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UNITED STATES DEPARTMENT OF THE NAVY
AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
AND THE
STATE OF MAINE

IN THE MATTER OF:	)
	)
The U.S. Department of the Navy	)
	)
Naval Air Station Brunswick, Maine	)

FEDERAL FACILITY AGREEMENT UNDER CERCLA SECTION 120

AS AMENDED

TABLE OF CONTENTS

SECTION		PAGE
I.	PURPOSE	4
II.	SCOPE	6
III.	DEFINITIONS	7
IV.	JURISDICTION	9
V.	FINDINGS OF FACT	10
VI.	CONSULTATION WITH EPA AND DEP	13
VII.	PROJECT MANAGERS	19
VIII.	ACCESS	22
IX.	DATA AND DOCUMENT AVAILABILITY	24
X.	PERMITS	25
XI.	REMOVAL AND EMERGENCY ACTIONS	27
XII.	DISPUTE RESOLUTION	29
XIII.	DEADLINES	32
XIV.	EXTENSIONS	34
XV.	FORCE MAJEURE	36
XVI.	RECORDS OF DECISION AND PLANS FOR REMEDIAL ACTIONS	37
XVII.	EXEMPTIONS	39
XVIII.	EPA CERTIFICATION	40
XIX.	STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION	41
XX.	ENFORCEABILITY	42
XXI.	STIPULATED PENALTIES	43
XXII.	OTHER CLAIMS	45
XXIII.	COVENANT NOT TO SUE AND RESERVATION OF RIGHTS	46

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TABLE OF CONTENTS

SECTION		PAGE
XXIV.	TERMINATION AND SATISFACTION	48
XXV.	FUNDING	49
XXVI.	COMMUNITY RELATIONS	50
XXVII.	PUBLIC COMMENT ON THIS AGREEMENT	51
XXVIII.	PRESERVATION OF RECORDS	53
XXIX.	AMENDMENT OR MODIFICATION OF AGREEMENT	54
XXX.	EFFECTIVE DATE	55
XXXI.	QUARTERLY PROGRESS REPORTS	56
XXXII.	FIVE YEAR REVIEW	57
XXXIII.	RESERVATION OF RIGHTS FOR RECOVERY OF EXPENSES	58
XXXIV.	RECOVERY OF STATE OVERSIGHT COSTS	59
SIGNATURE PAGE		63
Appendix A		

UNITED STATES DEPARTMENT OF THE NAVY
AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
AND THE
STATE OF MAINE

IN THE MATTER OF: The U.S. Department of the Navy Naval Air Station Brunswick, Maine	)))))))	Federal Facility Agreement

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. PURPOSE

1.1 The general purposes of this agreement are to:

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

(b) Establish a procedural framework and schedule for developing, implementing and monitoring appropriate response actions at the Site in accordance with CERCLA/SARA, the NCP, Superfund guidance and policy, RCRA, RCRA guidance and policy, applicable state law; and,

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

1.2 Specifically, the purposes of this Agreement are to:

(a) Identify Interim Remedial Action (IRA) alternatives which are appropriate at the Site prior to the implementation of final remedial action(s) for the Site. IRA alternatives shall be identified and proposed to the Parties as early as possible prior to formal proposal of IRAs to EPA pursuant to CERCLA/SARA and applicable state law. This process is designed to promote cooperation among the Parties in identifying IRA alternatives prior to selection of final IRAs.

(b) 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 Site and to establish requirements for the performance of a FS for the Site to identify, evaluate and select alternatives for the appropriate remedial action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants or contaminants at the Site in accordance with CERCLA/SARA and applicable state law.

(c) Identify the nature, objective and schedule of response actions to be taken at the Site. Response actions at the Site shall attain that degree of cleanup of hazardous substances, pollutants or contaminants mandated by CERCLA/SARA and applicable state law.

(d) Implement the selected interim and final remedial action(s) in accordance with CERCLA/SARA and applicable state law and meet the requirements of CERCLA Section 120(e)(2) for an interagency agreement between the Parties.

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

(f) Coordinate response actions at the Site with the mission and support activities at NAS Brunswick.

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

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

(i) Provide Maine DEP involvement in the initiation, development, selection and enforcement of remedial actions to be undertaken at NAS Brunswick, including the review of all applicable data as it becomes available and the development of studies, reports, and action plans; and to identify and integrate State ARARS into the remedial action process.

II. SCOPE

2.1 This Agreement shall apply to and be binding upon the Navy, EPA and DEP, their officers, successors in office, agents and employees. This Agreement shall also apply to subsequent owners and operators of NAS Brunswick. The Navy agrees to include notice of this Agreement in any document transferring ownership to any subsequent owners and operators of any portion of NAS Brunswick in accordance with Section 120(h) of CERCLA and 40 C.F.R. 264.119 and .120 and shall notify EPA and DEP of any such change or transfer at least 90 days prior to such transfer.

2.2 The Navy agrees it shall develop, implement and report upon a Remedial Investigation at the Site. The Remedial Investigation documents shall be subject to the review and comment procedures described in Section VI, Consultation With EPA And DEP, of this Agreement. The Remedial Investigation shall be conducted in accordance with the requirements and time schedules set forth in Attachment 1 and Section XIII, Deadlines, of this Agreement. The Remedial Investigation shall meet the purposes set forth in Section I, Purpose, of this Agreement.

2.3 The Navy agrees it shall develop, implement and report upon a Feasibility Study at the Site. The Feasibility Study documents shall be subject to the review and comment procedures described in Section VI, Consultation With EPA and DEP, of this Agreement. The Feasibility Study shall be conducted in accordance with the requirements and time schedules set forth in Attachment 1 and Section XIII, Deadlines, of this Agreement. The Feasibility Study shall meet the purposes set forth in Section I, Purpose, of this Agreement.

2.4 The Navy agrees it shall perform a Remedial Design, Remedial Action and Operation and Maintenance to maintain the effectiveness of response actions at the Site in accordance with CERCLA 120 (e) (2) and Section XVI, Records of Decision and Plans for Remedial Action, of this Agreement and CERCLA, RCRA and applicable regulations thereof.

III. DEFINITIONS

3.1 The terms used in this Agreement shall have the same definition as the terms defined in the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. Section 9601 et. seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499 and the National Contingency Plan (NCP). Additionally, the following terms used in this Agreement are defined as follows:

(a) "Agreement" shall refer to this document and shall include all Attachments to this Agreement. All such Attachments shall be appended to and made part of this Agreement.

(b) "Applicable state law" shall mean all laws determined to be applicable under this Agreement. The term shall include but not be limited to all laws determined to be ARARs. It is recognized that in some instances where this phrase is used, there may be no applicable State laws. The Maine Department of Environmental Protection shall be consulted, in accordance with CERCLA Section 121(d)(2)(A)(ii), when making determinations regarding applicable state laws.

(c) "Days" means calendar days, unless business days are specified. Any submittal or written statement of dispute which under the terms of this Agreement would be due on a Saturday, Sunday, or holiday shall be due on the following business day.

(d) "Deadline" shall be the time limitation applicable to a discrete and significant portion of the RI/FS for which a "Deadline" has been specifically established under the terms of this Agreement.

(e) "DEP" shall mean the State of Maine, including the Maine Department of Environmental Protection, its employees, agents, authorized representatives, successors and assigns.

(f) "Documents" shall mean any records, reports, correspondence or retrievable information of any kind relating to treatment, storage, disposal, investigation, and remediation of hazardous substances, hazardous constituents, pollutants or contaminants at or migrating from NAS Brunswick for matters covered by this Agreement.

(g) "EPA" shall mean the United States Environmental Protection Agency, its employees, agents, authorized representatives, successors and assigns.

(h) "Interim Remedial Action" or "IRA" shall mean all discrete remedial actions or operable units (OU), other than removal actions, implemented prior to 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 or contaminants to prevent endangerment of public health, and welfare or the environment. All lnterim Remedial Actions shall be undertaken in accordance with the NCP and the requirements of CERCLA/SARA, and applicable state laws.

(i) "NAS Brunswick" shall mean the Naval Air Station, located in Brunswick, Maine.

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

(k) "Navy" shall include the Department of the Navy, Naval Facilities Engineering Command Northern Division, and the Naval Air Station at Brunswick, Maine, their employees, agents, authorized representatives, successors and assigns.

(l) "Parties" shall mean the Navy, EPA and DEP.

(m) "RCRA" shall mean the Resource Conservation and Recovery Act, 42 u.s.c. 6901 et. seq., as amended by the Hazardous and Solid Waste Amendments of 1984, Pub. L. 98-616.

(n) "Record of Decision" shall be a public document that explains which cleanup alternative(s) will be implemented at NAS Brunswick and includes the basis for the selection of remedy. It is based on information and technical analysis generated during the RI/FS and consideration of public comments and community concerns.

(o) "Schedule" shall mean the time limitations established for the completion of remedial design and remedial actions (RD/RA) at the Site.

(p) "Site" shall include NAS Brunswick and for the purpose of this Agreement only, it shall also include other areas outside of NAS Brunswick contaminated by the migration of a hazardous substance, pollutant or contaminant from the property currently known as NAS Brunswick. The site is a "facility" within the meaning of section 101(9) of CERCLA/SARA, 42 U.S.C. section 9601(9).

(q) "Timetable" shall be the collective terms for all the "Deadlines" established for the RI/FS.

IV. JURISDICTION

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

(a) The U.S. Environmental Protection Agency (EPA), enters into those portions of this Agreement that relate to the remedial investigation/feasibility study (RI/FS) pursuant to Section 120(e) (1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499 (hereinafter jointly referred to as CERCLA), 42 U.S.C. Section 9620(e) (1), and Sections 6001, 3008(h) and 3004(u) and (v) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v) as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), (hereinafter jointly referred to as RCRA), and Executive Order 12580;

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

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

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

(e) The Department of Environmental Protection enters into this Agreement pursuant to the applicable federal authorities cited above as well as CERCLA Section 120(f) and 121(f), 42 U.S.C. 559620(f) and 9621(f), Section 3006 of RCRA, 42 U.S.C. S6926 and 38 M.R.S.A. SS 347, 348 and 349 and the Maine Hazardous Waste, Septage and Solid Waste Management Act, 38 M.R.S.A. SS1301, et seq.

V. FINDINGS OF FACT

5.1 The Brunswick Naval Air Station is located within the Town of Brunswick and bordered on the southwest by the village of Harpswell in Cumberland County, Maine. NAS Brunswick was established in 1942. It is owned and operated by the United States through the Department of the Navy. It is currently an active installation with the mission to fly and maintain aircraft.

5.2 The Department of the Navy initiated the Naval Assessment and Control of Installation Pollutants (NACIP) Program on 11 September 1980. The Navy Energy and Environmental Support Activity (NEESA) initiated the Initial Assessment Study (IAS) for NAS Brunswick on 15 November 1982 with an on-site survey. Various record and archival searches were conducted. The IAS study was completed and forwarded to EPA on 29 June 1983. The report indicated past use of at least nine areas on Brunswick Naval Air Station for the disposal of waste solvents, acids, paint thinner, transformer oil (possibly containing PCBs), construction rubble (including asbestos), household wastes and other wastes. The sites identified were:

site 1	Landfill Orion Street Area -- North
site 2	Landfill Orion Street Area -- South
site 3	Hazardous Waste Burial Area
site 4	Acid/Caustic Pit
site 5	Asbestos Disposal Area
site 6	Rubble and Asbestos Disposal Area
site 7	Old Acid/Caustic Pit
site 8	Perimeter Road Landfill
site 9	Neptune Drive Disposal Site
site 10	Harpswell Fuel Depot

Further confirmation studies were recommended at these seven areas, Sites 1 through 4 and 7 through 9.

5.3 The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 was enacted by Congress and signed into law by the President in December 1980.

5.4 On 22 May 1981, Naval Air Station Brunswick notified the U.S. EPA in accordance with CERCLA that 4 past hazardous waste sites were identified.

5.5 In 1984, NUS Corporation conducted a Field Investigation Team (FIT) Site Inspection at BNAS for the U.S. Environmental Protection Agency. Analysis of soil samples collected during the site inspection identified pesticides and various organic compounds. In several soil samples and one surface water sample obtained from Mere Brook elevated levels of aluminum and arsenic were detected.

5.6 The Jordan Avenue Well Field, which contributes to the water supply for the towns of Brunswick and Topsham, consists of 136 ground water wells of depths varying from 17 to 25 feet. This well field is within a half mile of the Naval Air Station.

5.7 Lands adjacent to the southern half of the Air Station aredependent on individual wells for potable water supply.

5.8 On 15 September 1984, the Navy contracted with the EC Jordan Co. to complete a Confirmation Study on the sites identified in the IAS. Jordan's findings were submitted to the Navy in June of 1985. Analysis of surface water samples indicated the presence of heavy metals, chromium and lead, and chloroform. Soil samples were found to contain lead. Ground water samples contained various organic compounds and heavy metals, including cadmium, chromium and mercury.

5.9 The Superfund Amendments and Reauthorization Act (SARA) was enacted by Congress and signed into law by the President on 17 October 1986. SARA required each Federal agency to comply with the Act in the same manner and to the same extent, procedurally and substantively as any non-governmental entity. Because of this, the Navy's NACIP Program was renamed the Installation Restoration Program and the terminology and methodology used by the EPA were adopted-by the Navy for consistency.

5.10 On 22 July 1987, NAS Brunswick was placed on the National Priorities List (52 FR 27620). The effective date for this Amendment to the NPL was 21 August 1987.

5.11 On 24 February 1988, U.S. EPA and DEP published a schedule for the Remedial Investigation and Feasibility Study to be undertaken at the Brunswick Naval Air Station. The Schedule appeared in the Brunswick Times Record and the Portland Press Herald.

5.12 A Technical Review Committee (TRC) was formed to facilitate communication and coordination among the members with regard to response actions undertaken under the Installation Restoration Program at BNAS. The committee members meet periodically to review technical data, remedial investigation reports, feasibility study reports, work plans and other documents relating to the response actions at BNAS. They consider and recommend necessary changes based on continuing review of proposed response actions. Membership on the TRC is composed of representatives from the Navy, the U.S. Environmental Protection Agency, Region I, the State of Maine Department of Environmental Protection, the Town of Brunswick, the Brunswick--Topsham Water District and an independent local citizen. The initial meeting was held on 3 December 1987. Subsequent meetings have been held for each of the important milestones for the project.

5.13 In April 1988, EC Jordan Co. prepared for the Navy a Remedial Investigation/Feasibility Study Work Plan. Field work commenced in accordance with this document on 20 June 1988.

5.14 Three additional areas were subsequently identified as potential disposal sites and are being investigated in accordance with the National Contingency Plan (NCP). These are referred to as:

Site 11, Fire Training Area
Site 12, EOD Training Area
Site 13, DRMO Area

5.15 The Navy has developed and is in the process of implementing a Community Relations Plan in accordance with EPA guidance. This plan responds to the need for an interactive relationship with all interested community elements, both on NAS Brunswick and off, regarding environmental activities conducted pursuant to this Agreement by the Navy.

5.16 Nothing contained in this Section shall constitute an admission of any liability by the Navy for any matters contained herein nor shall anything in this Section constitute an admission by the Navy with respect to any finding or any legal determination noted herein.

VI. CONSULTATION WITH EPA AND DEP

Review and Comment Process for Draft and Final Documents

6.1 Applicability: The provisions of this Section establish the procedures that shall be used by the Parties to provide each other with appropriate notice, review, comment, and response to comments regarding RI/FS and RD/RA documents, specified herein as either primary or secondary documents. In accordance with CERCLA Section 120, 42 U.S.C. Section 9620, and 10 U.S.C. Section 2705, the Navy will be responsible for issuing primary and secondary documents to EPA and DEP, unless otherwise agreed to by the Parties in writing. 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 6.2 through 6.10 below. The designation of a document as "draft" or "final" is solely for purposes of consultation with EPA and DEP in accordance with this Section. Such designation does not affect the obligation of the Parties to issue documents, which may be referred to herein as "final", to the public for review and comment as appropriate and as required by law.

6.2 General Process for RI/FS and RO/RA Documents:

(a) Primary documents include those reports, as specified in Section 6.3 below, that are major, discrete portions of RI/FS or RD/RA activities. Primary documents are initially issued by the Navy in draft subject to review and comment by EPA and DEP following receipt of comments on a particular draft primary document, the Navy will respond to the comments received and issue a draft final primary document subject to dispute resolution. The draft final primary document will become the final primary document either 30 days after issuance if dispute resolution is not invoked, or as modified by decision of the dispute resolution process.

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

6.3 Primary Reports:

(a) Prior to the effective date of this Agreement, the Navy has forwarded the following primary documents to EPA and DEP:

(1) RI/FS Work Plan (sites 1-4, 7-9)
(2) Preliminary Risk Assessment (sites 1-4, 7-9)
(3) Preliminary Analysis of Alternatives

(b) The Navy shall complete and transmit draft reports for the following primary documents to EPA and DEP for review and comment in accordance with the provisions of this part:

(1) RI/FS Work Plan (for sites other than 1-4 and 7-9)

(2) Preliminary Risk Assessment (for sites other than 1-4 and 7-9)

(3) Preliminary Analysis of Alternatives (for sites other than 1-4 and 7-9)

(4) Initial Screening Report

(5) RI Report

(6) FS Report

(7) RI/FS Report (including Risk Assessment)

(8) Proposed Plan

(9) Remedial Design

(10) Remedial Action Plan

(c) Only the draft final reports for the primary documents identified above shall be subject to dispute resolution. The Navy shall complete and transmit draft primary documents in accordance with the timetable and deadlines established in Section XIII, Deadlines, of this Agreement.

6.4 Secondary Documents:

(a) The Navy shall complete and transmit draft reports for the following secondary documents to EPA and DEP for review and comment in accordance with the provisions of this Part:

(1) Post Screening Investigation Work Plan

(2) Results of Treatability Study

(3) Sampling and Data Results

(b) Although the EPA and DEP may comment on the draft reports for the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by paragraph 6.2 hereof. Target dates shall be established for the

completion and transmission of draft secondary reports pursuant to Section XIII, Deadlines, of this Agreement.

6.5 Meetings of the Project Managers on Development of Reports: The Parties' Project Managers shall meet approximately every 45 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 6.3 and 6.4 above, the Parties' Project Managers 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 reports.

6.6 Identification and Determination of Potential ARARs:

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

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

6.7 Review and Comment on Draft Reports:

(a) The Navy shall complete and transmit each draft primary report to EPA and DEP on or before the corresponding deadline established for the issuance of the report. The Navy shall complete and transmit each secondary document in accordance with the target dates established for the issuance of such reports established pursuant to Section XIII, Deadlines, of this Agreement.

(b) Unless the Parties mutually agree to another time period, all draft reports shall be subject to a 45-day period for review and comment. Review of any document by the EPA and DEP

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, applicable state law, and any pertinent guidance or policy issued by the EPA. Comments by the EPA and DEP shall be provided with adequate specificity so that the Navy may respond to the comment 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 Navy, the EPA and DEP shall provide a copy of the cited authority or reference. EPA and DEP may extend the 45-day comment period for an additional 20 days by written notice to the Navy prior to the end of the 45-day period. On or before the close of the comment period, EPA and DEP shall transmit by next day mail or equivalent their parties comments to the Navy.

(c) Representatives of the Parties shall make themselves readily available 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 Navy on the close of the comment period.

(d) In commenting on a draft report which contains a proposed ARAR determination, EPA and DEP shall include a reasoned statement of whether they object to any portion of the proposed ARAR determination. To the extent that EPA and DEP do object, they shall explain the basis for the objection(s) in detail and shall identify any ARARs which they believe were not properly addressed in the proposed ARAR determination.

(e) Following the close of the comment period for a draft report, the Navy shall give full consideration to all written comments on the draft report submitted during the comment period. Within 45 days of the close of the comment period on a draft secondary report, the Navy shall transmit to EPA and DEP its written response to comments received within the comment period. Within 45 days of the close of the comment period on a draft primary report, the Navy shall transmit to EPA and DEP a draft final primary report, which shall include the Navy's response to all written comments, received within the comment period. While the resulting draft final report shall be the responsibility of the Navy, it shall be the product of consensus to the maximum extent possible.

(f) The Navy may extend the 45-day period for either responding to comments on a draft report or for issuing the final draft final primary report for an additional 20 days by providing written notice to EPA and DEP prior to the expiration of the 45-day limit. In appropriate circumstances, this time period may be further extended in accordance with Section XIV, Extensions, hereof.

6.8 Availability of Dispute Resolution for Draft Final Primary Documents:

(a) Dispute resolution shall be available to the Parties for draft final primary reports as set forth in Section XII, Dispute Resolution.

(b) When dispute resolution is invoked on a draft final primary report, work may be stopped in accordance with the procedures set forth in Section XII, Dispute Resolution, regarding dispute resolution.

6.9 Finalization of Reports: The draft final primary report shall serve as the final primary report and be deemed incorporated herein if no party invokes dispute resolution regarding the document or, if invoked, at the completion of the dispute resolution process should the Navy's position be sustained. If the Navy's determination is not sustained in the dispute resolution process, the Navy shall prepare, within not more than 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 Section X[V, Extensions, hereof.

6.10 Subsequent Modifications of Final Reports: Following finalization of any primary report pursuant to paragraph 6.9 above, EPA, DEP, or the Navy may seek to modify the report, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in subparagraphs (a) and (b) below.

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

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

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

VII. PROJECT MANAGERS

7.1 Prior to the effective date of this Agreement, the Navy, DEP and EPA have each designated a Project Manager. The Parties' Project Managers shall be responsible for assuring implementation of the RI/FS and RD/RA in accordance with the terms of this Agreement. Communications between the Navy, DEP and EPA on all documents, including reports, comments, and other correspondence concerning the activities performed pursuant to this Agreement, shall be directed through the Parties' Project Managers.

7.2 The Parties may change their respective Project Managers. Such change shall be accomplished by notifying the other Parties in writing within S days of the change.

7.3 The Parties' Project Managers shall meet informally as necessary. Although the Navy has ultimate responsibility for meeting its respective timetable and deadlines or schedule, the EPA and DEP Project Managers shall endeavor to assist in this effort by scheduling meetings to address documents, reviewing reports, overseeing the performance of environmental monitoring at the Site, reviewing RI/FS or RD/RA progress, attempting to resolve disputes informally.

7.4 Necessary and appropriate adjustments to deadlines or schedules may be proposed by any Party and must be approved orally by all Parties' Project Managers to be effective. Within five (5) working days following a modification, the Party which requested the modification shall prepare a memorandum detailing the modification and the reasons therefore and shall provide a copy of the memorandum to the other Parties for signature and return.

7.5 A Project Manager may also recommend and request minor field modifications to the work performed pursuant to this Agreement, or in techniques, procedures or designs utilized in carrying out this Agreement, which are necessary to the completion of the project. The minor field modifications proposed under this Part must be approved orally by all Project Managers to be effective. No such work modifications can be so implemented if an increase in contract cost will result without the authorization of the Navy Contracting Officer. If agreement cannot be reached on the proposed additional work or modification to work, dispute resolution as set forth in Section XII, Dispute Resolution, shall be used in addition to this Section. Within five (5) business days following a modification made pursuant to this Section, the Party requesting the modification shall prepare a memorandum detailing the modification and the reasons therefore and shall provide or mail a copy of the memorandum to the Project Managers.

7.6 Modifications of work not provided for in paragraph 7.5 of this section, must be approved by all Project Managers. If agreement cannot be reached on the proposed modification to work, dispute resolution as set forth in Section XII, Dispute Resolution, shall be used. Within five (5) business days following a modification made pursuant to this Section, the Party requesting the modification shall prepare a memorandum detailing the modification and the reasons therefore and shall provide or mail a copy of the memorandum to the other Parties.

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

7.8 The Parties shall transmit primary and secondary documents and all notices required herein by next day mail, hand delivery, facsimile or certified letter. Time limitations shall commence upon receipt. The Navy shall provide to EPA and DEP six (6) copies of primary and secondary documents.

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

(a) For the Navy:

James Shafer (CODE 1421)
Northern Division, Naval Facilities Engineering Command, Philadelphia Naval Shipyard
Philadelphia, PA 19112-5094

(b) For the EPA:

Meghan F. Cassidy
Environmental Protection Agency,
Region I JFK Federal Building (HPS-1)
Boston, MA 02203

(c) For the DEP:

Ted Wolfe
Project Manager
Department of Environmental Protection
Station # 17 State House
Augusta, Maine 04333

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

7.11 Project Managers' meetings held pursuant to section 6.5, may be incorporated with Technical Review Committee (TRC) meetings or may be held independently. It shall be the responsibility of the Navy to ensure that the occurrence of such meetings is documented in the Administrative Record.

6155

VIII. ACCESS

8.1 EPA and DEP will be permitted to enter the site at reasonable times previously arranged and coordinated for the purpose of inspecting records, logs, and other documents relevant to implementation of this Agreement; reviewing the progress of the Navy, its contractors, and lessees in carrying out the activities under this Agreement; conducting, with prior notice to the Navy, tests which EPA or DEP deems necessary; and verifying data submitted to EPA and DEP. The Navy shall honor all reasonable requests for access to the site made by EPA or DEP. The Navy shall provide an escort to EPA and DEP. EPA and DEP access shall be subject to requirements which are necessary to protect national security, mission essential activities and health and safety requirements.

8.2 Upon denying any aspect of access, the Navy shall provide an explanation within 72 hours of the reason for the denial and, to the extent possible, provide a recommendation for accommodating the requested access in an alternatemanner.

8.3 The Parties agree that this Agreement is subject to CERCLA Section 120(j), 42 U.S.C. Section 9620(j), regarding the issuance of Site Specific Presidential Orders as may be necessary to protect the national security.

8.4 If EPA or DEP obtain any samples, before leaving the site, it shall give the Navy's Project Manager, or his or her designated representative, a receipt describing the sample obtained, and, if requested, a portion of each such sample. A copy of the results of any analysis made of such samples shall be provided to all parties.

8.5 To the extent that access is required to areas presently owned by or leased to parties other than the Navy, including other branches of the Department of Defense, the Navy agrees to exercise its best efforts and authorities to obtain access pursuant to Section 104(e) of CERCLA from the present owners and/or lessees within 60 calendar days after identification of the need for such access when necessary. The Navy shall use its best efforts to obtain access agreements which shall provide reasonable access to EPA and DEP and/or their authorized representatives. "Best efforts" for the purposes of this paragraph shall include, without limitation, identifying and locating the owner(s) and lessees of areas, offering consideration to the owner(s) and/or lessees for access to areas, making attempts to obtain access agreements from the owner(s) and/or lessees of all areas onto which access is needed under this Agreement.

6155

8.6 In the event that site access is not obtained within the 60 day time period set forth above, within 15 days after the expiration of the 60 day period the Navy shall notify the EPA and DEP regarding the lack of and efforts to obtain such access agreements. Within 15 days of such notice, the Navy shall submit appropriate modifications in response to inability to obtain access.

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

8.8 The Navy shall provide the EPA and DEP with at least thirty (30) days prior notice of any conveyance of title to or any transfer of an interest in real property which may affect this Agreement or any activities to be taken pursuant to it. The Navy shall ensure that all activities or remedial measures to be undertaken pursuant to this Agreement will not be impeded or impaired by any transfer of title or any transfer of any other interest in real property relating to NAS Brunswick or any structures located thereon.

IX. DATA AND DOCUMENT AVAILABILITY

9.1 The Navy shall make all sampling results, test results or other data generated through the implementation of this Agreement available to EPA and DEP. If data validation is not completed within 60 days after the last sample is taken in the field, the Navy shall request raw data or results and shall forward such data or results to EPA and DEP within five (5) working days after receipt by the Navy Project Manager. EPA and DEP will similarly make available to the Navy the results of sampling, tests or other data generated by EPA or DEP.

9.2 At the request of EPA or DEP, the Navy shall allow, to extent practicable, split or duplicate samples to be taken by EPA or DEP or their authorized representatives of any samples collected by the Navy pursuant to the implementation of this Agreement. The Navy shall notify EPA and DEP not less than 14 days in advance of any scheduled sample collection activity.

9.3 At the request of the Navy, EPA and DEP shall allow, to the extent practicable, split or duplicate samples to be taken by the Navy or their authorized representatives, of any samples collected by the EPA or DEP pursuant to the implementation of this Agreement. The EPA and DEP shall notify the Navy not less than 14 days in advance of any scheduled sample collection activity.

X. PERMITS

10.1 The Navy shall be responsible for obtaining all Federal, State and local permits which are necessary for the performance of all work under this Agreement.

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

10.3 When the Navy proposes a response action to be conducted entirely on NAS Brunswick, which in the absence of Section 121(e) (1) of CERCLA and the NCP would require a Federal or State permit, and for which the Navy does not seek a permit, the Navy shall include in the Submittal to the EPA and DEP:

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

(b) Identification of the standards, requirements, criteria, or limitations which would have had to have been met to obtain each such permit;

(c) Explanation of how the response action proposed will meet the standards, requirements, criteria or limitations identified in (b) immediately above.

Upon request of the Navy, EPA and DEP will provide their positions with respect to (b) and (c) above in a timely manner.

10.4 Section 10.2 above is not intended to relieve the Navy from the requirement(s) of obtaining a permit whenever it proposes a response action involving the shipment or movement of a hazardous substance or hazardous waste off NAS Brunswick.

10.5 The Navy shall notify EPA and DEP in writing of any permits required for any activities it plans to undertake outside NAS Brunswick as soon as it becomes aware of the requirement. The Navy shall apply for all such permits and provide EPA and DEP with copies of all such permits.

10.6 During any appeal by any Party of any permit required to implement this Agreement or during review of any proposed modification(s), the Navy shall continue to implement those portions of this Agreement which can be reasonably implemented

independent of final resolution of the permit issue(s) under appeal. However, as to work that cannot be so implemented, any corresponding timetable, deadlines, and schedule will be subject to Part XIV, Extensions, of this Agreement.

XI. REMOVAL AND EMERGENCY ACTIONS

11.1 Any removal action conducted on the Site shall be conducted in a manner consistent with this Agreement, CERCLA, and the NCP.

11.2 The Navy shall provide EPA and DEP with timely notice of any proposed removal action.

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

11.4 If during the course of performing the activities required under this Agreement, the Navy identifies an actual or a substantial threat of a release of any hazardous substance from the site, the Navy may propose that it undertake actions to abate the danger and threat which may be posed by such actual or threatened release. All removal actions conducted on NAS Brunswick shall be conducted in a manner consistent with this Agreement, CERCLA, and the NCP and shall, to the extent practicable, contribute to the efficient performance of any long term remedial action with respect to the release(s) or threatened release(s) concerned. Actions may include, but are not limited to, a removal or treatment or both. Such a proposal to undertake such actions by the Navy shall be submitted to EPA and DEP and shall include:

a. documentation of the actual or threatened release from the site;

b. documentation that the actions posed will abate the danger and threat which may be posed by release of hazardous substances from the Site;

c. documentation that the action is consistent with the NCP and, to the extent practicable, contribute to the efficient performance of any long-term remedial action with respect to the release or threatened release concerned;

d. A screening and evaluation of several action alternatives which address the actual or threatened release from the site, which screening shall be based on cost, feasibility, and effectiveness of the alternative actions; and;

e. A work plan and schedule for the proposed action.

11.5 The opportunity for review and comment for proposed removal actions, as stated in Section 11.4 above, may not apply if the action is in the nature of an emergency removal taken because of an immediate, imminent and substantial endangerment to human health or the environment. The Navy may determine that

review and comment, as stated in Section 11.4 above, is impractical. However, in the case of an emergency removal action, the Navy shall provide EPA and DEP with oral notice as soon as possible and written notice within 48 hours after the Navy determines that an emergency removal is necessary. Within 7 days after initiating an emergency removal action, the Navy shall provide the EPA and DEP with the written basis (factual, technical and scientific) for such action and any available documents supporting such action. Upon completion of an emergency removal action, the Navy shall state whether, and to what extent, the emergency removal action varied from the description of the action in the written notice provided pursuant to this Section. Such actions may be conducted at any time, either before or after the issuance of a ROD.

11.6 If an imminent health hazard (e.g. a drinking water well containing any contaminant at concentrations greater than any Federal or State drinking water action level) or an activity conducted pursuant to this Agreement which is creating a danger to the public health or welfare or the environment is discovered by any Party during the efforts covered by this Agreement, the discovering Party will notify the Navy and the Navy will take immediate action to notify all parties, potentially affected persons and officials. The Navy will expeditiously take appropriate measures to protect all persons affected.

11.7 All activities pursuant to this Agreement will be conducted under the Health and Safety Plan and will be conducted so as to minimize the threat to the surrounding public.

XII. DISPUTE RESOLUTION

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

12.2 Within 30 days after: (1) the issuance of a draft final primary document pursuant to Section VI, Consultation with EPA and DEP, 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.

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

12.4 The DRC will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (Senior Executive Service (SES) or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The EPA representative on the DRC is the Waste Management Division Director of EPA's Region I (EPA Division Director). The Navy's designated member is the Commanding Officer, Northern Division, Naval Facilities Engineering Command. The DEP's designated member is the Director, Bureau of Oil and Hazardous Materials Control, DEP. Written notice of any delegation of authority from the Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Section VII, Project Managers.

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

12.6 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's Region 1. The Navy's representative on the SEC is the Deputy Director for Environment, Office of the Assistant Secretary of the Navy (Installations and Environment) The DEP's representative is the Commissioner of the DEP. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision signed by the Parties. If unanimous resolution of the dispute is not reached within 21 days, EPA's Regional Administrator shall issue a written position on the dispute. The Navy or DEP may, within twenty-one (21) days of the Regional Administrator's issuance of EPA's position, issue a written notice elevating the dispute to the Administrator of U.S. EPA for resolution in accordance with all applicable laws and procedures. In the event that the Navy or DEP elects not to elevate the dispute to the Administrator within the designated twenty-one (21) day escalation period, the Navy or DEP shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.

12.7 Upon escalation of a dispute to the Administrator of EPA pursuant to paragraph 12.6 above, the Administrator will review and resolve the dispute within 21 days. Upon request, and prior to resolving the dispute, the EPA Administrator shall meet and confer with the Navy's Secretariat Representative and the DEP Commissioner's representative to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the other parties with a written final decision setting forth resolution of the dispute and a statement of the information upon which the decision is based. The duties of the Administrator set forth in this section shall not be delegated.

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

12.9 When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the EPA Division Director requests, in writing, that work related to the dispute be stopped because, in EPA's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. DEP may request the EPA

Division Director to order work stopped for the reasons set forth above. To the extent possible, the Party seeking a work stoppage shall consult with the other Parties prior to initiating a work stoppage request. After stoppage of work, if any Party believes that the work stoppage is inappropriate or may have potential significant adverse impacts, the Parties may meet with the EPA Division Director to discuss the work stoppage. Following this meeting, and further consideration of the issues, the EPA Division Director will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the EPA Division Director may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the Navy or DEP.

12.10 Within 21 days of resolution of a dispute pursuant to the procedures specified in this part, the Navy shall incorporate the resolution and final determination into the appropriate plan, schedule or procedures and proceed to implement this Agreement according to the amended plan, schedule or procedures.

12.11 Resolution of a dispute pursuant to this section of the Agreement constitutes a final resolution to any dispute arising under this Agreement. The parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Section of this Agreement.

12.12 Notwithstanding any other provision of this Agreement, the DEP reserves its right to maintain an action under Section 121(f)(3)(B) of CERCLA, 42 U.S.C. Section 9621(f)(3)(B), to challenge the selection of a remedial action that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation.

XIII. DEADLINES

13.1 A timetable and deadlines for the following primary documents have been established by the Parties and published:

(a) Preliminary Risk Assessment

(b) Preliminary Analysis of Alternatives

(c) Draft Initial Screening Report

(d) Draft RI Report

(e) Draft FS Report

(f) Draft RI/FS Report

13.2 The Parties have established target dates for the following secondary documents:

(a) Post Screening Investigation Work Plan

(b) Result of Treatability Study

(c) Sampling and Data Results

A copy of the agreed upon timetable and deadlines, and target dates is appended hereto as Appendix 1.

13.3 Within 60 days of the submission of the draft FS Report, the Navy will propose deadlines for the following primary documents:

(a) Proposed Plan

The deadlines will be proposed, finalized and published in accordance with paragraph 13.5.

13.4 Within 21 days of issuance of the Record of Decision, the Navy shall propose deadlines for completion of the following draft primary documents:

(a) Remedial Design

(b) Remedial Action Plan

The deadlines will be proposed, finalized and published in accordance with paragraph 13.5.

13.5 Within 15 days of receipt, EPA and DEP shall review and provide comments to the Navy regarding the proposed deadlines. Within 15 days following receipt of the comments, the Navy shall, as appropriate, make revisions and reissue the proposal. The Parties shall meet as necessary to discuss and finalize the proposed deadlines. If the Parties agree on proposed deadlines, the finalized deadlines shall be incorporated into the appropriate Work Plans. If the Parties fail to agree within 30 days on the proposed deadlines, the matter shall immediately be submitted for dispute resolution pursuant to Section XII, Dispute Resolution, of this Agreement. The final deadlines established pursuant to this paragraph shall be published by EPA.

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

XIV. EXTENSIONS

14.1 Either a timetable and deadlines 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 Navy shall be submitted in writing and shall specify:

(a) The time table and deadlines or the schedule that is sought to be extended;

(b) The length of the extension sought;

(c) The good cause(s) for the extension; and

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

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

(a) an event of force majeure;

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

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

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

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

14.3 Absent agreement of cause pursuant to Section determination through the the Parties with respect to the existence of good 14.2 above, the Navy may seek and obtain dispute resolution process that good cause exists.

14.4 Within seven days of receipt of the written request for an extension of a timetable and deadlines or a schedule, EPA and DEP shall advise the Navy in writing of their position(s) on the request. Any failure by EPA or DEP to respond within the seven-day period shall be deemed to constitute its concurrence in the request for extension. If EPA or DEP does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

14.5 If there is a consensus among the Parties that the requested extension is warranted, the Navy shall extend the affected timetable and deadlines 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 deadlines or schedule shall not be extended except in accordance with a determination resulting from the dispute resolution process.

14.6 Within seven days of receipt of a statement of nonconcurrence with the requested extension, the Navy may invoke dispute resolution.

14.7 A timely and good faith request for an extension shall toll any assessment of stipulated penalties or application for judicial enforcement of the affected timetable and deadlines 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, deadlines 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 deadlines or schedule as most recently extended.

6155

XV. FORCE MAJEURE

15.1 A Force Majeure shall mean any event arising from causes beyond the control of the Navy 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 Navy; 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 Navy shall have made a timely request for such funds as a part of the budgetary process as set forth in Section XXV, Funding, of this Agreement. A Force Majeure shall also include any strike or other labor dispute, whether or not within control of the Parties affected thereby. Force Majeure shall not solely include increased costs or expenses of Response Actions, whether or not anticipated at the time such Response Actions were initiated.

XVI. RECORDS OF DECISION AND PLANS FOR REMEDIAL ACTION

16.1 This section shall apply to selection of remedial actions and any disputes relating thereto.

16.2 For each operable unit(s) or the entire Site, the Navy shall submit the final draft RI/FS to EPA and DEP for review within the time frame detailed in Appendix A. This document shall contain a statement of the preferred remedial alternative(s). EPA and DEP comments shall be addressed by the Navy when preparing the final RI/FS report and drafting the Proposed Plan. The final RI/FS and Proposed Plan shall be distributed to the public and the Navy will hold a public information meeting to discuss the preferred alternative for each operable unit. A public comment period will be announced, and a public hearing will be held by the Navy to receive comments on the RI/FS and Proposed Plan for each operable unit. Copies of all written and oral public comments received will be provided to the Parties. Following public comment, any Party may request modification of the RI/FS or the Proposed Plan based on the public comments received. Any Party which disagrees with the requested modification may initiate Dispute Resolution pursuant to Section XII.

16.3 Within 45 days of the close of the public comment period, the Navy will draft and submit to EPA and DEP a draft Record of Decision for each operable unit. The draft Record of Decision will include a Responsiveness Summary, in accordance with applicable EPA guidance. The Parties shall have 30 days to concur in the Navy's draft Record of Decision. If the Parties agree on the draft Record of Decision, it shall be adopted and the Navy shall issue the final Record of Decision. If the Parties are unable to reach agreement on the draft Record of Decision, selection of a remedial action shall be made by the EPA Administrator and EPA shall then prepare and issue the final Record of Decision. The final Record of Decision shall be published in accordance with Section 117 of CERCLA, 42 U.S.C. Section 9617.

16.4 Upon issuance of the ROD for the final remedial action(s) by EPA, the RI/FS will be deemed completed.

16.5 The selection of remedial action(s) by the EPA Administrator shall be final and not subject to dispute by the Navy. If a Record of Decision prepared by the EPA departs significantly from the Proposed Plan which was subject to public comment, then EPA shall subject the new Proposed Plan to public comment.

16.6 Within 21 days of issuance of a Record of Decision for any operable unit, the Navy shall submit a plan to EPA and DEP

for the implementation of the selected remedial action, including appropriate timetables and schedules. This Remedial Action Plan (RAP) shall include a Remedial Design Workplan, a Remedial Design due date, and an Operation and Maintenance Plan. EPA and DEP shall review this Remedial Action Plan, timetables and schedules. EPA and DEP shall notify the Navy in writing whether the RAP, timetables and schedules are acceptable and shall provide any comments. If the RAP timetables and schedules are acceptable, they shall be published in accordance with the Community Relations Plan and shall be considered to be incorporated into this Agreement and shall become an enforceable part thereof without any further action. If the RAP is not acceptable, the Navy shall make the changes required and resubmit the RAP, timetables, and schedules within 30 days of notification that it is not acceptable.

16.7 The Remedial Design and Remedial Action Plan are primary documents subject to the review and comment process in Section VI, Consultation With EPA And DEP. The Remedial Action Plan shall at a minimum contain: (a) a project schedule for construction and implementation of the remedial action, (b) an operation and maintenance plan which shall cover both implementation and longterm maintenance of the remedial action, (c) a construction quality assurance plan which shall ensure that a completed remedial action meets or exceeds all design criteria, plans and specifications, (d) a sampling and analysis plan, (e) a waste management plan, and, (f) a contingency plan for a response to systems malfunctions. The Navy shall implement the Remedial Action Plan immediately upon approval by EPA and DEP in accordance with the requirements, schedules, timetables, and deadlines as set forth in the RAP, this Agreement and CERCLA.

16.8 Upon approval by EPA, all terms, conditions, timetables, deadlines, schedules, proposed work, and Records of Decision relating to any interim or final remedial actions that are required by this Section shall be incorporated into this Agreement and become an enforceable part thereof.

XVII. EXEMPTIONS

17.1 The obligation of the Navy to comply with the provisions of this Agreement may be relieved by a Presidential order or exemption issued pursuant to the provisions of CERCLA Section 120(j)(1), 42 U.S.C. Section 9620(j)(1), or RCRA Section 6001, 42 U.S.C. Section 6961.

XVIII. EPA CERTIFICATION

18.1 When the Navy determines that any final remedial action, including any groundwater remediation, has been completed in accordance with the requirements of this Agreement, it shall so advise EPA and DEP in writing, and shall request from EPA certification that the remedial action(s) have been completed in accordance with the requirements of this Agreement. Within 90 days of the receipt of the request for EPA certification, EPA shall advise the Navy and the DEP in writing that:

(a) EPA certifies that the remedial action has been completed in accordance with this Agreement, based on conditions known at the time of certification; or

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

18.2 If EPA denies the Navy's request for certification that a remedial action has been completed in accordance with this Agreement, the Navy may invoke dispute resolution to review EPA's determination. If EPA's denial of certification is upheld in dispute resolution, EPA shall describe the additional work needed to bring the remedial action into compliance with the requirements of this Agreement. After performing such additional work, the Navy shall resubmit a request for certification to EPA. EPA shall then grant or deny certification pursuant to the process set forth in this paragraph and the previous paragraph.

XIX. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

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

19.2 Based upon the foregoing, the Parties intend that any remedial action selected, implemented and completed under this Agreement will be protective of human health and the environment such that remediation of releases covered by this Agreement shall obviate the need for further corrective action under RCRA (i"e., no further corrective action shall be required). The Parties agree that, with respect to releases of hazardous waste covered by this Agreement that are associated with the NPL portions of the site, RCRA shall be considered an applicable or relevant and appropriate requirement pursuant to CERCLA Section 121.

19.3 The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties further recognize that ongoing hazardous waste management activities at NAS Brunswick 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 NAS Brunswick for on-going hazardous waste management activities at the Site, EPA and DEP shall reference and incorporate any appropriate provisions, including appropriate schedules (and the provision for extension of such schedules), of this Agreement into such permit. With respect to those portions of this Agreement incorporated by reference into permits, the Parties intend that judicial review of the incorporated portions shall, to the extent authorized by law, only be reviewed under the provisions of CERCLA.

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

XX. ENFORCEABILITY

20.1 The Parties agree that:

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

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

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

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

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

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

20.4 The parties agree that the State of Maine is a person for purposes of this Section.

6155

XXI. STIPULATED PENALTIES

21.1 In the event that the Navy fails to submit a primary document set forth in this Agreement to EPA pursuant to 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 and the DEP may demand an assessment of a stipulated penalty against the Navy. In the event that EPA does not assess a stipulated penalty following a DEP demand, the matter may be referred to dispute resolution in accordance with Section XII of this Agreement. 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.

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

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

(a) The facility responsible for the failure;

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

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

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

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

21.4 Stipulated penalties assessed pursuant to this Section shall be payable only in the manner and to the extent expressly provided for in Acts authorizing funds for, and appropriations to, the DOD. EPA and DEP agree to share equally any stipulated penalties paid by the Navy unless prohibited by law to do so.

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

21.6 This section shall not affect the Navy's ability to obtain an extension of a timetable, deadline or schedule pursuant to Section XIV, Extensions, of this Agreement.

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

XXII. OTHER CLAIMS

22.1 Subject to Section XIX, Statutory Compliance, nothing in this Agreement shall restrict the Parties from taking any action under CERCLA, RCRA, state law, or other environmental statutes for any matter not specifically part of the work performed under CERCLA, which is the subject matter of this Agreement.

22.2 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 to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants or contaminants found at, taken to, or taken from NAS Brunswick.

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

XXIII. COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

23.1 In consideration for the Navy's compliance with this Agreement, and based on the information known to the Parties on the effective date of this Agreement, the Parties agree that compliance with this Agreement shall stand in lieu of any administrative, legal and equitable remedies against the Navy available to them regarding the currently known releases or threatened releases of hazardous substances including hazardous wastes, pollutants or contaminants at the Site which are within the scope of this Agreement, which are the subject of the RI/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; except that nothing in this Agreement shall preclude EPA or DEP from exercising any administrative, legal or equitable remedies available to them to require additional response actions by the Navy in the event that:

(1) (a) conditions previously unknown or undetected by EPA or DEP arise-or are discovered at the Site, or

(b) EPA or DEP receives additional information not previously available concerning the premises which they employed in reaching this Agreement;

(2) the implementation of the requirements of this Agreement are no longer protective of public health and the environment.

23.2 This covenant not to sue does not affect any claims, including claims by the State, for natural resources damage assessments or for damage to natural resources.

23.3 Nothing in this Agreement shall restrict the Parties from taking any action under CERCLA, RCRA, State law, or other environmental statutes for any conditions or violations which are not within the scope of the Agreement, which are not the subject of the RI/FS(s) to be conducted pursuant to this Agreement and which will not be adequately addressed by the remedial action(s) provided for under this Agreement.

23.4 Notwithstanding this Section, or any other Section of this Agreement, the State shall retain any statutory right it may have to obtain judicial review of any final decision of EPA on selection of remedial action(s) including, without limitation, any authority the State may have under CERCLA Sections 113, 121(e)(2), 121(f), and 310, 42 U.S.C. Sections 9613, 9621(e)(2), 9621(f), and 9659, except that the State expressly agrees to exhaust any applicable remedies provided in Section VI, Consultation With EPA And DEP, and Section XII, Dispute Resolution, of this Agreement prior to exercising any such rights.

23.5 Notwithstanding any other provision of this Agreement, in the event that the Navy is granted an extension under Section XIV, Extensions, of this Agreement based upon insufficient availability of funds or in the event the Navy's work obligations under this Agreement are not fulfilled for six (6) consecutive months due to insufficient availability of funds, whichever occurs first, the State may terminate all provisions of the Agreement affecting the State's rights and responsibilities upon providing ten (10) days notice of its intent to terminate to the other Parties.

6155

XXIV. TERMINATION AND SATISFACTION

24.1 The provisions of this Agreement shall be deemed satisfied upon a consensus of the Parties that the Navy has completed its obligations under the terms of this Agreement. Following EPA Certification of the remedial actions at the Site pursuant to paragraphs 18.1 and 18.2 of Section XVIII, EPA Certification, any Party may propose in writing the termination of this Agreement upon a showing that the objectives of this Agreement have been satisfied. A Party opposing termination of this Agreement shall serve its objections upon the other Parties within 30 days of receipt of the proposal. Upon termination of this Agreement, the Party which proposed the termination shall place a public notice stating such in a newspaper of local circulation.

XXV. FUNDING

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

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

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

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

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

XXVI. COMMUNITY RELATIONS

26.1 The Navy has developed and is in the process of implementing a Community Relations Plan in accordance with EPA guidance. This plan responds to the need for an interactive relationship with all interested community elements, both on NAS Brunswick and off, regarding environmental activities conducted pursuant to this Agreement by the Navy.

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

26.3 The Parties agree to comply with all relevant EPA policy and guidance on community relations programs and public participation requirements which are in accordance with CERCLA and consistent with the NCP and other applicable, relevant and appropriate requirements, laws and regulations.

26.4 Community relations activities will be conducted by the Navy for the selection of remedies for the sites as outlined in Section XVI, Records of Decision and Plans for Remedial Action, of this Agreement.

26.5 The Parties agree that work conducted under this agreement and any subsequent proposed remedial action alternatives and subsequent plans for remedial action at the site arising out of this agreement shall comply with public participation requirements of CERCLA, including section 117, all applicable guidance developed and provided by EPA, and all applicable state laws. This shall be achieved through implementation of the Community Relations Plan.

26.6 The Navy agrees it shall establish and maintain an Administrative Record at or near NAS Brunswick available to the public, and another copy at a central location, in accordance with CERCLA Section 113(k), 42 U.S.C. Section 9613. The Administrative Record developed by the Navy shall be periodically updated and a copy of the index will be provided to EPA and DEP.

26.7 Any extension or modification (including any adjustments to a deadline or schedule) which affects the delivery of a primary document shall be published by the EPA in accordance with the Community Relations Plan.

XXVII. PUBLIC COMMENT ON THIS AGREEMENT

27.1 Within 15 days after the date the Regional Administrator of U.S. EPA executes this Agreement, EPA shall announce the availability of this Agreement to the public for their review and comment. EPA shall accept comments from the public for 45 days after such announcement. After the 45 day public comment period expires, the Parties shall review all such comments. Within 30 days after the expiration of the public comment period the Parties shall decide that either:

(a) the Agreement shall be made effective without any modifications; or

(b) the Agreement shall be modified prior to being made effective.

27.2 If the Parties agree that the Agreement shall be made effective without any modifications, EPA shall transmit a copy of the signed Agreement to the Navy and DEP shall notify them in writing that the Agreement is effective. The effective date of the Agreement shall be the date of that letter from EPA to the Navy and DEP.

27.3 If the Parties agree that modifications are needed and agree upon the modifications and amend the Agreement by mutual consent within 60 days after the expiration of the public comment period, EPA will determine whether the modified Agreement requires additional public notice and comment pursuant to any provision of CERCLA. If EPA determines that no additional notice and comment are required, EPA shall transmit a copy of the modified Agreement to the Navy and DEP and shall notify them in writing that the modified Agreement is effective. If the Parties amend the Agreement within the 60 day period and if EPA concludes that such modifications require that the public receive additional opportunity for notice and comment, such additional notice and comment shall be provided consistent with the provisions stated in Section 27.1 above. If the Parties agree, after such additional notice and comment has been provided, that the Agreement does not require any further modification, EPA shall send a copy of the mutually agreed upon Agreement to the Navy and DEP and shall notify them that the Agreement is effective. The effective date of the Agreement shall be the date of that letter from EPA to the Navy and DEP.

27.4 If, within 30 days after the expiration of the 45 day comment period, the Parties have not reached agreement on either:

(a) whether modifications to the Agreement are needed; or

(b) what modifications to the Agreement should be made;

the matters which are in dispute shall be resolved by the dispute resolution procedures of Section XII, Dispute Resolution, above. For the purposes of this Section, the Agreement shall not be effective while the dispute resolution proceedings are underway. After these proceedings are completed, Administrative Notice shall be provided to the Parties indicating the results of the dispute resolution proceedings. The Navy, DEP, and EPA reserve the right to withdraw from the Agreement by providing written notice to the other Parties within 20 days after receiving the Administrative Notice of the resolution of the matters in dispute. Failure by a Party to provide such a written notice of withdrawal within this 20 day period shall act as a waiver of the right of that Party to withdraw from the Agreement. If no Party withdraws from the Agreement within this 20 day period, EPA shall thereafter send a copy of the final Agreement to the Navy and DEP and shall notify them that the Agreement is effective. The effective date of the Agreement shall be the date on that letter from EPA to the Navy and DEP.

XXVIII. PRESERVATION OF RECORDS

28.1 Despite any document retention policy to the contrary, the Parties shall preserve, during the pendency of this Agreement and for a minimum of seven years after its termination, all records and documents in their possession which relate to the actions carried out pursuant to this Agreement. After this seven-year period, each Party shall notify the other Parties at least 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 such records, unless withholding is authorized and determined appropriate by law.

28.2 All such records and documents shall be preserved for a period of seven years following the termination of any judicial action regarding the work performed under CERCLA, which is the subject of this agreement.

XXIX. AMENDMENT OR MODIFICATION OF AGREEMENT

29.1 Except as provided in Section VII, Project Managers, paragraph 7.4, adjustments to deadlines and schedules, and paragraph 7.5, regarding minor field modifications, this Agreement can be amended or modified solely upon written consent of the Parties. Such amendments or modifications shall have as the effective date that date on which they are signed by all Parties and notice thereof is provided to each signatory pursuant to Section VII.

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

29.3 The EPA will determine whether the proposed modification or amendment to the Agreement should be subject to public comment pursuant to any provisions of CERCLA. If EPA determines that no public comment period is warranted, the effective date of the amendment or modification shall be as outlined in Paragraph 29.1 above. If EPA concludes that the public should receive the opportunity for comment, such notice and comment shall be provided consistent with the provisions stated in Section XXVII of this Agreement.

XXX. EFFECTIVE DATE

30.1 This Agreement shall become effective in accordance with section XXVII, Public Comment On This Agreement.

30.2 Upon its effective date, this Agreement supersedes the previous two-party Agreement for NAS Brunswick between EPA and the Navy.

XXXI. QUARTERLY PROGRESS REPORTS

31.1 The Navy shall provide quarterly written progress reports to EPA and DEP unless otherwise agreed by the Parties. At a minimum these progress reports shall:

(a) Describe actions taken pursuant to this Agreement;

(b) Include all results of sampling, tests, and all other data (or a summary thereof) received or generated and verified by the Navy during the reporting period;

(c) Include all activities completed pursuant to this Agreement during the past quarter as well as such actions and plans which are scheduled for the next quarter; and

(d) Describe any delays, the reasons for such delays, anticipated delays, concerns over possible schedule implementation or problems that arise in execution of the workplan during the quarter and any steps that were taken to alleviate the delays or problems.

31.2 Each previous quarter's report shall be submitted to EPA and DEP by the 10th day of each month following the last day of each quarter (i.e, January 20, April 20, July 20, October 20).

XXXII. FIVE YEAR REVIEW

32.1 Consistent with 42 U.S.C. Section 9621(c) and in accordance with this Agreement, if the selected remedial action results in any hazardous substance, pollutants or contaminants remaining at the site, the Parties shall review the remedial action program at least every five (5) years after the initiation of the final remedial action to assure that human health and the environment are being protected by the remedial action being implemented.

32.2 If upon such review it is the conclusion of any Party that additional action or modification of remedial action is appropriate at the site in accordance with 42 U.S.C. Sections 9604 or 9606, the Navy shall implement such additional or modified action as agreed upon by all Parties.

32.3 Any dispute among the Parties regarding need for or the scope of additional action or modification to a remedial action shall be resolved under Section XII, Dispute Resolution, of this Agreement.

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

XXXIII. RESERVATION OF RIGHTS FOR RECOVERY OF EXPENSES

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

XXXIV. RECOVERY OF STATE OVERSIGHT COSTS

34.1 The Navy agrees to request funding and reimburse the State, subject to the conditions and limitations set forth in this Section, and subject to Section XXV, Funding, for all reasonable costs it incurs in providing services in direct support of the Navy's environmental restoration activities pursuant to this Agreement at the Site.

34.2 Reimbursable expenses shall consist only of actual expenditures required to be made and actually made by the State in providing the following assistance to the Navy regarding NAS Brunswick.

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

(b) Identification and explanation of State requirements in performing response actions, especially State applicable or relevant and appropriate requirements (ARARs).

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

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

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

(f) Other services specified in this Agreement.

34.3 Within ninety (90) days after the end of each quarter of the Federal fiscal year, the State shall submit to the Navy an accounting of all State costs actually incurred during that quarter in providing direct support services under this Section. Such accounting shall be accompanied by cost summaries and be supported by documentation which meets federal auditing requirements. The summaries will set forth employee-hours and other expenses by major type of support service. All costs submitted must be for work directly related to implementation of the Agreement and not inconsistent with either the National

Contingency Plan (NCP) or the requirements described in OMB Circulars A-87 (Cost Principles for State and Local Governments), A-128 (Audits for State and Local Cooperative Agreements with State and Local Governments), and Standard Forms 424 and 270. The Navy has the right to audit cost reports used by the State to develop cost summaries. Before the beginning of each fiscal year, the State shall supply a budget estimate of what it plans to do in the next year in the same level of detail as the billing documents.

34.4 Except as allowed pursuant to Subsections 34.6 & 34.9 below, within ninety (90) days of receipt of the accounting provided pursuant to Subsection 34.3 above,the Navy shall reimburse the State in the amount set forth in the accounting.

34.5 In the event the Navy disputes any of the costs set forth in the accounting provided pursuant to Subsection 34.3, such disputes shall be resolved through a bilateral dispute resolution process set forth at Subsection 34.9 below.

34.6 The Navy shall not be responsible for reimbursing the State for any costs actually incurred in the implementation of this Agreement in excess of one percent (1%) of the Navy total lifetime project costs incurred through construction of the remedial action(s). This total reimbursement limit is currently estimated to be a sum of $168,000.00 over the life of the Agreement. Circumstances could arise whereby fluctuations in the Navy estimates or actual final costs through the construction of the final remedial action creates a situation where the State receives reimbursement in excess of one percent of these costs. Under these circumstances, the State remains entitled to payment for services rendered prior to the completion of a new estimate if the services are within the ceiling applicable under the previous estimate.

(a) Funding of support services must be constrained so as to avoid necessary diversion of the limited Defense Environmental Restoration account funds available for the overall cleanup, and

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

34.7 Either the Navy or the State may request, on the basis of significant upward or downward revisions in the Navy's estimate of its total lifetime costs through construction used in Section 34.6 above, a renegotiation of the cap. Failing an agreement, either the Navy or the State may initiate dispute resolution in accordance with Section 34.9 below.

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

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

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

(b) If the Navy and State Project Managers are unable to resolve a dispute, the matter shall be referred to the Commanding Officer, Northern Division, Naval Facilities Engineering Command (CONORTHDIV) or his designated representative, and the Director, Bureau of Oil and Hazardous Materials Control, DEP, as soon as practicable, but in any event within (5) working days after the dispute is elevated by the Project Managers.

(c) If the CONORTHDIV and the Bureau Director are unable to resolve the dispute within ten (10) working days, the matter shall be elevated to the Commissioner, DEP, and the Assistant Secretary of the Navy for Installations and Environment.

(d) In the event the Commissioner and the Assistant Secretary of the Navy (Installations and Environment) are unable resolve a dispute, the State retains any legal and equitable remedies it may have to recover its expenses, and in addition, the State may withdraw from this Agreement by giving sixty (60) days notice to the other Parties.

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

(a) Identification, investigation, and cleanup of any contamination beyond the boundaries of NAS Brunswick;

(b) Laboratory analysis; or

(c) Data collection for field studies.

34.11 Nothing in this Agreement shall be construed to constitute a waiver of any claims by the State for any expenses incurred prior to the effective date of this Agreement.

34.12 The Navy and the State agree that the terms and conditions of this Section shall become null and void if the State enters into a Defense/State Memorandum of Agreement (DSMOA) with the Department of Defense (DOD) which addresses State reimbursement.

6155

APPENDIX A

REMEDIAL INVESTIGATION/FEASIBILITY STUDY SCHEDULE FOR BRUNSWICK NAVAL AIR STATION SUPERFUND SITE

AGENCY

This notice is published by the United States Environmental Protection Agency (EPA) Region 1, the Maine Department of Environmental Protection (DEP) and the United States Department of the Navy (Navy).

SUMMARY

This notice provides an update on the timetable and deadlines for the completion of a Remedial Investigation and Feasibility Study (RI/FS) at the Naval Air Station Brunswick hazardous waste site in Brunswick, Maine. The schedule provided in this notice shall supercede the schedule previously published on February 24, 1988. This site is included on the Superfund National Priorities List (NPL) and is owned and operated by the federal government. If violated, the timetables and deadlines contained in this publication may be enforced by any person in a civil action.

BACKGROUND

Section 105(a) of the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) 42 u.s.c. Section 9601 et seq. (hereinafter referred to as CERCLA) creates a National Priorities List (NPL) of sites with known releases or threatened releases of hazardous substances. The statute imposes various requirements for the remediation of NPL sites. The first step in the remedial process is a comprehensive study of the site designed to determine the nature and extent of the contamination and to evaluate remedial options. This study is known as a Remedial Investigation/Feasibility Study (RI/FS).

On August 21, 1987, 22 sites, including Naval Air Station Brunswick, which are owned or operated by the federal government were placed on the NPL. EPA and the State must publish timetables and deadlines for expeditious completion of the RI/FS at these sites as required by Section 120 of CERCLA. The timetables and deadlines published by EPA are "requirements which have become effective pursuant to this Act" and are therefore enforceable by any person in a civil action (CERCLA Section 310, 42 U.S.C. Section 9659).

EPA will conduct reviews to determine whether an activity or element of work meets all appropriate procedural and substantive

objectives, standards and requirements set for and promulgated in CERCLA, the National Contingency Plan (NCP), EPA guidelines, regulations, rules, criteria, national Superfund policy and Superfund practices in effect at the time of performance of the activity or element of work.

SITE HISTORY

The Brunswick Naval Air Station is located south of the Androscoggin River between the towns of Brunswick and Bath on the central Maine coastline. Of the 3,092 acre Naval Air Station, approximately 12 sites totalling at least 15 acres have been identified as being used in the past for disposal of hazardous wastes. Among the identified sites three were used primarily for the landfilling of the station's household, office and other wastes. Other sites were used for disposal of acid, caustic and building materials, including asbestos. Pesticides, solvents and waste oils present on the facility potentially threaten groundwater, surface water and adjacent wetlands.

In May 1984, EPA conducted a Site Investigation at the Naval Air station Brunswick. Based on the potential threat to public health and the environment, the Naval Air Station was proposed for the NPL by the EPA in October 1984. Brunswick was added to the NPL effective August 1987.

The EPA and the Navy entered into a Federal Facility Agreement (FFA) to govern the cleanup activities at Naval Air Station Brunswick in September 1989. The FFA was amended in February 1990 as a result of public comments received. The FFA is currently being amended to include the Maine DEP as a party to the Agreement. The purpose of the FFA is to establish a procedural framework and schedule for developing, implementing and monitoring appropriate response actions at the Naval Air Station Brunswick in accordance with CERCLA/SARA, the NCP, Superfund guidance and policy, RCRA, RCRA guidance and policy, and applicable state law.

TIMETABLES AND DEADLINES

The Navy submitted the Draft Remedial Investigation (RI) Report (primary document) and the Draft Post Screening Work Plan (secondary document) on April 2, 1990. May 17, 1990 marked the close of the comment period for these documents. EPA and ME DEP have reviewed and commented on these draft documents. In accordance with the FFA for this site;

A. The Navy shall give full consideration to all written comments on the Draft RI Report submitted during the comment period. Within 45 days of the close of the comment period on the Draft Post Screening work Plan, the Navy shall transmit

to EPA its written responses to comments received within the comment period. Within 45 days of the close of the comment period on a Draft RI Report, the Navy shall transmit to EPA and DEP a Draft Final RI Report, which shall include the Navy's response to all written comments, received within the comment period. While the resulting Draft Final RI Report shall be the responsibility of the Navy, it shall be the product of consensus to the maximum extent possible.

B. The Navy may extend the 45-day comment period for either responding to comments on a draft report or for issuing the final draft final primary report for an additional 20 days by providing written notice to EPA and DEP prior to the expiration of the 45-day limit. In appropriate circumstances, this time period may be further extended in accordance with Section XIV, Extensions, of the FFA.

C. The Draft Final RI Report shall serve as the Final RI Report, and be deemed incorporated herein, if no party invokes dispute resolution regarding the document or, if invoked, at the completion of the dispute resolution process should the Navy's position be sustained. If the Navy's determination is not sustained in the dispute resolution process, the Navy shall prepare, within not more than 35 days, a revision of the Draft Final RI 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 Section XIV, Extensions, of the FFA.

D. The Navy is encouraged to perform tasks concurrently when the nature of the tasks permits.

E. Within 56 weeks after EPA notifies the Navy to proceed with the FS, the Navy must submit a Draft FS Report (primary document) to EPA and DEP which conforms to the NCP, CERCLA, applicable EPA guidance and results from the RI. The Draft FS Report must include: a discussion of alternatives development and screening; any additional site characterization information; results of bench/pilot studies; a treatability report; and how each alternative measures against the remedy evaluation and selection criteria of the NCP and CERCLA. During the aforementioned 56 weeks the Navy must submit interim deliverables which conform to the time frames as outlined in the schedule below.

F. The Navy shall give full consideration to all written comments on the Draft FS Report submitted during the comment period. Within 45 days of the close of the comment period on a Draft FS Report, the Navy shall transmit to EPA and DEP a Draft Final FS Report, which shall include the Navy's

ressponse to all written comments, received within the comment period. While the resulting Draft Final FS report shall be the responsibility of the Navy, it shall be the product of consensus to the maximum extent possible.

G. The Navy may extend the 45-day comment period for issuing the Draft Final FS Report for an additional 20 days by providing written notice to EPA and DEP prior to the expiration of the 45-day limit. In appropriate circumstances, this time period may be further extended in accordance with Section XIV, Extensions, of the FFA.

H. The Draft Final FS Report shall serve as the Final FS Report, and be deemed incorporated herein, if no party invokes dispute resolution regarding the document or, if invoked, at the completion of the dispute resolution process should the Navy's position be sustained. If the Navy's determination is not sustained in the dispute resolution process, the Navy shall prepare, within not more than 35 days, a revision of the Draft Final FS 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 Section XIV, Extensions, of the FFA.

I. Within 60 days of submission of the Draft FS Report, the Navy must propose a deadline for submission of the Proposed Plan. The deadlines will be proposed, finalized and published in accordance with Paragraph 13.5 of the FFA.

J. EPA and DEP recognize that the time needed for an RI/FS is affected by site-specific factors. In most cases the time provided in this schedule will be adequate. This schedule may be modified by the EPA Regional Office and DEP upon showing by the Navy that more time is reasonably necessary. Any changes to this schedule will be made in accordance with the provisions of the FFA.

SCHEDULE

TASK	DELIVERABLE	MAXIMUM TIME OF DELIVERABLE TO EPA/DEP (As measured from EPA's Notice to Proceed unless otherwise noted)
PHASE I REMEDIAL INVESTIGATION AND PHASE I AND II FEASIBILITY STUDY (AS DESCRIBED IN EPA GUIDANCE)		
Site Characterization/ Initial Screening of Alternatives	RI/FS Work Plan	April 1988
	RI/FS Work Plan Addendum	July 1988
Sampling (3 rounds)	Data package after each round of sampling including appropriate tables, maps and graphics	January 13, 1989 March 10, 1989 July 20, 1989
	Risk Assessment and Preliminary Analysis of Alternatives	February 1989
Additional Sampling	Data Package	January 8, 1990*
	Draft Initial Screening Report	February 16, 1990*
	Draft Post-Screening Work Plan	April 2, 1990*
Draft RI	Draft RI Report	April 2, 1990
		TOTAL: 107 WEEKS

Note: * indicates submittal dates which were extended based upon receipt of written request by the Navy. Extensions were granted in accordance with the Federal Facility Agreement.

POST SCREENING FIELD INVESTIGATION/DETAILED ANALYSIS OF ALTERNATIVES (PHASE II RI AND PHASE III FS AS DESCRIBED IN EPA GUIDANCE)

TASK	DELIVERABLE	MAXIMUM TIME OF DELIVERABLE TO EPA/DEP (As measured from EPA's Notice to Proceed unless otherwise noted)
Contract	Contract Award	12 weeks
Completion of Field Program (including treatability studies)		30 weeks
Sampling	Data package including appropriate tables, maps and graphics	44 weeks
Draft FS	Draft FS Report	56 weeks
		TOTAL: 56 WEEKS

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

UNITED STATES NAVY

BY: _____ 19 October 1990

JACQUELINE E. SCHAFER
Assistant Secretary of the Navy
Installations and Environment

DATE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY: _____ 10/19/90

JULIE BELAGA
Regional Administrator
Region I

DATE

STATE OF MAINE

BY: _____ 10/19/90

DEAN C. MARRIOTT
Commissioner of Environmental Protection

DATE

BY: _____ 10/19/90

JAMES E. TIERNEY
Attorney General

DATE