA as an IRA consistent with the final remedy in recognition of LAAP's proposed listing on the NPL. The IRA is a remedial action for an operable unit as such term is defined in Part IV of this Agreement.

E. The Army has completed a Remedial Investigation (RI) and Feasibility Study (FS) for remediation of surface and subsurface contamination at Area P as an IRA which has been reviewed by EPA and LDEQ. The RI and FS indicates that explosive contaminated washdown water from previous load and pack operations that had been discharged into the Area P Lagoons has and will continue to leach into the groundwater unless remedial measures are implemented. In addition, the Army has completed a DD and has submitted an RD and RA workplan to EPA and LDEQ for the remediation of surface and subsurface contamination at Area P.

F. On August 13, 1987 the Army initiated an updated RI and an FS for the final remedy at the Facility.

G. On August 14, 1987, LAAP put a notice of the availability of the RI and FS for surface and subsurface remediation of Area P in local newspapers and placed a copy of the RI and FS in the Webster Parish Public Library. A public meeting on the RI and FS for the preferred Area P Interim Remedial Action was held at Minden, Louisiana on August 25, 1987. The public comment period on the RI and FS ended on September 7, 1987 with no significant comments on the plan being received.

H. On October 28, 1987, EPA stated it would allow groundwater, surface and subsurface remediation of the Facility under CERCLA on condition that the Parties approve this Agreement and the Army meet all applicable RCRA requirements.

I. On December 22, 1987, the Deputy for Environment, Safety, and Occupational Health, Office of the Assistant Secretary of the Army Installations and Logistics, approved a DD for the Interim Remedial Action at the Area P Lagoons. This DD was submitted to EPA and LDEQ for approval.

J. On December 28, 1987, the Secretary of the LDEQ concurred with the Army on approval of the DD for the IRA at the Area P Lagoons. EPA has not approved the DD.

K. Well installation and groundwater, surface water and soil sampling for the Updated RI were completed in March of 1988. The results will be submitted to EPA and LDEQ pursuant to this Agreement.

L. On April 11, 1988, LDEQ issued a Demand for Remedial Action to the Army and LAAP to design and implement an IRA at the Area P Lagoons.

M. On April 20, 1988, the Army initiated interim remedial action at the Area P Lagoons.

N. An Agreement implementing the Demand for Remedial

Action was signed by the Army on June 9 and 17, 1988 and by LDEQ on June 23, 1988.

#### VI. FEDERAL DETERMINATIONS

A. The LAAP is a Federal Facility which is subject to, and shall comply with CERCLA in the same manner and to the same extent, both procedurally and substantively, as any non-governmental entity, including liability under Section 107 of CERCLA, 42 U.S.C. §9607.

B. The LAAP constitutes a "Facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. §9601(9), and LAC 33:V.109(40 C.F.R. §260.10). The Army is defined as a "person" in Section 101(21) of CERCLA, 42 U.S.C. §9601(21), and LAC 33:V.109(40 C.F.R. §260.10).

C. The United States Army is an "owner or operator" as defined in Section 101(20) of CERCLA, 42 U.S.C. §9601(20), LAC 33:V.109(40 C.F.R. §260.10), and "owned or operated" the LAAP within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. §9607(a)(2).

D. Due to past releases into the groundwater on the Facility of "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14), and their continued presence therein, the Facility is subject to the requirements of CERCLA, 42 U.S.C. §9601 et seq.

E. Due to disposal and storage of hazardous wastes as defined in RCRA, 42 U.S.C. §§6903(3),(5), and (33), and in LAC 33:V.109 the Facility is subject to RCRA, 42 U.S.C. §6901 et seq., and LAC 33:V et seq.

F. The IRA or remedial action(s) for an operable unit taken pursuant to the Agreement are reasonable and necessary to protect the public health, welfare or the environment and a reasonable time for beginning and/or completing the IRA or remedial action(s) for an operable unit required by this Agreement shall be provided.

G. The EPA has determined that the submittals, actions, and other elements of work required by this Agreement are necessary to protect the public health or welfare or the environment.

#### VII. STATE DETERMINATIONS

A. The Louisiana Environmental Quality Act (Act), Louisiana Revised Statutes 30:1051 et seq., requires the maintenance of a healthful and safe environment in Louisiana. The Act empowers the Secretary to exercise all incidental powers necessary or proper to carry out its purposes, and to act as the primary public trustee of the environment. Specifically Sections 1149.3 and 1149.45 of the Act empower the Secretary to demand remedial action when the Secretary determines that

a discharge or disposal of a hazardous substance has occurred which may present an imminent and substantial endangerment to health or the environment.

B. The LAAP is a Federal Facility which is subject to the Act.

C. The LAAP constitutes a "Facility" as defined by §1054(14) of the Act and is subject to the Act. The Army is a "person" within the meaning of Section 1054(8) of the Act.

D. The United States Army is an "owner or operator" within the meaning of Section 1149.43 of the Act, and "owned or operated" the LAAP within the meaning of the Act.

E. The presence of hazardous constituents, as defined in LAC 33:V.109 in the groundwater constitute a discharge within the meaning of the Act and the LAC.

LDEQ has determined that there has been a discharge of hazardous constituents at LAAP.

F. The IRA and remedial action(s) for an operable unit taken pursuant to the Agreement are reasonable and necessary to protect the public health and the environment of the State.

G. The LDEQ has determined that the submittals, actions, and other elements of work required by this Agreement are necessary to protect the public health or welfare or the environment.

VIII. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

A. The Parties intend to integrate the Army's CERCLA response obligations and RCRA corrective action obligations which relate to the release(s) of hazardous constituents, hazardous substances, hazardous wastes, pollutants or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will be deemed to achieve compliance with CERCLA, 42 U.S.C. §9601 et seq.; to satisfy the corrective action requirements of Sections 3004(u) and (v) of RCRA, 42 U.S.C. §6924(u) and (v), for a RCRA permit, and Section 3008(h) of RCRA, 42 U.S.C. §6928(h), for interim status facilities; and to 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. §9621.

B. Based upon the foregoing, the Parties intend that any remedial action selected, implemented and completed under this Agreement shall be deemed by the Parties to be protective of human health and the environment such that remediation of releases covered by this Agreement shall obviate the need for further corrective action under RCRA (i.e., no further corrective action shall be required). The Parties agree that with respect to releases of hazardous waste covered by this Agreement, RCRA shall be considered an Applicable or Relevant and Appropriate Requirement (ARAR) pursuant to Section 121 of CERCLA, 42 U.S.C. §9621.

C. 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 on-going hazardous waste management activities at LAAP 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 Facility, EPA and LDEQ 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 and applicable State law.

D. 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. §9604.

## IX. CONSULTATION WITH EPA AND LDEQ

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

#### A. Applicability

The provisions of this Part establish the procedures that shall be used by the Army, EPA, and LDEQ to provide the Parties with appropriate notice, review, comment, and response



to comments regarding RI, FS, RD and RA documents, specified herein as either primary or secondary documents. In accordance with Section 120 of CERCLA, 42 U.S.C. §9620 and 10 U.S.C. §2705, the Army will normally be responsible for issuing primary and secondary documents to EPA and LDEQ. As of the effective date of this Agreement, all draft and final reports for any deliverable document identified herein shall be prepared, distributed and subject to dispute, in accordance with Paragraphs B through J below.

The designation of a document as "draft" or "final" is solely for purposes of consultation with EPA and LDEQ in accordance with this Part. 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.

B. General Process for RI, FS, RD, and RA Documents:

1. Primary documents include those reports that are major, discrete portions of RI, FS, RD and RA activities. Primary documents are initially issued by the Army in draft subject to review and comment by EPA and LDEQ. Following receipt of comments on a particular draft primary document, the Army shall 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 30 days after the issuance of a draft final document if dispute resolution is not invoked or as modified by decision of the dispute resolution process.

2. Secondary documents include those reports that are discrete portions of the primary documents and are typically input or feeder documents. Secondary documents are issued by the Army in draft subject to review and comment by EPA and LDEQ. Although the Army shall 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.

### C. Primary Reports

1. The Army shall complete and transmit draft reports for primary documents to EPA and LDEQ for review and comment in accordance with the provisions of this Part. In practice, these documents may address operable units, specific sites or multiple sites.

1. RI Workplan, includes but is not limited to, Sampling and Analysis Plan and QAPP, Health and Safety Plan
2. Risk Assessment
3. RI Report
4. FS Workplan
5. FS Report
6. Proposed Plan

7. Record of Decision
8. Remedial Design
9. Remedial Action Workplan
10. Community Relations Plan

3. Only the draft final reports for the primary documents identified above shall be subject to dispute resolution. The Army shall complete and transmit draft primary documents in accordance with the timetable and deadlines established in Part XIV of this Agreement.

D. Secondary Documents

1. The Army shall complete and transmit draft reports for the following secondary documents to EPA and LDEQ as appropriate or requested by EPA and LDEQ for review and comment in accordance with the provisions of this Part:

1. Data Quality Objectives for Remedial Response Activities
2. Post-screening Investigation Workplan
3. Treatability Studies
4. Sampling and Data Results

2. Although EPA and LDEQ may comment on the draft reports for the secondary documents, such documents shall not be subject to dispute resolution except as provided by Paragraph B hereof. Target dates shall be established for the completion and transmission of draft secondary reports pursuant to Part XIV of this Agreement.

E. Meetings of the Project Coordinators on Development of Reports

The Project Coordinators shall meet at a minimum every 90 days, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the site on the primary and secondary documents. Prior to preparing any draft report specified in Paragraphs C and D above, the Project Coordinators shall meet to discuss the report results in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft report.

F. Identification and Determination of Potential ARARs

1. For those primary reports or secondary documents that consist of or include ARAR determinations, prior to the issuance of a draft report, the Project Coordinators shall meet to identify and propose, to the best of their ability, all potential ARARs pertinent to the report being addressed. Draft ARAR determinations shall be prepared by the Army in accordance with Section 121(d)(2) of CERCLA, the NCP and pertinent guidance issued by EPA and LDEQ, which are not inconsistent with CERCLA and the NCP.

2. 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 constituent, 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 and FS process until a ROD is issued.

G. Review and Comment on Draft Reports

The Army shall complete and transmit each draft primary report to EPA and LDEQ on or before the corresponding deadline established for the issuance of the report. The Army shall complete and transmit the draft secondary document in accordance with the target dates established for the issuance of such reports established pursuant to Part XIV of this Agreement.

2. Unless the Parties mutually agree to another time period, all draft reports shall be subject to a 30-day period for review and comment. Review of any document by the EPA and LDEQ may concern all aspects of the report (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 promulgated by the EPA and LDEQ. Comments by the EPA and LDEQ shall be provided with adequate specificity so that the Army may respond to the comments and, if appropriate, make changes to the draft report. Comments shall refer to any pertinent sources of authority or references

upon which the comments are based, and, upon request of the Army, the EPA and LDEQ shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy reports, EPA and LDEQ may extend the 30-day comment period for an additional 20 days by written notice to the Army prior to the end of the 30-day period. On or before the close of the comment period, EPA and LDEQ shall transmit by next day mail their written comments to the Army.

3. Representatives of the Army shall make themselves readily available to EPA and LDEQ during the comment period for purposes of informally responding to questions and comments on draft reports. 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.

4. In commenting on a draft report which contains a proposed ARAR determination, EPA or LDEQ shall include a reasoned statement of whether they object to any portion of the proposed ARAR determination. To the extent that EPA or LDEQ does object, such agency shall explain the bases for its objections in detail and shall identify any ARARs which it believes were not properly addressed in the proposed ARARs determination.

5. Following the close of the comment period for a draft report, the Army shall give full consideration to all written comments on the draft report submitted during the

comment period. Within 30 days of the close of the comment period on a draft secondary report, the Army shall transmit to EPA and LDEQ its written response to comments received within the comment period. Within 30 days of the close of the comment period on a draft primary report, the Army shall transmit to EPA and LDEQ a draft final primary report, which shall include the Army's response to all written comments, received within the comment period. While the resulting draft final report shall be the responsibility of the Army, it shall be the product of consensus to the maximum extent possible.

6. The Army may extend the 30-day period for either responding to comments on a draft report or for issuing the draft final primary report for an additional 20 days by providing notice to EPA and LDEQ. In appropriate circumstances, this time period may be further extended in accordance with Part XV of this Agreement.

H. Availability of Dispute Resolution for Draft Final Primary Documents

1. Dispute resolution shall be available to the Parties for draft final primary reports as set forth in Part XI of this Agreement.

2. When dispute resolution is invoked on a draft primary report, work may be stopped in accordance with the procedures set forth in Part XI of this Agreement.

### I. Finalization of Reports

The draft final primary report shall serve as the final primary report if no Party invokes dispute resolution regarding the document or, if 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 prepare, within not more than 35 days, a revision of the draft final report which conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Part XV of this Agreement.

### J. Subsequent Modifications of Final Reports

Following finalization of any primary report pursuant to Paragraph I above, EPA, LDEQ, or the Army may seek to modify the report, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in Paragraphs 1 and 2 below.

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



2. In the event that a consensus is not reached by the Project Coordinators on the need for a modification, either EPA, LDEQ or the Army may invoke dispute resolution to determine if such modification shall be conducted. Modification of a report shall be required only upon a showing that: (1) the requested modification is based on significant new information, and (2) the requested modification could be of significant assistance in evaluating impacts on the public health or the environment, in evaluating the selection of remedial alternatives, or in protecting human health and the environment.

3. Nothing in this Subpart 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 report or document or by amendment to this Agreement.

#### X. WORK TO BE PERFORMED

If at anytime after the effective date of this Agreement and on the basis of any information, it is determined by any Party that hazardous wastes or hazardous constituents have been released into the environment from the Facility, and corrective action for the release is not specifically included in the remedial action, the Party shall notify the other Parties in writing within fifteen (15) days of the discovery.

These units and releases will be fully subject to RCRA, including but not limited to corrective action under Sections 3004(u) and (v) and 3008(h) as appropriate, pursuant to Section III.

#### FACILITY REMEDIATION

The Army shall develop and implement plans for study and for remediation of surface, subsurface and groundwater contamination at the Facility. All response actions taken pursuant to this Agreement shall be consistent with CERCLA, the NCP, and CERCLA guidance and policy, and any ARARs. Specifically the objectives of the Facility response action plans are:

##### A. GROUNDWATER INVESTIGATION AND REMEDIATION

###### 1. Groundwater Remedial Investigation (RI)

The Army has submitted an RI report, dated January 1987, to EPA and LDEQ. EPA and LDEQ have reviewed the RI report and provided comments to the Army. These comments are to be addressed in an Updated RI.

The Army shall submit an Updated RI report for the investigation of groundwater contamination at the Facility. The Updated RI report shall include data on all currently identified sources of contamination that are contributing to groundwater contamination at the Facility. The Updated RI report shall be subject to review and comment by EPA and LDEQ in accordance with Part IX of this Agreement.

## 2. Groundwater Feasibility Study

The Army shall submit a Feasibility Study workplan for groundwater remediation at the Facility. This workplan includes, but is not limited to, a schedule for completing the FS. The FS workplan shall be subject to review and comment by EPA and LDEQ in accordance with Part IX of this Agreement.

## 3. Remedy Selection Process

Upon finalization of the Updated groundwater RI and the groundwater FS by EPA and LDEQ in the manner specified in Part IX, the Army shall within sixty (60) days submit a Proposed Plan which describes the preferred remedial action and reviews the screening of alternatives for groundwater remediation.

Following review and comment by EPA and LDEQ in accordance with Part IX of this Agreement, the Army shall publish the Proposed Plan and provide opportunity for public comment in accordance with Section 117 of CERCLA, 42 U.S.C. §9617.

Within forty-five (45) days of the close of the public comment period, the Army shall prepare a draft ROD and a Responsiveness Summary in accordance with Section 117(b) of CERCLA. The Army shall submit the Responsiveness Summary and

ROD to EPA and LDEQ in accordance with the review and comment process of Part IX of this Agreement.

If EPA, LDEQ, and the Army cannot jointly agree on the proposed alternative for remedial action then the final selection of the remedial actions(s) shall be in accordance with CERCLA Section 120(e)(4)(A), 42 U.S.C. §9620(e)(4)(A), and Part XI of this Agreement. EPA shall then prepare the final ROD. Final selection of the remedial action by Administrator shall not be subject to dispute.

Following final selection of the remedial action, the Army shall propose, design and submit a Plan for implementation of the selected remedial action, including appropriate timetables and schedules, to EPA and LDEQ for review and comment as outlined in Part IX of this Agreement.

Within 15 months following approval of the Plan by EPA and LDEQ, the Army shall implement substantial, continuous, physical onsite remedial action(s) in accordance with the deadlines established in Part XIV of this Agreement.

The Army shall perform the long-term operation and maintenance for the selected remedial action.

**B. SOURCE CONTROL REMEDIAL ACTION AT AREA P**

The source control remedial action shall satisfy the requirements of CERCLA, the NCP, CERCLA guidance and policy,

and any ARARs. For purposes of this Agreement, groundwater remediation is considered to be the final remedial action for sources of groundwater contamination.

For purposes of this Agreement, the source control at the Area P shall be considered an IRA. The IRA is a remedial action for an operable unit as such term is defined in Part IV of this Agreement.

The acknowledgement of any documents in this Part generated from activities conducted under the Agreement for the Interim Remedial Action at the Area P (LDEQ Agreement) between LDEQ, LAAP and the Army does not constitute EPA approval of the documents.

Approval of all technical documents for the source control at Area P received by EPA prior to December 1, 1988 shall be made upon signature of the Agreement by the Parties.

(a) The IRA for the Area P Lagoons shall meet the RCRA requirements for permitted facilities in accordance with 40 C.F.R. 264 Subpart O and LAC 33:V.3105 and shall submit information related to the Area P IRA in the format required by 40 C.F.R. 270.19 and LAC 33:V.3115. Upon the execution of this Agreement by all Parties and notwithstanding any existing Agreement by and between any Parties, the remediation of the Area P Lagoons shall be in accordance with this Agreement.

(b) The Army has completed the investigations for the IRA at the Area P Lagoons. Pursuant to the LDEQ Agreement, the preferred IRA has received public comment in accordance with Section 117 of CERCLA and LAC 33:V.105.E as evidenced in a DD. The DD has been submitted to EPA for approval. Approval of the DD shall be made upon signature of the Agreement by the Parties.

(c) The Army has submitted RA Plans I, II, and III with respect to the IRA. These documents have been reviewed and comments provided to the the Army by LDEQ in accordance with the LDEQ Agreement.

The Army has submitted an RD/RA workplan which includes tentative schedules for completing the IRA at the Area P Lagoons. The workplan also includes, but is not limited to, Performance Burn Plan and test burn data in lieu thereof, Quality Assurance Project Plan, Safety, Health and Emergency Response Plan, and Spill Prevention, Control and Countermeasure Plan. These documents have been reviewed by LDEQ and comments have been provided to the Army in accordance with the LDEQ Agreement for the IRA at Area P.

(d) The Army shall implement substantial, continuous, physical onsite remedial action in accordance with the deadlines established in Part XIV of this Agreement.

(e) The Army shall perform the necessary long-term operation and maintenance for the selected Area P IRA.

C. PROCEDURES FOR IMPLEMENTING OTHER REMEDIAL ACTION(S)  
INVOLVING GROUNDWATER CONTAMINATION

The remediation of each discrete source of groundwater contamination shall be implemented pursuant to the following procedures:

1. The Army shall conduct a focused RI and FS addressing each site or combination of sites contributing to the contamination of groundwater. Each focused RI may be combined into one document. The Army shall submit a focused FS report addressing each site or a combination of sites.

2. The focused RI and FS report and Proposed Plan shall be presented in draft to EPA and LDEQ, for review in accordance with Part IX of this Agreement. Following the finalization of the focused RI and FS process for a site or combination of sites, the Army shall publish the Proposed Plan and provide opportunity for public comment in accordance with Section 117 of CERCLA.

3. Within forty-five (45) days of the close of the comment period, the Army shall prepare a draft ROD for each site or combination of sites and submit them to EPA and LDEQ in accordance with Part IX of this Agreement. If EPA, LDEQ, and the Army cannot jointly agree on the proposed alternative for the site or combination of sites, final selection shall be in accordance with CERCLA Section 120(e)(4)(A), 42 U.S.C. §9620(e)(4)(A), and Part XI of this Agreement. EPA shall then prepare the final ROD. Final selection of the remedial action by the Administrator shall not be subject to dispute.

4. Following the final selection of the remedial action for a site or combination of sites, the Army shall propose, design, and submit a Plan for implementation of the selected remedial action, including appropriate timetables and schedules. Upon approval of the Plan by EPA and LDEQ, the Army shall implement the remedial action(s) in accordance with the Plan.

The Army shall perform the necessary long-term operation and maintenance for the selected remedial action(s) for an operable unit.

**D. REMEDIAL ACTION(S) NOT INVOLVING GROUNDWATER CONTAMINATION**

Those sites on the Facility identified in the groundwater RI that do not contribute to groundwater contamination may require remedial action(s). The remediation of each site shall be



implemented pursuant to Section C of this Part according to the deadlines established in Part XIV of this Agreement.

#### E. MONTHLY PROGRESS REPORTS

The Army shall provide monthly written progress reports to EPA and LDEQ unless the frequency of reporting is changed by the Parties. At a minimum, these progress reports will:

- (1) describe the actions which have been taken pursuant to this Agreement;
- (2) include all results of sampling and tests and all other data received or generated and verified by the Army during the reporting period;
- (3) include any photographs illustrating actions taken by the Army at the Facility;
- (4) include all activities completed since the last reporting period during the past months as well as such actions and plans which are scheduled for the next reporting period; and
- (5) describe any delays or problems that arose in the execution of the workplan during the reporting period and any steps that were taken to alleviate the delays or problems.

Each report shall be submitted to EPA and to LDEQ by next-day mail, hand delivery, or facsimile by the twentieth day of each successive month. All documents to be submitted will be sent to the designated Project Coordinators.

#### XI. RESOLUTION OF DISPUTES

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

All Parties to this Agreement shall make reasonable efforts to informally resolve disputes at the Project Coordinator or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this Part shall be implemented to resolve a dispute.

A. Within thirty (30) days after: (1) the issuance of a draft final primary document pursuant to Part IX of this Agreement, or (2) any action which leads to or generates a dispute, the disputing Party shall submit to the Dispute Resolution Committee (DRC) a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute and the technical, legal or factual information the disputing Party is relying upon to support its position.

B. 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 Coordinators 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.

C. 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 (Senior Executive Service equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The EPA representative on the DRC is the Hazardous Waste Management Division Director of EPA, Region VI. The LDEQ designated member is the Assistant Secretary of the Office of Legal Affairs and Enforcement. The Army's designated member is the Commander of LAAP. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Part XXXII of this Agreement.

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

E. The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The EPA representative on the SEC is the Regional Administrator of EPA, Region VI. The LDEQ designee is the Secretary. The Army's representative on the SEC is the DESOH, ASA[I&L]. 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, EPA's Regional Administrator shall issue a written position on the dispute. The Army or LDEQ 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 neither the Army nor LDEQ elects to elevate the dispute to the Administrator within the designated fourteen (14) day escalation period, both the Army and LDEQ shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.

F. Upon escalation of a dispute to the Administrator of EPA pursuant to Subpart E, 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 LDEQ's Secretary, and the Army's Secretariat Representative to discuss the issue(s) under dispute. Upon resolution, the Administrator shall

provide the Army and LDEQ with a written final decision setting forth resolution of the dispute. The duties of the Administrator set forth in this Part shall not be delegated.

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

H. When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Hazardous Waste Division Director for EPA's Region VI or the Assistant Secretary of Legal Affairs and Enforcement requests, in writing, that work related to the dispute be stopped because, in EPA's or LDEQ'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 or LDEQ shall consult with the Army prior to initiating 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 EPA Division Director and LDEQ Secretary to discuss the work stoppage. Following this meeting, and further consideration of the issues, the EPA Division Director or LDEQ Secretary will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the Division Director or LDEQ Secretary 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.

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

J. Resolution of a dispute pursuant to this Part 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 Part of this Agreement.

XII. ENFORCEABILITY

## A. The Parties agree that:

(1) 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; and

(2) all timetables or deadlines associated with the RI and 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;

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

(4) any final resolution of a dispute pursuant to Part XI of this Agreement 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.

B. 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.

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

### XIII. STIPULATED PENALTIES

A. In the event that the Army fails to submit a primary document (i.e. RI and FS Workplan, Risk Assessment, RI Report, FS Report, Proposed Plan, Record of Decision, Remedial Design, or Remedial Action Workplan) to EPA and LDEQ pursuant to the appropriate timetable or deadline in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement which relates to an interim or final remedial action, EPA may assess a stipulated penalty against the 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 Paragraph occurs.

B. Upon determining that the Army has failed in a manner set forth in Paragraph A, 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 the stipulated penalty assessed by EPA if the failure is determined, through the dispute resolution process, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.

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

1. The facility responsible for the failure;
2. A statement of the facts and circumstances giving rise to the failure;
3. A statement of any administrative or other corrective action taken at the relevant facility, or a state-

ment of why such measures were determined to be inappropriate;

4. A statement of any additional action taken by or at the facility to prevent recurrence of the same type of failure; and
5. The total dollar amount of the stipulated penalty assessed for the particular failure;

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

E. In no event shall this Part give rise to a stipulated penalty in excess of the amount set forth in Section 109 of CERCLA.

F. This Part shall not affect the Army's ability to obtain an extension of a timetable, deadline or schedule pursuant to Part XV of this Agreement.

G. 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 Part.

H. These stipulated penalty assessments shall not be binding on LDEQ and LDEQ expressly reserves the right to assess penalties independent of this Part.

XIV. DEADLINES

A. Within twenty-one (21) days of the effective date of this Agreement, the Army shall propose deadlines for completion of the following draft primary documents:

- a. RI Workplan (Future sites)
- b. Updated Groundwater RI Report
- c. Risk Assessment
- d. FS Workplan
- e. FS Report
- f. Proposed Plan
- g. Record of Decision
- h. Community Relations Plan

Within fifteen (15) days of receipt, EPA in conjunction with LDEQ, shall review and provide comments to the Army regarding the proposed deadlines. Within fifteen (15) days following receipt of the 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 agree on proposed deadlines, the finalized deadlines shall be incorporated into the appropriate workplans. If the Parties fail to agree within thirty (30) days on the proposed deadlines, the matter shall immediately be submitted for dispute resolution pursuant to Part XI of this Agreement.

The final deadlines established pursuant to this Paragraph shall be published by EPA, in conjunction with the State.

B. Within twenty-one (21) days of issuance of the ROD, the Army shall propose deadlines for completion of the following draft primary documents:

- a. Remedial Design
- b. Remedial Action Workplan

These deadlines shall be proposed, finalized and published utilizing the same procedures set forth in Paragraph B. above.

C. Within twenty (21) days of the effective date of this Agreement, the Army shall propose the start date of actual burning of hazardous waste at the Area P Lagoons and the completion date for that burning.

D. The deadlines set forth in this Part, or to be established as set forth in this Part, may be extended pursuant to Part XV of this Agreement. The Parties recognize that one possible basis for extension of the deadlines for completion of the Remedial Investigation and Feasibility Study reports is the identification of significant new Facility conditions during the performance of the remedial investigation.

XV. EXTENSIONS

A. Either a timetable and deadline or a schedule shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension. Any request for extension by the Army shall be submitted in writing and shall specify:

1. The timetable and deadline or the schedule that is sought to be extended;
2. The length of the extension sought;
3. The good cause(s) for the extension; and
4. Any related timetable and deadline or schedule that would be affected if the extension were granted.

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

1. An event of force majeure;
2. A delay caused by another Party's failure to meet any requirement of this agreement;
3. A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;
4. 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

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

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

D. Within seven (7) days of receipt of a request for an extension of a timetable and deadline or a schedule, EPA or LDEQ shall advise the Army in writing of their respective positions on the request. Any failure by EPA or LDEQ to respond within the seven day period shall be deemed to constitute concurrence by the non-responding agency in the request for extension. If either EPA or LDEQ does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

E. If there is consensus among 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 determination resulting from the dispute resolution process.

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

G. 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.

#### XVI. DESIGNATED PROJECT COORDINATORS

A. On or before the effective date of this Agreement, EPA, LDEQ and the Army shall each designate a Project Coordinator, and Alternate or Designate (hereinafter jointly referred to as Project Coordinator) for the purpose of overseeing the implementation of this Agreement. Each Party's Project Coordinator shall be their representative on the TRC. To the maximum extent possible, communications among Army, EPA and LDEQ on

all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to this Agreement, shall be directed through the Project Coordinators. During implementation of this Agreement, the Project Coordinators shall operate whenever possible, by consensus. If the Project Coordinators cannot agree the Parties may seek dispute resolution under Part XI of this Agreement. The Army Project Coordinator shall function as the Remedial Project Manager within the meaning of the NCP.

B. The EPA, LDEQ and the Army may change their respective Project Coordinators. Such change shall be accomplished by notifying the other Parties in writing within five (5) days of the change.

C. The Project Coordinators' authority includes, but is not limited to: (1) taking samples and ensuring the type, quantity and location of the samples taken by the Army are done in accordance with the terms of any approved workplan; (2) observing, and taking photographs and making such other report on the progress of the work as the Project Coordinators deem appropriate subject to the access provisions of Section XIX of this Agreement; (3) reviewing records, files and documents relevant to the work performed; (4) directing the Army Project Coordinator to stop work whenever the EPA or LDEQ Project Coordinator determines, after discussion with the Army Project Coordinator, that activity(s) at the Facility may create a present danger to public health or welfare or



the environment. EPA or LDEQ shall, within 24 hours of directing a work stoppage, present the reasons therefore, in writing, to the Army. Within 72 hours of a written request by the Army for review of any directed work stoppage, the LDEQ Administrator of the Inactive and Abandoned Sites Division or EPA Division Director shall determine in writing, whether continued work stoppage is necessary to protect public health, welfare, or the environment, after meeting with the Army to discuss the potential danger to public health, welfare, and the environment and possible measures to abate or mitigate the danger. Any schedule effected by a directed work stoppage shall be extended for a period equal to the delay caused by a directed work stoppage.

D. Each Project Coordinator shall be responsible for assuring that all communications received from the other Project Coordinators are appropriately disseminated to and processed by the entity which the Project Coordinator represents.

#### XVII. QUALITY ASSURANCE

A. The Army shall use quality assurance, quality control, and chain of custody procedures throughout all field investigation, sample collection and laboratory analysis activities. The Army shall inform and obtain the approval of EPA and LDEQ in planning all sampling and analysis. The Army shall develop an operable-unit or element-specific Quality Assurance Project Plan (QAPP), as necessary, for review and comment by EPA and

LDEQ. The QAPP shall be prepared in accordance with EPA Document QAMS-005/80 and applicable guidance as developed and provided by EPA and shall include but not be limited to: operable-unit or element-specific sampling methodology; sample storage and shipping methods; documentation; sampling and chain-of-custody procedures; calibration procedures; laboratory quality control/quality assurance procedures and frequency.

B. In order to provide quality assurance and maintain quality control regarding all samples collection pursuant to this Agreement, the Army shall obtain the approval of EPA and LDEQ for methods deemed satisfactory to EPA and LDEQ and shall submit all protocols used for sampling and analysis to EPA and LDEQ for review and comment. The Army shall also ensure that the laboratory(s) utilized for analysis participate in the U.S. Army Toxic and Hazardous Materials Agency quality assurance/quality control program. Further evaluation by EPA and LDEQ Quality Assurance Office personnel may entail, upon request by EPA or LDEQ, the analysis of performance evaluation samples to demonstrate the quality of each laboratory's analytical data.

C. The Army shall also ensure that appropriate EPA and LDEQ personnel or their authorized representatives will be allowed access to the laboratory(s) and personnel utilized by

the Army in implementing this Agreement. Such access shall be for the purpose of validating sample analyses, protocols and procedures required by the Remedial Investigation and Quality Assurance Project Plan.

#### XVIII. PERMITS

A. The Parties recognize that under Section 121(d) and (e)(1) of CERCLA, 42 U.S.C. §9621(d) and (e)(1), and the NCP, portions of the response action covered by this Agreement and conducted entirely on the Facility are exempt from the procedural requirement to obtain Federal, State, or local environmental permits, but must satisfy all the applicable or relevant and appropriate Federal and State permitting standards, requirements, criteria, or limitations which would have been included in any such permit.

B. The Parties recognize that activities off-facility and ongoing operations not covered by this Agreement may require the issuance of permits under Federal and Louisiana laws. This Agreement does not affect the requirements, if any, to obtain such permits.

C. The Army shall notify the other Parties when it become aware of any permits required for off-facility activities. If a permit necessary for implementation of this Agreement is not issued, or is issued or renewed in a manner which is

materially inconsistent with the requirements of any appropriate primary document, the Parties shall meet to consider modification of this Agreement that is necessary either to obtain a permit or to conform to an issued permit.

D. During any appeal of any permit required to implement this Agreement or during review of any Party's proposed modifications as provided above, all Parties shall continue to implement those portions of this Agreement which can reasonably be implemented pending final resolution of the permit issues. However, as to work which cannot be so implemented, any corresponding timetable, deadlines, and schedule will be subject to Part XV of this Agreement.

E. When the Army proposes a response action (including a workplan pursuant to this Agreement) to be conducted entirely on the Facility which in the absence of Section 121 (e)(1) of CERCLA and the NCP would require a Federal or State permit, the Army shall include in the submittal: (1) identification of the standards, requirements, criteria, or limitations which would be required to obtain each such permit; (2) explanation of how the response action proposed will meet the standards, requirements, criteria or limitations identified in (1) immediately above. Upon request of the Army, EPA and LDEQ will provide their position with respect to (1) and (2) above within thirty (30) days.

XIX. ACCESS

A. Without limitation on any authority conferred on EPA and LDEQ by statute or regulation, EPA and LDEQ or their authorized representatives shall have the authority to enter and move about all property at LAAP with an escort designated by the Army at all reasonable times for purposes consistent with this Agreement, State law, CERCLA and RCRA subject to statutory and regulatory requirements as may be necessary to protect national security. Such authority shall include, but not be limited to: inspecting records, operating logs, and contracts related to the investigative and remedial work at LAAP; reviewing the progress of the Army in carrying out the terms of this Agreement; conducting such tests as EPA, LDEQ, or the Project Coordinators deem necessary; and verifying the data submitted to EPA and LDEQ by the Army. The Parties agree that to facilitate access to LAAP, the Army will provide an escort whenever EPA or LDEQ, including contractors, require access to the restricted portions of LAAP. EPA and LDEQ will provide reasonable notice of the need for access to **such** restricted portions of LAAP to the Army Project Coordinator in order to effect the escort. In addition, EPA and LDEQ shall not use any camera, sound recording or other electronic recording device at LAAP without the permission of the Army Project Coordinator. The Army shall not unreasonably

withhold such permission. When permission must be withheld, the Army shall be responsible for alternate arrangements for any work utilizing a camera, sound recording, or other electronic device if feasible. The Army shall provide within 48 hours of withholding permission written explanation of the reasons why alternate arrangements are not feasible.

B. The rights to access by EPA and LDEQ, granted in paragraph A of this section, shall be subject to those regulations as may be necessary to protect national security. All regulations justifying any denial of access, shall be reasonably applied and shall not unduly hinder EPA or LDEQ from carrying out their responsibilities and authorities pursuant to this Agreement. Upon denying any aspect of access the Army shall provide within 48 hours a written explanation of the reason for the denial and, if feasible, a recommendation for accommodating the needed access in an alternate manner. If alternate accommodations are not feasible, a written explanation shall be provided to EPA and LDEQ within 48 hours. The Parties agree that this Agreement is subject to Section 120(j) of CERCLA, 42 U.S.C. §9620(j) regarding the issuance of Site Specific Presidential Orders as may be necessary to protect national security.

C. All Parties with access to LAAP pursuant to this section shall comply with all approved Health and Safety plans.

D. To the extent that activities pursuant to this Agreement must be carried out on other than Army property, the Army shall use its best efforts to obtain access agreements from the owners which shall provide reasonable access for the Army, EPA, LDEQ and their representatives. In the event that the Army is unable to obtain such access agreements, the Army shall promptly notify EPA and LDEQ regarding both the lack of agreements and efforts to obtain access agreements.

XX. SAMPLING AND DATA/DOCUMENT AVAILABILITY

A. The Army shall make the results of all sampling and/or tests or other data generated on the Army's behalf, with respect to the implementation of this Agreement, available to EPA and LDEQ in progress reports as described in Part X(F). EPA and LDEQ will make available to the Army the results of sampling or tests or other data/documents similarly generated by EPA or LDEQ.

B. At the request of EPA or LDEQ, the Army shall allow split or duplicate samples to be taken by EPA or LDEQ or their authorized representatives of any samples collected by the Army pursuant to the implementation of this Agreement. The Army shall notify EPA and LDEQ not less than fourteen (14) days in advance of any scheduled sample collection activity under the workplan.

XXI. RECORD PRESERVATION

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 in their possession or in the possession of their division, employees or agents, which relate in any way to the actions carried out pursuant to this Agreement, despite any document retention policy to the contrary. After this seven year period, a Party shall notify the other Parties at least thirty (30) days prior to destruction of any such documents. Upon request by any Party, the requested Party shall make available such records or copies of any such records, unless withholding is authorized and determined appropriate by law.

XXII. FIVE YEAR REVIEW

If a remedial action is selected that results in any hazardous substances, pollutants, or contaminants remaining at the site, the Army, EPA and LDEQ shall review the remedial action no less often than each five years after the initiation of a the final remedial action to assure that human health and the environment are being protected by the remedial action being implemented. If upon such review, it is the judgement of EPA and LDEQ that additional action or modification of the remedial action is appropriate in accordance with Section 104



and/or 106 of CERCLA, such additional or modified action shall be implemented in accordance with Part IX.J of this Agreement.

#### XXIII. OTHER CLAIMS

Subject to Part VIII of this Agreement, nothing in this Agreement shall restrict EPA or LDEQ from taking any action under CERCLA, RCRA, State law, or other environmental statutes for any matter not specifically part of the work performed pursuant to this Agreement.

Nothing in this Agreement shall constitute or 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 it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, pollutants, contaminants or hazardous constituents found at, taken to, or taken from LAAP.

#### XXIV. STATE'S RESERVATION OF RIGHTS

A. In consideration for the Army's compliance with this Agreement, and based on the information known to the Parties on the effective date of this Agreement, the Army and the State agree that compliance with this Agreement shall stand in lieu of any administrative, legal and equitable remedies against the Army available to the State regarding the

currently known releases or threatened releases of hazardous substances including hazardous wastes, pollutants or contaminants at the Facility which are within the scope of this Agreement, which are the subject of the RI(s) and FS(s) to be conducted pursuant to this Agreement and which will be adequately addressed by the remedial action(s) provided for under this Agreement.

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

#### XXV. STATE TECHNICAL ASSISTANCE EXPENSES

The Army agrees to reimburse LDEQ for the costs related to the implementation of this Agreement in an amount that shall not exceed:

A. Fifty thousand dollars (\$50,000.00) per year for each of the first two years of this Agreement.

B. At the end of the second year, technical expenses will be renegotiated for succeeding years.

C. In the event that the Army and LDEQ are unable to

reach agreement after good faith negotiation pursuant to subparagraph B above, the Army and LDEQ shall refer any remaining issues related to cost reimbursement to dispute resolution in accordance with Attachment 1 of this Agreement.

D. If LDEQ and the Army cannot resolve their disputes pursuant to Attachment 1 of this Agreement, LDEQ may withdraw as a Party to this Agreement by providing written notice of its withdrawal to each of the Parties. Such withdrawal by LDEQ will terminate all of the responsibilities which LDEQ may have under this Agreement.

E. Reimbursement of costs provided to LDEQ under this Agreement shall be in accordance with this Part and Attachment 1 to this Agreement.

#### XXVI. PUBLIC PARTICIPATION

A. The Parties agree that this Agreement and any subsequent remedial action alternative proposal(s) and the Proposed Plan(s) for remedial action(s) at the Facility arising out of this Agreement shall comply with public participation requirements of Section 117 of CERCLA, the NCP, and EPA guidances on public participation.

B. Consistent with Part IX of this Agreement, the Army shall develop and implement a Community Relations Plan (CRP) which responds to the need for an interactive relationship

with all interested community elements, both on LAAP and off, regarding environmental activities conducted pursuant to this Agreement by the Army.

C. Any party issuing a press release with reference to any of the work required by this Agreement shall advise the other Parties of such press release and contents thereof at least two (2) business days before the issuance of such press release.

D. Community Relations and Public Participation activities undertaken by the Army shall be coordinated in advance with EPA and LDEQ.

#### XXVII. PUBLIC COMMENT

A. The public participation requirements of this Agreement shall be consistent with public participation requirements applicable to RCRA permits under 40 C.F.R Part 124 and Section 7004 of RCRA. Specifically the following procedures shall be implemented to ensure consistency with RCRA Section 7004 and 40 C.F.R. Part 124:

(1) Within fifteen (15) days of the effective date of this Agreement by all Parties, LAAP shall provide public notice that an Federal Facility Agreement has been finalized and shall announce the availability of this Agreement to the public for 45-day review and comment period. The public

notice shall be published in a major local newspaper and broadcast over the local radio stations.

(2) EPA shall accept comments from the public on behalf of all Parties for a period of forty-five (45) days after such announcement. At the end of the comment period, the Parties shall review all such comments and after consultation shall either:

- (a) Determine that no modification of the Agreement is necessary, in which case the Army and LDEQ shall be so notified in writing; or
- (b) Determine that modification of the Agreement is necessary, in which case the Parties will either amend the Agreement by mutual consent or, if the Parties do not mutually agree on needed changes within fifteen (15) days from the close of the public comment period, the Parties shall submit their written notices of position directly to the Dispute Resolution Committee, and the dispute resolution procedures of Part XI shall apply.

(3) If there is written notice of opposition to the Agreement within the time period for public comment, EPA or the LDEQ must hold an informal public hearing with thirty (30) days prior notice. A written transcript or tape recording of the hearing shall be prepared by EPA and provided

to LAAP to be made part of LAAP's administrative record.

B. In the event of significant revision or public comment, notice procedures of Sections 117 and 211 of CERCLA shall be followed and a responsiveness summary shall be published by the EPA.

C. In the event that the Agreement is modified as a result of public comments, and following the exhaustion of the dispute resolution procedures of Part XI, the Army and LDEQ reserve the right to withdraw from the Agreement within twenty (20) days of EPA's submission of the modified Agreement to the Parties via overnight mail. If neither the Army or LDEQ provide EPA with written notice of withdrawal from the Agreement within such twenty (20) day period, the Agreement, as modified shall automatically become effective on the twenty-first day, and the EPA shall issue a notice to the Parties within three working days of the effective date. With the exception of the rights to withdraw from this Agreement found in this Part and Part 25, no other right to withdraw from this Agreement is reserved.

D. When final decision by the Parties is reached on whether to modify or withdraw from the Agreement, EPA shall issue a notice of decision for the Agreement in accordance with 40 C.F.R. §124.15 (a). In addition, EPA shall issue a response to comments in accordance with 40 C.F.R. §124.17.

E. If the Army or LDEQ withdraw from the Agreement within twenty (20) days of EPA's submission to the Parties of the modified Agreement following exhaustion of dispute resolution, then EPA and LDEQ reserve the right to take any action under any applicable statute or law.

#### XXVIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

A. The effective date of this Agreement shall be the date on which it is signed by EPA. EPA shall sign last, following signatures by the Army and the LDEQ. This Agreement may subsequently be modified based on the implementation of Part XXVII of this Agreement.

B. This Agreement may be modified in accordance with this paragraph by any Party, upon the written approval of all Parties, by submitting requested modifications to the other Parties. Any modifications or amendments shall be in writing, shall be effective on the date specified therein and shall be incorporated into this Agreement.

C. Any reports, plans, specifications, schedules, and attachments required by this Agreement are, upon approval by EPA and LDEQ, incorporated into this Agreement.

#### XXIX. ADMINISTRATIVE RECORD

A. The Army shall establish and maintain an Administrative Record which will include an index of all documents contained therein at or near LAAP in accordance with Section

113(k) of CERCLA. The Administrative Record shall be established and maintained in accordance with current and future EPA policy and guidelines. A copy of each document placed in the Administrative Record shall be provided to the EPA and LDEQ as they are generated. An updated index of documents in the Administrative Record shall be provided to EPA and LDEQ on at least a semi-annual basis.

B. The Army shall follow the participation requirements of CERCLA Section 113(k) and comply with any guidance and/or regulations promulgated by EPA with respect to such subsection.

#### XXX. FORCE MAJEURE

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 Part XXXI of this Agreement. 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.

#### XXXI. FUNDING

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 DOD budgetary process to fulfill its obligations under this Agreement.

In accordance with Section 120(e)(5)(B) of CERCLA, 42 U.S.C. §9622(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 this Agreement.

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. §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.

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.

Funds authorized and appropriated annually by Congress under the "Environmental Restoration Defense" appropriation in the Department of Defense Appropriation Act and allocated by the DASD(E) to the Army will be the source of funds for activities required by this Agreement consistent with Section 211 of SARA, 10 U.S.C. Chapter 160. However, should the 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.

XXXII. NOTIFICATION

A. Unless otherwise specified any document provided pursuant to a schedule or deadline identified or developed under this Agreement shall be sent by next-day mail, hand delivery, or facsimile. All communications between the Parties hereto shall be issued by and delivered to the following:

U.S. Environmental Protection Agency  
Larry Wright, Acting  
Superfund Enforcement Branch Chief (6H-E)  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202

and

Louisiana Department of Environmental Quality  
William DeVille, Administrator  
Inactive and Abandoned Sites Division  
P.O. Box 44037  
Baton Rouge, Louisiana 70804

Documents sent to the Army shall be addressed as follows unless the Army specifies otherwise by written notice:

Louisiana Army Ammunition Plant  
Paxton Willis  
Environmental Coordinator (SMCLA/SF)  
P.O. Box 30058  
Shreveport, Louisiana 71130

B. Unless otherwise indicated in this Agreement, notification of change of representative specified in this Part shall be provided to the other Parties within fifteen (15) days of the effective date of said change.

C. Written notice shall be provided to the Parties of any delegation of authority from a Party's designated representative. Such change shall be accomplished by notifying the other Parties in writing within five (5) days of the change.

D. The Army shall notify its agents, employees, and necessary contractors, and all subsequent owners, operators and lessees of LAAP of the existence of this Agreement and provide copies of this Agreement to all contractors performing any work pursuant to this Agreement. Each undersigned representative of a Party certifies that he/she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement.

#### XXXIII. SUCCESSORS AND ASSIGNS

A. This Agreement shall apply to and be binding upon the Army, EPA, LDEQ, their officers, successors in office, agents and employees. The Army shall assure that no portion of the LAAP will be used in any manner which would adversely affect the integrity of any monitoring system or response measures installed pursuant to this Agreement. This Agreement shall also apply to subsequent owners and operators of the LAAP.

B. The Army shall include notice of this Agreement in

any document transferring ownership to any subsequent owner and/or operator of any portion of LAAP in accordance with Section 120(h) of CERCLA and to follow the provisions of LAC 33:V.3525 (40 C.F.R. §§264.119 and 264.120) and shall notify EPA and LDEQ of any such change or transfer at least ninety (90) days prior to such transfer. Notice pursuant to Section 120(h)(3)(B) of CERCLA of any transfer of ownership shall not relieve the Department of Defense (DOD) and the Army of their obligation to perform pursuant to this Agreement.

#### XXXIV. EMERGENCY ACTIONS

Notwithstanding any other provision of this Agreement, the Army retains the right, consistent with Executive Order 12580, to conduct such emergency actions taken because of imminent and substantial endangerment to human health or the environment from the release or threat of release of hazardous constituents, hazardous substances, pollutants or contaminants at or from LAAP. Such actions may be conducted at any time, either before or after the issuance of a ROD.

The Army shall provide the other Parties adequate opportunity for timely review and comment after the Army makes any proposal to carry out such response action and before the Army initiates any such response action. This opportunity for review and comment shall not apply if the action is in the nature of an emergency removal action taken because of imminent and substantial

endangerment to human health or the environment and it is the determination of the Army that consultation would be impractical. In such case, the Army shall notify the EPA and LDEQ in writing within 48 hours of taking such action.

XXXV. RESERVATION OF RIGHTS FOR RECOVERY OF OTHER EXPENSES

The Parties agree to amend this Agreement at a later date in accordance with any subsequent national resolution of the issues of cost reimbursement.

XXXVI. TERMINATION AND SATISFACTION

The provisions of this Agreement shall be deemed satisfied upon the receipt of written notice from the EPA and LDEQ that the Army has demonstrated, to the satisfaction of EPA and LDEQ, that all of the terms of this Agreement have been completed. Upon such demonstration by the Army, said written notice shall not be unreasonably withheld or delayed. Termination and satisfaction of this Agreement shall not affect the duration of any final permit requirements which may be issued as a result of Army's Part B permit applications.

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

IT IS SO AGREED:

FOR THE U.S. DEPARTMENT OF THE ARMY:

1/31/89  
Date

Lewis D. Walker  
Lewis D. Walker  
Deputy for Environmental Safety  
and Occupation Health  
Office of the Assistant Secretary  
of the Army (I&L)

\_\_\_\_\_  
Date

\_\_\_\_\_  
W. Richard Wright  
Lieutenant Colonel  
Commander  
Louisiana Army Ammunition Plant

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

1/31/89  
Date

J. Winston Porter  
J. Winston Porter  
Assistant Administrator  
United States Environmental  
Protection Agency

FOR THE LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Paul H. Templet, PhD.  
Secretary  
Louisiana Department of  
Environmental Quality

ATTACHMENT 1PAYMENT PROCEDURE FOR STATE TECHNICAL ASSISTANCE EXPENSES

## A1. 1.

The Army, pursuant to its authority under 10 U.S.C. 2701(d), agrees to reimburse LDEQ, subject to the conditions and limitations set forth in this attachment, for specified services provided to LAAP pursuant to paragraph 2 of this section.

A1. 2. State Support Services

Services provided under this section include the following types of assistance for response actions at LAAP:

- a. Timely technical review and substantive comment on reports or studies which LAAP prepares in support of its response actions and submits to the State.
- b. Identification and explanation of unique state requirements applicable to military installations in performing response actions, especially state applicable or relevant and appropriate requirements (ARARs).
- c. Field inspections to ensure cleanup activities are implemented in accordance with agreed upon conditions between the State and the Army.



- d. Support and assistance to LAAP in the conduct of public participation activities in accordance with Federal and State requirements for public involvement.
- e. Participation in the review and comment functions of LAAP's Technical Review Committee.
- f. Other services specified in this Agreement, or as agreed to by LAAP and LDEQ.

A1. 3 Submission of Invoices and Payment

- a. Within thirty (30) days after the end of each quarter, LDEQ shall submit to the Army an invoice for costs incurred related to section A1. 2. All costs submitted by LDEQ shall be reasonable, allocable to this Agreement, and not violative of Federal or State statutes or regulations. Travel expenses claimed by LDEQ shall not exceed those expenses adopted by the State LDEQ for reimbursement of travel expenses.
- b. The Army shall, within 180 calendar days after receipt of an invoice, remit a check for the amount of those costs made payable to LDEQ. The check should specifically reference the site and this Agreement and be mailed to:

Louisiana Department of Environmental Quality  
Office of Legal Affairs and Enforcement  
Inactive and Abandoned Sites Division  
P.O. Box 44307  
Baton Rouge, Louisiana 70804-4307

Al. 4. Maintenance of Accounting Records and Right of Audit

LDEQ shall maintain adequate accounting records sufficient to identify all expenses related to this Agreement. LDEQ agrees to maintain these financial records for a period of five (5) years from the termination date of this Agreement. LDEQ agrees to provide LAAP, or its designated representative, reasonable access to all financial records for the purpose of audit for a period of five years from the termination date of this Agreement.

Al. 5. Submission and Update of Technical Assistance Expense Projections

- a. Within thirty (30) days of the receipt of LAAP's project completion dates, LDEQ will provide LAAP with cost estimates for technical assistance for the duration of this Agreement.
- b. LDEQ will be responsible for submitting updated expense estimates for technical assistance for the duration of

the Agreement on a semi-annual basis, i.e. no later than 1 April and 1 October. LAAP will provide LDEQ with thirty (30) days notification of its need for the latest projected expenses as required for LAAP's submission of the 1383 funding report. Expense estimates shall be subject to review by LAAP or its designated representative.

A1. 6. Dispute Resolution

- a. In the event that LAAP believes that costs set forth in the accounting information, described in paragraph A1. 3., were not within the scope of services set forth in paragraph A1. 2., or not reasonable, allocable to this Agreement, or are violative of this Agreement as outlined in paragraph A1. 3., or if the Army and LDEQ have any other dispute concerning cost reimbursement, including any disagreement over a cap of future technical assistance expenses under Part XXV of this Agreement, LAAP may challenge the amount to be paid to LDEQ. This shall occur through the dispute resolution process described in this section.
- b. The LAAP Project Coordinator and the LDEQ Project Coordinator shall be the primary points of contact to coordinate resolution of disputes occurring pursuant to Part XXV of this Agreement, and Attachment 1.

- v
- c. ~~If~~ the LAAP Project Coordinator and the LDEQ Project Coordinator are unable to agree, the matter shall be referred to the installation commander or his designated representative and the Administrator of LDEQ's Inactive and Abandoned Sites Division as soon as practicable, but in any event, within five (5) working days.
  
  - d. Should they be unable to agree within ten (10) working days, the matter shall be elevated to the Secretary of LDEQ and the DESOH,ASA[I&L].
  
  - e. It is the intention of the Army and LDEQ that all disputes shall be resolved in this manner. The use of alternative dispute resolution is encouraged. In the event the Secretary of LDEQ and the DESOH,ASA[I&L] are unable to resolve a dispute, LDEQ retains all of its legal and equitable remedies to recover its cost.