UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IV
345 COURTLAND STREET, N.E.
ATLANTA, GEORGIA 30365

08.02-12/06/89-00180

4WD-RCRA & FF

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Jacqueline E. Schafer
Assistant Secretary of the Navy
(Installations and Environment)
Crystal Plaza No. 5
Room 266
Washington, D.C. 20360-5000

RE: Federal Facility Agreement for MCB Camp Lejeune and MCAS New River

Dear Ms. Schafer:

Enclosed is the Navy's copy of the agreement with a complete set of signatures. The Federal Facility Agreement for Marine Corps Base Camp Lejeune and Marine Corps Air Station New River was executed for all parties February 13, 1991. This letter satisfies the requirements for written notification of execution under section XXXVIII. EFFECTIVE DATE. EPA has set an effective date of March 1, 1991 for the Federal Facility Agreement (FFA) for MCB Camp Lejeune and MCAS New River, North Carolina. The first document required under the FFA will be the Site Management Plan. This document is due 30 days from the effective date and is considered a primary document.

The official designated Remedial Project Manager for Marine Corps Base Camp Lejeune will be Mr. Carl R. Froede Jr. The alternate will be Mr. J.C. Meredith.

If you have any questions concerning these matters, please contact Mr. Carl R. Froede Jr., Remedial Project Manager, of my staff at (404) 347-3016.

Sincerely yours,

J. E. Meredith

for James H. Scarbrough, P.E., Chief
RCRA and Federal Facilities Branch
Waste Management Division

Enclosure

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FEDERAL FACILITIES AGREEMENT

BETWEEN

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION IV;

THE NORTH CAROLINA DEPARTMENT OF ENVIRONMENT,

HEALTH AND NATURAL RESOURCES;

AND

UNITED STATES DEPARTMENT OF THE NAVY,

FOR

MARINE CORPS BASE, CAMP LEJEUNE

AND

MARINE CORPS AIR STATION, NEW RIVER, NORTH CAROLINA

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December 6, 1989

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

AND THE

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT,

HEALTH AND NATURAL RESOURCES

AND THE

UNITED STATES DEPARTMENT OF THE NAVY

IN THE MATTER OF:	)	FEDERAL FACILITY
	)	AGREEMENT UNDER
The U.S. Department of Navy's	)	CERCLA SECTION 120
Marine Corps Base (MCB), Camp	)	
Lejeune and Marine Corps Air	)	Administrative
Station, New River, North Carolina)		Docket Number:

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

I. JURISDICTION

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

A. The U.S. Environmental Protection Agency (USEPA), Region IV, enters into those portions of this Agreement that relate to the Remedial Investigation/Feasibility Study (RI/FS) pursuant to Section 120(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. Section 9620(e)(1), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499 (hereinafter jointly referred to as CERCLA/SARA or CERCLA) and Sections 6001, 3008(h) and, upon issuance of RCRA hazardous waste permit, 3004(u) & (v) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Sections 6961, 6928(h) and 6924(u) & (v), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), (hereinafter jointly referred to as RCRA/HSWA or RCRA) and Executive Order 12580;

B. USEPA, Region IV, enters into those portions of this Agreement that relate to remedial/corrective actions pursuant to Section 120(e)(2) of CERCLA/SARA, 42 U.S.C. Section 9620(e)(2), Sections 6001, 3008(h) and upon issuance of the RCRA hazardous

waste permit(s), 3004(u) & (v) of RCRA, 42 U.S.C. Sections 6961, 6928(h), and 6924(u) & (v) and Executive Order 12580;

C. The Marine Corps enters into those portions of this Agreement that relate to the RI/FS pursuant to Section 120(e)(1) of CERCLA, 42 U.S.C. Section 9620(e)(1), Sections 6001, 3008(h) and upon issuances of the RCRA hazardous waste permit, 3004(u) & (v) of RCRA, 42 U.S.C. Sections 6961, 6928(h), and 6924(u) & (v), Executive Order 12580, the National Environmental Policy Act, 42 U.S.C. Section 4321 et seq., and the Defense Environmental Restoration Program (DERP), 10 U.S.C. Section 2701 et seq., and North Carolina General Statute (N.C.G.S.) Chapter 130A, Sections 294(c), 308, 309, and Sections 310.20-22 (as amended);

D. The Marine Corps enters into those portions of this Agreement that relate to remedial/corrective actions pursuant to Section 120(e)(2) of CERCLA/SARA, 42 U.S.C. Section 9620(e)(2), Sections 6001, 3008(h) and, upon issuance of the RCRA hazardous waste permit(s), 3004(u) and (v) of RCRA, 42 U.S.C. Sections 6961, 6928(h) and 6924(u) & (v), Executive Order 12580 and the DERP.

E. The Department of Environment, Health and Natural Resources (DEHNR) of the State of North Carolina (the State), enters into this agreement pursuant to Sections 120(f) and 121 of

December 6, 1989; Section I

CERCLA/SARA, 42 U.S.C. Sections 9620(f) and 9621, Section 6001 and 3006 of RCRA, 42 U.S.C. Sections 6961 and 6926 and N.C.G.S. Chapter 130A, Sections 294(c), 308, 309, and Sections 310.20-22 (as amended).

December 6, 1989: Section II
(Revised June 1990)

II. PARTIES

The Parties to this Agreement are the USEPA, the North Carolina DEHNR, and the Marine Corps. The North Carolina DEHNR is entering into this Agreement with the approval of the Governor of the State of North Carolina. The terms of this Agreement shall apply to and be binding upon the State of North Carolina in accordance with N.C.G.S. Sections 130A-310.21, 130A-310.22, 130A-299, 130A-305 and 143B-7. The terms of this Agreement shall apply to and be binding upon the Parties, and their agents and employees and all subsequent owners, operators and lessees of the Camp Lejeune/New River Complex. The Marine Corps will notify USEPA and DEHNR of the identity and assigned tasks of each of its contractors performing work under this Agreement upon their selection. This section shall not be construed as an agreement to indemnify any person. The Marine Corps shall take reasonable steps to notify its agents, employees, response action contractors for the Site, and all subsequent owners, operators, and lessees of Camp Lejeune/New River of the existence of this Agreement. Each undersigned representative of a Party certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement.

III. DEFINITIONS

Except as noted below or otherwise explicitly stated, the terms herein shall have their ordinary meaning unless otherwise defined in CERCLA/SARA, RCRA/HSWA and North Carolina Solid Waste Management Act, N.C.G.S. Section 130A-290 et. seq. (as amended).

In addition:

A. "Agreement" shall mean this document and shall include all Appendices to this document referred to herein. All such Appendices are an integral and enforceable part of this document.

B. "Camp Lejeune" shall mean Marine Corps Base, Camp Lejeune, North Carolina. See Appendix A.

C. "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499.

D. "Corrective Action" means: (1) to identify and evaluate the nature and extent of the release of hazardous waste or constituents from Solid Waste Management Units (SWMUs) at the Site and (2) investigation and implementation of Corrective

Measures as needed pursuant to Sections 3008(h) or 3004(u) and 3004(v) of RCRA, 42 U.S.C. 6928(h) or 6924(u) and 6924(v), necessary to protect human health and the environment.

E. "Days" shall mean calendar days, unless business days are specified. Any submittal, written notice of position or written statement of dispute that under the terms of this Agreement would be due on a Saturday, Sunday or a federal/State holiday shall be due on the following business day.

F. "DEHNR" means the Department of Environment, Health and Natural Resources of the State of North Carolina.

G. "Feasibility Study" (FS) means the study which fully evaluates and develops remedial action alternatives to prevent or mitigate the migration or the release of hazardous substances, and pollutants, contaminants or constituents at and from the Site. The similar RCRA term for "Feasibility Study" is "Corrective Measures Study". (See Appendix B.)

H. "Hazardous Constituents" shall have the meaning set forth in Appendix VIII of 40 C.F.R. Part 261 (1980), as amended.

I. "Hazardous Substances" shall have the meaning set forth by Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14).

J. "Hazardous Waste" shall have the meaning set forth in Section 1004 of RCRA and 40 C.F.R. Part 260 (1988), as amended.

K. "Letter of Intent to Execute" means a document executed by the Parties prior to the release of this Agreement to the public for its review and comment. The purpose of the Letter of Intent is to bind the Parties to the execution of the Agreement subject only to the need for modifications precipitated by public comment. Should significant modification of the Agreement be required as a result of any comments received from the public, the then-outstanding Letter of Intent will become null and void. Once the Parties have reached mutual agreement as to all significant public-induced amendments to the Agreement through negotiation, a new Letter of Intent will be executed for the amended Agreement. The new Letter of Intent, together with the Agreement, as amended, and a Responsiveness Summary will be released to the public for its review and comment. This process will be continued until no further amendments are necessary in response to public comment.

L. "Marine Corps" shall mean the U.S. Marine Corps at Marine Corps Base (MCB) Camp Lejeune and Marine Corps Air Station (MCAS) New River. The term "Marine Corps" shall also include non-Marine Corps personnel of the Department of the Navy

responsible for administration/implementation of this Agreement (eg. Atlantic Division, Naval Facilities Engineering Command and Assistant Secretary of the Navy (Shipbuilding and Logistics)).

M. "The National Contingency Plan" (NCP) means the plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. Section 9605, and codified at 40 C.F.R. Part 300 (1988), as amended.

N. "New River" shall mean Marine Corps Air Station (MCAS), New River, North Carolina. (See Appendix A.)

O. "On-Site Coordinator" shall mean the individual designated by the Marine Corps who is responsible to the Marine Corps Project Manager for overseeing and providing technical assistance concerning the activities to be performed at the Site pursuant to this Agreement.

P. "Operable Unit" means a discrete action that comprises an incremental step toward comprehensively addressing Site problems. Each operable unit manages migration, or eliminates/mitigates a release, threat of release or pathway of exposure. Operable units may address specific geographical portions of the Site, specific Site problems, or initial phases of a response (removal/remedial) action or may consist of any set of actions performed over time or any actions that are concurrent

but located in different parts of the Site. Operable units will not impede implementation of subsequent actions including final response actions at the Site.

Q. "Parties" means all parties who are signatories to this Agreement.

R. "Project Manager" (USEPA, DEHNR and the Marine Corps) means the individual who oversees and provides technical assistance concerning the activities to be performed pursuant to this Agreement. Each Party shall appoint its own Project Manager who will be such Party's principle point of contact for the implementation of this Agreement.

S. "Proposed Remedial Action Plans" (PRAPs) means reports describing the remedies proposed for remediation of specific locations at the Site.

T. "Release" shall be used as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22).

U. "Remedial Action" (RA) shall be used as that term as defined in Section 101(24) of CERCLA, 42 U.S.C. Section 9601(24). The similar RCRA term for "Remedial Action" is "Corrective Action". (See Appendix B.)

V. "Remedial Design" (RD) means the technical analysis and procedures which follow the selection of a remedy(ies) for specific locations at the Site and result in a detailed set of plans and specifications for implementation of the remedial action. The similar RCRA term for "Remedial Design" is "Corrective Measures Implementation". (See Appendix B.)

W. "Remedial Investigation" (RI) means the investigation conducted to fully determine the nature and extent of one or more release(s) or threat(s) of releases of hazardous substances, pollutants, contaminants or constituents at specific locations at the Site and to gather necessary data to provide the basis for location-specific remedial actions. The similar RCRA term for "Remedial Investigation" is "RCRA Facility Investigation". (See Appendix B.)

X. "Removal" shall have the same meaning as "remove" or "removal" as defined by Section 101(23) of CERCLA, 42 U.S.C. Section 9601(23).

Y. "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984, Pub. L. 98-616.

Z. "Response Action" includes removal and remedial actions and shall be used as that term as described in Section 101(25) of CERCLA, 42 U.S.C. Section 9601(25).

AA. "Responsiveness Summary" means a summary of the comments received by the Parties from concerned groups or individuals during a public comment period, which documents public concerns and the responses to those concerns by the appropriate Party or Parties.

BB. "Significant New Information" for the purposes of this Agreement means information that could be of material assistance in protecting or evaluating impacts on the public health, welfare or the environment, or in evaluating the selection of response/corrective action alternatives and (1) was not previously known or (2) new or existing data that has been subjected to sampling or analysis techniques or interpretation or treatment technologies, which were not previously available and/or were not previously recommended by the Parties.

CC. "Significant New Site Conditions" means those conditions of geology, hydrogeology or contamination that were not reasonably forseeable or known at the time a Remedial Investigation (RI) was initiated.

DD. "Site" shall include Marine Corps Base, Camp Lejeune and Marine Corps Air Station, New River and any other areas contaminated by the migration of a hazardous substance, pollutant, contaminant or constituent from Camp Lejeune or New River as discussed in Section IV (Site Description) of this Agreement.

EE. "Solid Waste Management Units" (SWMUs) means those units subject to applicable RCRA regulations, 40 CFR Parts 260 - 280 (1988) as amended, and identified by the Parties as requiring further investigation. (See Appendix C.)

FF. "State" shall mean the State of North Carolina.

GG. "Submittal" shall mean every document, report, schedule, deliverable, work plan or other item to be submitted by one Party to another Party pursuant to this Agreement.

HH. "USEPA" or "EPA" shall mean the United States Environmental Protection Agency.

IV. SITE DESCRIPTION

For the purposes of this Agreement, the approximately one hundred and seventy (170) square mile area comprising Marine Corps Base, Camp Lejeune and Marine Corps Air Station, New River and any off-Camp Lejeune/New River area contaminated by the migration of hazardous substances, pollutants, contaminants or constituents from MCB Camp Lejeune/MCAS New River shall constitute the Site. Since the precise extent of contamination off-Camp Lejeune/New River is not presently known, the total extent of the Site is not known. The term "Site" includes the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of response actions. The Parties will continually clarify the extent of the Site on the basis of additional investigations including Site Remedial Investigations performed by the Marine Corps to more accurately reflect the areas contaminated by hazardous substances, pollutants, contaminants or constituents related in whole or in any part to Camp Lejeune/New River. The work to be performed under this Agreement will conform to the definition of the Site established by the Parties. All of Camp Lejeune/New River lies within the boundaries of the current Site definition. (See Appendix A.) Notwithstanding the above, the Parties understand that some or all response actions required for

hazardous substances, pollutants, contaminants or constituents that have migrated on-Site from off-Site locations may be the responsibility in whole or in part of one or more persons not signatory to this Agreement pursuant to Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a).

V. IDENTIFIED AND POTENTIAL RELEASES REQUIRING CERCLA RESPONSE/RCRA CORRECTIVE ACTIONS

As the result of preliminary on-Site (Camp Lejeune/New River) assessments of seventy-seven (77) specific locations, the Parties find that: (a) on-Site releases of hazardous substances (HSs) have occurred in the past; (b) other on-Site hazardous substance, pollutant, contaminant, or constituent releases may have occurred in the past; (c) other on-Site hazardous substance, pollutant, contaminant, or constituent releases may be occurring and/or may occur in the future; (d) the documented on-Site HS releases will require CERCLA response actions and (e) other on-Site hazardous substance, pollutant, contaminant, or constituent releases may require CERCLA response/RCRA corrective actions in the future. Specifically, the Parties find that:

1. There has been a release of 1,1,1-Trichloroethylene (TCE) and other Volatile Organic Compounds (VOCs) into the Hadnot Point Industrial Area (HPIA) shallow water aquifer on Camp Lejeune.

2. Hazardous substances, pollutants, contaminants, or constituents may have been released at twenty-three (23) specific on-Site locations in the past.

3. On-Site hazardous substance, pollutant, contaminant, or constituent releases may be occurring or may occur in the future at either the aforementioned twenty-three (23) specific locations or at locations yet to be determined.

4. The HPIA Volatile Organic Compound releases will require CERCLA response actions to address contaminants in the shallow and deep water aquifers.

5. Eight deep aquifer drinking water wells on Camp Lejeune have been closed due to VOC contamination.

6. Other on-Site hazardous substance, pollutant, contaminant or constituent releases yet to be confirmed/ identified may require CERCLA response/RCRA corrective action in the future.

7. Camp Lejeune/New River was proposed for the National Priorities List on 24 June, 1988 (53 Federal Register 23988). Camp Lejeune/New River was listed on the National Priorities List on 4 October, 1989 (54 Federal Register 41015).

VI. DETERMINATIONS

Based upon Section V (Identified and Potential Releases Requiring CERCLA Response/RCRA Corrective Action) above, the Parties determine that:

1. The United States is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21), and the owner/operator of Camp Lejeune/New River as defined by Sections 101(20) and 107(a)(1) of CERCLA, 42 U.S.C. Sections 9601(20) and 9607(a)(1).

2. The Site (Camp Lejeune/New River) is a "Facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. Section 101(9).

3. Hazardous substances, pollutants, contaminants or constituents within the meaning of 42 U.S.C. Sections 9601(14), 9601(33) and 9604(a)(2), Section 1004(5) of RCRA, 42 U.S.C. Section 6903(5) and 40 C.F.R. Part 261 (1988), as amended, have been managed and/or disposed of at the Site.

4. There have been releases and there may continue to be releases and/or threats of release of hazardous substances, pollutants, contaminants or constituents into the environment at

the Site within the meaning of 42 U.S.C. Sections 9601(22), 9604, 9606, and 9607 and Section 1004(5) of RCRA, 42 U.S.C. Section 6903(5) and 40 C.F.R. Part 261 (1988), as amended.

5. With respect to those releases and/or threat of releases, the Marine Corps is a responsible party within the meaning of 42 U.S.C. Section 9607 and N.C.G.S. Chapter 130A-310(9) (as amended).

6. This Agreement provides for the expeditious completion of all remedial actions necessary to protect public health, welfare or the environment consistent with the NCP.

VII. SCOPE OF THE AGREEMENT

A. This Agreement shall apply to all releases and threats of release of hazardous substances, pollutants, contaminants or constituents for which response authorities are provided under CERCLA/SARA and Sections 3008(h) and 3004(u) and (v) of RCRA, 42 U.S.C. Sections 6928(h) and 6924(u) and (v). This Agreement does not extend to solid or hazardous waste generation, transportation, and/or treatment/storage/disposal requirements under RCRA outside the RCRA corrective action process, nor does it extend to discharges of oil and hazardous substances addressed under N.C.G.S. Sections 143-215.75, et seq. (the Oil Pollution and Hazardous Substance Control Act, or releases regulated under Chapter 143 of N.C.G.S., except releases from underground petroleum storage tanks specifically addressed under this Agreement.

B. The Marine Corps shall conduct the work identified within the scope of this Agreement in accordance with the authorities cited in Section I (Jurisdiction) of this Agreement, and all provisions of RCRA, CERCLA, and the NCP, as amended, and as provided for in pertinent USEPA or State-issued guidance or policy, and other applicable Federal or State law.

C. The USEPA and DEHNR shall provide all pertinent guidance in response to written requests by the Marine Corps for said guidance to assist the Marine Corps in satisfying the requirements pursuant to this Agreement.

D. Under this Agreement, the Marine Corps agrees it shall:

1. Develop and implement a Site Community Relations Plan, a Site Health and Safety Plan, and a Site Sampling and Analysis Plan;

2. Conduct Remedial Investigations at Operable Units at the Site;

3. Conduct Feasibility Studies at Operable Units at the Site incorporating, at a minimum, the results of the Remedial Investigations;

4. Develop Proposed Remedial Action Plans for Operable Units at the Site; and

5. Conduct CERCLA Response/RCRA Corrective Actions for Operable Units at the Site.

VIII. PURPOSE

A. The general purposes of this Agreement are to:

1. Ensure that the environmental impacts associated with past and present activities at the Site are thoroughly investigated and appropriate CERCLA response/RCRA corrective action alternatives are developed and implemented as necessary to protect the public health, welfare and the environment;

2. Establish a procedural framework and schedule for developing, implementing and monitoring appropriate response actions at the Site in accordance with CERCLA/SARA, RCRA, N.C.G.S. Chapter 130(a), Article 9, the National Contingency Plan (NCP), and USEPA/State-issued guidance and policy relevant to remediation at the Site;

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

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

1. Identify incremental removal/remedial actions, also known as operable units, which are appropriate at specific

locations of the Site prior to the implementation of final CERCLA response/RCRA corrective action(s). Any Party may propose incremental CERCLA response/RCRA corrective actions (operable units) to the other Parties and should do so as soon as the need for such incremental CERCLA response/RCRA corrective action is identified. This process is designed to promote cooperation among the Parties in identifying incremental CERCLA response/RCRA corrective actions prior to their formal proposal. The Parties do not intend that the identification/proposal of any incremental CERCLA response/RCRA corrective actions preclude the timely initiation of emergency actions necessary to address immediate threats to human health, welfare or the environment pursuant to Section XIII (Emergency Actions) of this Agreement.

2. Establish requirements for the performance of RIs to determine fully the nature and extent of the threat to the public health, welfare or the environment caused by the release and threatened release of hazardous substances, pollutants, contaminants or constituents at the Site and to establish requirements for the performance of FSs for the Site to identify, evaluate, and select alternatives for the appropriate CERCLA response/RCRA corrective action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants, contaminants or constituents at the Site in accordance with CERCLA/SARA and applicable State law.

3. Identify the nature, objective and schedule of response/corrective actions to be taken at the Site. Such response actions at the Site shall attain that degree of remediation of hazardous substances, pollutants, contaminants or constituents mandated by CERCLA/SARA and applicable or relevant and appropriate requirements (ARARs) under State law.

4. Implement the selected CERCLA response/RCRA corrective action(s) in accordance with CERCLA/RCRA and applicable State law.

5. Meet the requirements of Section 120(e)(2) of CERCLA, 42 U.S.C. Section 9620(e)(2), for an interagency agreement among the Parties.

6. As provided in Section IX (Statutory Compliance/RCRA-CERCLA Integration) of this Agreement, assure compliance, through this Agreement, with RCRA and other federal and State hazardous waste laws and regulations for matters covered herein as consistent with the NCP and USEPA/State-issued policy/guidance.

7. Coordinate CERCLA response/RCRA corrective actions at the Site with the mission and support activities of units at

Marine Corps Base, Camp Lejeune and Marine Corps Air Station, New River, North Carolina.

8. Expedite the remediation process to the extent consistent with protection of human health, welfare and the environment.

9. Provide for DEHNR involvement in the initiation, development, and selection and enforcement of CERCLA response/RCRA corrective actions to be undertaken at the Site, including the review of all applicable data as it becomes available and the development of studies, reports, and action plans; and to identify and integrate State ARAR's into the CERCLA response/RCRA corrective action processes subject to Sections 121(d)(4) and (f)(3) of CERCLA, 42 U.S.C Sections 9621(d)(4) and (f)(3).

10. Provide for operation and maintenance of any CERCLA response/RCRA corrective action selected and implemented pursuant to this Agreement.

IX. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

A. The Parties intend to integrate the Marine Corps' CERCLA response obligations and RCRA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes, hazardous constituents, pollutants or contaminants into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will achieve compliance with CERCLA, 42 U.S.C. Section 9601 et seq.; satisfy the corrective action requirements of Sections 3004(u) and (v) of RCRA, 42 U.S.C. Section 6924(u) and (v), for a RCRA permit, and Section 3008(h), 42 U.S.C. Section 6928(h), for interim status facilities; and meet or exceed all applicable or relevant and appropriate federal and State laws and regulations, to the extent required by Section 121 of CERCLA, 42 U.S.C. Section 9621, and applicable State law. This Agreement does not extend to hazardous waste generation, transportation and/or treatment/storage/disposal requirements under RCRA outside the RCRA corrective action process or releases from underground petroleum storage tanks not being addressed under this Agreement.

B. Based upon the foregoing, the Parties intend that any response action selected, implemented and completed under this Agreement will be protective of human health, welfare and the

environment such that remediation of releases covered by this Agreement shall obviate the need for further corrective action under RCRA. The Parties agree that with respect to releases of hazardous waste or hazardous constituents covered by this Agreement, RCRA shall be considered an applicable or relevant and appropriate requirement pursuant to Section 121 of CERCLA, 42 U.S.C Section 9621. (Releases or other hazardous waste activities not covered by this Agreement remain subject to all applicable State and federal environmental requirements.)

C. The Parties recognize that the requirement to obtain permits for response (removal or remedial) actions undertaken at the Site pursuant to this Agreement shall be as provided for in CERCLA and the applicable regulations including the NCP pursuant to SARA. The Parties further recognize that on-going hazardous waste management activities at Camp Lejeune/New River may require the issuance of permits under federal and State laws. This Agreement does not affect the requirements, if any, to obtain such permits, nor shall it be construed to waive permit requirements for activities at the Site unrelated to response work conducted pursuant to CERCLA. However, if a permit is issued to the Marine Corps for on-going hazardous waste management activities at the Site, USEPA and/or DEHNR 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 review is authorized by law, only occur under the provisions of CERCLA.

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

X. CONSULTATION WITH USEPA AND DEHNR

Review and Comment Process for Draft and Final Documents

A. Applicability:

1. 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 Section 120 of CERCLA, 42 U.S.C. Section 9620, and 10 U.S.C. Section 2705, the Marine Corps will normally be responsible for issuing primary and secondary documents to USEPA and DEHNR. As of the effective date of this Agreement, all draft and final documents for any deliverable identified herein shall be prepared, distributed and subject to dispute in accordance with Paragraphs B through J below.

2. The designation of a document as "draft" or "final" is solely for purposes of consultation with USEPA and DEHNR 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

documents. A secondary document may be disputed at the time the corresponding draft final primary document is issued.

C. Primary Documents:

1. The Marine Corps shall complete and transmit draft documents for the following primary documents to USEPA and DEHNR for review and comment in accordance with the provisions of this Section. Descriptions of the documents required for submission are located in Appendix D.

a. Site Scope of Work

b. Site Community Relations Plan (CRP)

c. Location-specific Remedial Investigation or Feasibility Study (RI/FS) Work Plans

d. Location-specific Baseline Risk Assessments

e. Location-specific Risk Assessments

f. Location-specific Remedial Investigation (RI) Reports

g. Location-specific Feasibility Study (FS) Reports (including Detailed Analysis of Alternatives)

h. Location-specific Proposed Remedial Action Plans (PRAP)

i. Location-specific Records of Decision (RODs)

j. Location-specific Remedial Design (RD) Reports (including Design Plans and Specifications)

k. Location-specific Remedial Action (RA) Work Plans

l. Location-specific Final Remediation Reports (including Notices of Intent to Delete)

m. Location-specific Five Year Review Reports

n. NPL Close-Out Report.

2. Only the draft final primary documents identified above shall be subject to dispute resolution. The Marine Corps shall complete and transmit draft primary documents in accordance with the timetable and deadlines established in Section XXVIII (Deadlines) of this Agreement.

D. Secondary Documents:

1. The Marine Corps shall complete and transmit draft documents for the following secondary documents to USEPA and DEHNR for review and comment in accordance with the provisions of this Section. Secondary documents include but are not limited to EPA/State-required documents such as:

a. Location-specific Statements of Work

b. Location-specific Preliminary Characterization Summary Reports

c. Site Health and Safety Plan

d. Site Sampling and Analysis Plan (including Quality Assurance Project Plan (QAPP) and Field Sampling Plan)

e. Site Quarterly Progress Reports

f. Location-specific Treatability Study Reports

g. Location-specific Remedial Action (RA) Progress Reports

h. Site Remedial Design (RD) Implementation Plan

i. Location-specific Remedial Pre-Design Reports

j. Location-specific Remedial Action (RA) Post-Construction Reports.

2. Although USEPA and DEHNR may comment on the draft documents for the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by Paragraph B hereof. Target dates shall be established for the completion and transmission of draft secondary documents pursuant to Part XXVIII (Deadlines) of this Agreement.

E. Meetings of the Project Managers on Development of Documents:

The Project Managers shall meet on a quarterly basis 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 document described in Paragraphs C and D above, the Project Managers shall discuss the data to be reported in an effort to reach a common understanding with respect to the results to be presented in the draft document to the maximum extent practicable. Project Managers may be accompanied by whatever support personnel they deem necessary to accomplish the purpose of the meeting.

F. Identification and Determination of Potential ARARs:

1. For those primary or secondary documents that consist of or include ARAR determinations, prior to the issuance of a draft document, the Project Managers shall meet to identify and propose, to the best of their ability, all potential ARARs pertinent to the document being addressed. DEHNR shall identify all potential State ARAR's as early in the remedial process as possible consistent with the requirements of Section 121 of CERCLA, 42 U.S.C. Section 9621 and the NCP. The Marine Corps shall consider any written interpretations of ARAR's provided by DEHNR. Draft ARAR determinations shall be prepared by the Marine Corps in accordance with Section 121(d)(2) of CERCLA, 42 U.S.C. Section 9621(d)(2), the NCP and pertinent USEPA/State-issued guidance that is consistent with CERCLA and the NCP.

2. In identifying potential ARARs, the Parties

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

G. Review and Comment on Draft Documents:

1. The Marine Corps shall complete and transmit each draft primary document to USEPA and DEHNR on or before the corresponding deadline established for the issuance of the document. The Marine Corps shall complete and transmit the draft secondary documents in accordance with the target dates established for the issuance of such documents established pursuant to Section XXVIII (Deadlines) of this Agreement.

2. Unless the Parties mutually agree to another time period, all draft documents shall be subject to a sixty (60) day period for review and comment. Review of any document by the USEPA and DEHNR may concern all aspects of the document (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and

consistency with CERCLA, the NCP and any pertinent USEPA/State-issued guidance or policy and with applicable State law. Comments by the USEPA and DEHNR shall be provided with adequate specificity so that the Marine Corps may respond to the comment and, if appropriate, make changes to the draft document. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of the Marine Corps, the USEPA and DEHNR shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy documents, USEPA or DEHNR may extend the sixty (60)-day comment period for an additional twenty (20) days by written notice to the Marine Corps prior to the end of the sixty (60)-day period. On or before the close of the comment period, USEPA and DEHNR shall transmit their written comments to the other Parties by registered/return-receipt mail.

3. Representatives of the Marine Corps shall make themselves reasonably available to USEPA and DEHNR during the comment period for purposes of informally responding to questions and comments on draft documents. Oral comments made during such discussions need not be the subject of a written response by the Marine Corps.

4. In commenting on a draft document which contains a proposed ARAR determination, the objecting Party shall include a

reasoned statement whenever it objects to any portion of the proposed ARAR determination. Whenever the USEPA or DEHNR objects, it shall explain the basis for its objection(s) in detail and shall identify any ARARs which it believes were not properly addressed in the proposed ARAR determination.

5. Following the close of the comment period for a draft document, the Marine Corps shall give full consideration to all written comments on the draft document submitted during the comment period. Within sixty (60) days of the close of the comment period on a draft secondary document, the Marine Corps shall transmit to USEPA and DEHNR its written response to comments received within the comment period. Within sixty (60) days of the close of the comment period on a draft primary document, the Marine Corps shall transmit to USEPA and DEHNR a draft final primary document, which shall include the Marine Corps' response to all written comments received within the comment period. While the resulting draft final document shall be the responsibility of the Marine Corps, it shall be the product of consensus to the maximum extent possible.

6. The Marine Corps may extend the sixty (60)-day period for either responding to comments in a draft document or for issuing the draft final primary document for an additional twenty (20) days by providing written notice to USEPA and DEHNR.

In appropriate circumstances, this time period may be further extended in accordance with Section XXIX (Extensions) of this Agreement.

H. Availability of Dispute Resolution for Draft Final Primary Documents:

1. Dispute resolution shall be available to the Parties for draft final primary documents as set forth in Section XI (Resolution of Disputes) of this Agreement.

2. When dispute resolution is invoked on a draft primary document, work may be stopped in accordance with the procedures set forth in Section XI (Resolution of Disputes) of this Agreement.

I. Finalization of Primary Documents:

The draft final primary document shall become the final primary document if no party invokes dispute resolution within thirty (30) days of issuance of the document or, if invoked, at completion of the dispute resolution process should the Marine Corps' position be sustained. If the Marine Corps' determination is not sustained in the dispute resolution process, the Marine Corps shall prepare, within not more than sixty (60) days, a revision of the draft final document which conforms to the

results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Section XXIX (Extensions) of this Agreement.

J. Subsequent Modifications of Final Primary Documents : Following finalization of any primary document pursuant to paragraph I above, any Party to this Agreement may seek to modify the document, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in Subparagraphs 1 and 2 below.

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

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

upon a showing that: (1) The requested modification is based on Significant New Information, and (2) The requested modification could be of material assistance in evaluating impacts on the public health, welfare or the environment, in evaluating the selection of remedial alternatives, or in protecting human health, welfare and the environment.

3. Nothing in this Section shall alter USEPA's or DEHNR's ability to request the performance of additional work that was not comtemplated by this Agreement. The Marine Corps' obligation to perform such work must be established by either a modification of a report or document or by amendment to this Agreement. (See Section XXXV (Amendment of Agreement) below.)

K. It is the intent of the Parties to this Agreement that work done and data generated prior to the effective date of this Agreement be retained and utilized as elements of the RI/FS pursuant to CERCLA and the RCRA analog to the maximum extent feasible without violating applicable or relevant and appropriate laws, regulations, or guidelines. The Parties acknowledge that the Marine Corps is in the process of conducting some of the work to be performed pursuant to this Agreement. The Marine Corps may proceed with currently ongoing work.

L. It is understood by the Parties that work previously

done and any modifications must conform to the NCP and Sections 3008(h), 3004(u) and (v) of RCRA, 42 U.S.C. 6928(h), 6924(u) and (v). To the extent that modification to work completed/work in progress is necessary, such modification will be accomplished in accordance with Paragraph G (Review and Comment on Draft Documents) above.

M. It is understood by the Parties that the Scope of Work Primary Document shall contain a list of known locations of contamination or releases and that the Marine Corps will modify the Scope of Work Primary Document upon the discovery of previously unknown specific locations, contamination, releases or Significant New Site Conditions.

XI. RESOLUTION OF DISPUTES

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

B. Informal Resolution: All parties to this Agreement shall make reasonable efforts to informally resolve disputes at the Project Manager or their immediate supervisor level. During this informal dispute resolution process the Parties shall meet as many times as the Parties deem necessary to discuss and attempt resolution of the dispute. If resolution cannot be achieved informally, the formal procedures of Paragraph C of this Section shall be implemented to resolve a dispute.

C. Formal Resolution:

1. Within thirty (30) days after: (1) issuance of a draft final primary document pursuant to Section X (Consultation with USEPA and DEHNR) of this Agreement, or (2) any action which leads to or generates a dispute, the disputing Party shall submit to the other Parties a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute and the

technical, legal or factual information the disputing Party is relying upon to support its position.

2. The Dispute Resolution Committee (DRC) will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (Senior Executive Service (SES) or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Section XV (Notification) of this Agreement. The membership of the DRC includes:

(a) USEPA:

Principal: Director
Waste Management Division
USEPA, Region IV

Alternate: Deputy Director
Waste Management Division

(b) DEHNR:

Principal: Director
Division of Solid Waste Management
Department of Environment, Health and
Natural Resources

Alternate: Acting Director
Division of Solid Waste Mangement
Department of Environment, Health and
Natural Resources

(c) Marine Corps:

Principal: Director
Environmental Quality Division
Atlantic Division
Naval Facilities Engineering Command

Alternate: Head, Environmental Programs Branch
Environmental Quality Division
Atlantic Division
Naval Facilities Engineering Command

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

4. The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision signed by all Parties. If unanimous resolution of the dispute is not reached within twenty-one (21) days, USEPA's Regional Administrator shall issue a written position on the dispute. The Marine Corps or DEHNR may, within twenty-one (21) days of the Regional Administrator's issuance of USEPA's position, issue a written notice elevating the dispute to the Administrator of USEPA for resolution in accordance with all applicable laws and procedures. In the event that a Party elects not to elevate the dispute to the Administrator within the designated twenty-one (21) days escalation period, the Party shall be deemed to have agreed with Regional Administrator's written position with respect to the dispute. The membership of

the SEC includes:

(a) USEPA: Regional Administrator
USEPA, Region IV

(b) DEHNR: Assistant Secretary
Environmental Protection
Department of Environment, Health and
Natural Resources

(c) Marine Corps: Commander
Atlantic Division
Naval Facilities Engineering Command

5. Upon escalation of a dispute to the Administrator of USEPA pursuant to Subparagraph 4 above, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the USEPA Administrator shall meet and confer with the Assistant Secretary of the Navy (Shipbuilding and Logistics) and the Deputy Secretary for Environment and Natural Resources of the Department of Environment, Health and Natural Resources to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the other Parties with a written final decision setting forth resolution of the dispute. The duties of the Administrator set

forth in this Section shall not be delegated.

D. The State 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.

E. The pendency of any dispute under this Section shall not affect the Marine Corps' 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 Paragraph C of this Section.

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

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

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

H. Resolution of a dispute pursuant to this Section of the Agreement constitutes a final resolution of any dispute arising

under this Agreement. All Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Section of this Agreement.

XII. PERMITS

A. The Parties recognize that under Sections 121(d) and 121(e)(1) of CERCLA/SARA, 42 U.S.C. Sections 9621(d) and 9621(e)(1), and the NCP, 40 CFR Part 300 et seq. (1988) as amended, portions of the response actions called for by this Agreement and conducted entirely on-Site are exempted from the procedural requirement to obtain a federal, State, or local permit but must satisfy applicable or relevant and appropriate federal and State standards, requirements, criteria, or limitations which would have been included in any such permit.

B. When the Marine Corps proposes a response action other than an emergency removal action to be conducted entirely on-Site, which in the absence of Section 121(e)(1) of CERCLA/SARA and the NCP would require a federal or State permit, the Marine Corps shall include in the Work Plan:

1. Identification of each permit which would otherwise be required;

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

3. Explanation of how the response action proposed will meet the standards, requirements, criteria or limitations identified in paragraph (2) immediately above, but only to the extent that this information is not covered by the statutory obligations of the Parties to identify ARAR's. Upon request of the Marine Corps, USEPA and DEHNR will provide their position with respect to 2. and 3. above in a timely manner.

C. Paragraph A above is not intended to relieve the Marine Corps from complying with federal, State, or local hazardous waste management requirements whenever it proposes a response action involving the shipment or movement of a hazardous substance/waste off-Site.

D. The Marine Corps shall provide DEHNR and USEPA Project Managers written notice of any permits or other authorizations required for off-Site activities as soon as it becomes aware of the requirement. Upon request, the Marine Corps shall provide DEHNR and/or USEPA Project Managers copies of all such permit applications and other documents related to the permit or authorization process.

E. If a permit or other authorization necessary for implementation of this Agreement is not issued/granted (or is

proposed to be issued or renewed in a manner which is materially inconsistent with the requirements of any Work Plan reached pursuant to this Agreement), the Marine Corps agrees to notify DEHNR and USEPA of the inconsistency as soon as possible. The Project Managers shall then meet to consider the appropriate course of action.

F. During the pendency of any delay pursuant to Paragraph E above, the Marine Corps shall continue to implement those portions of the applicable Work Plan which are not directly or indirectly dependent upon a permit/authorization in question and which can be implemented pending final resolution of the permit issue(s).

G. Should the Project Managers determine that the modification of a primary document is necessary, the Marine Corps shall prepare modifications pursuant to Section X (Consultation with USEPA and DEHNR) of this Agreement. Any disagreement as to the need for the modification of a previous document is subject to the provisions of Section XI (Resolution of Disputes) of this Agreement.

H. The Marine Corps shall submit its proposed modifications to the other Parties within thirty (30) days of the agreement by all Project Managers that modification is necessary or of the

conclusion of dispute resolution as appropriate.

I. Except as otherwise provided in this Agreement, the Marine Corps shall comply with all State and federal laws and regulations which the Marine Corps is subject to at the Site.

XIII. EMERGENCY ACTIONS

A. The Project Managers may collectively agree on a cessation of work due to either an imminent and substantial endangerment to human health, welfare or the environment or a release of a hazardous substance which creates an emergency situation.

B. The Marine Corps Project Manager, or in his absence the Marine Corps On-Site Coordinator or authorized Department of Navy Contracting Official, can order a temporary cessation of work (on either his own volition or at the request of a USEPA or DEHNR Project Manager) in order to respond to an emergency situation arising from a release or threat of a release of a hazardous substance, pollutant, contaminant, or constituent at the Site.

C. In the event the Marine Corps Project Manager does not concur with the USEPA or DEHNR Project Managers on the need for a continuation of any cessation of work, the Parties agree to discontinue work for such period of time as needed to take appropriate action, including abating the danger. If the matter cannot be resolved by informal consultation, it will be resolved pursuant to Section XI (Resolution of Disputes) of this Agreement.

D. Notwithstanding any other provision of this Agreement, the Marine Corps retains the right, consistent with Executive Order 12580, to conduct such emergency actions as may be necessary to alleviate immediate threats to human health, welfare or the environment from the release or threat of release of hazardous substances, pollutants, contaminants or constituents at or from the Site. Such actions may be conducted at any time and shall be conducted in accordance with all applicable law. Consistent with 10 U.S.C. Section 2705, the Marine Corps shall provide an adequate opportunity for timely review and comment by USEPA, DEHNR and local officials for any proposal to carry out response actions with respect to any releases or threatened releases of hazardous substances and before undertaking such response actions. The preceding sentence does not apply if the action is an emergency removal taken because of imminent and substantial endangerment to human health, welfare or the environment and consultation would be impractical.

E. The Marine Corps shall provide the other Parties with oral notice within twenty-four (24) hours after it determines that an emergency action is necessary due to an imminent and substantial endangerment to human health, welfare or the environment. In addition, within seven (7) days of initiating such action, the Marine Corps shall provide written notice to the

other Parties explaining why such action is or was necessary to abate an imminent and substantial endangerment. Promptly thereafter, the Marine Corps shall provide the other Parties with the written bases (factual, technical, scientific) for such action and any available documents supporting such action. Upon completion of such an emergency action, the Marine Corps shall notify the other Parties in writing that the emergency action has been implemented. Such notice shall state whether, and to what extent, the emergency action varied from the description of the action provided in the written notice provided pursuant to the second sentence of this paragraph.

F. This Section shall not be construed to relieve the Marine Corps from compliance with State and federal notice requirements applicable to releases.

XIV. REPORTING

The Marine Corps shall submit to DEHNR and USEPA quarterly written progress reports which identify and briefly describe the actions which the Marine Corps has taken during the previous quarter to implement the requirements of this Agreement. Progress reports shall also identify and briefly describe the activities scheduled to be taken during the upcoming quarter. Progress reports shall be submitted by the tenth (10) day of January, April, July and September for each quarter following the effective date of this Agreement. The progress reports shall include a statement of the manner and extent to which the requirements and time schedules set out in this Agreement and approved Work Plans are being met. In addition, the progress reports shall identify any anticipated delays in meeting time schedules, the reason(s) for the delay and actions taken to prevent or mitigate the delay. The Marine Corps shall submit notice of a Significant New Site Condition within seven (7) days of such discovery.

XV. NOTIFICATION

A. Unless otherwise specified, the following shall be sent by a registered/return-receipt mail, facsimile machine or hand delivery to Project Managers or their designated agent(s):

1. Any report provided pursuant to a schedule or deadline identified in or developed under this Agreement.

2. Any notice of Significant New Site Conditions.

3. Any decisions on remedial action selected by USEPA.

4. Any notice of dispute and response thereto submitted under Section XI (Resolution of Disputes) of this Agreement.

5. Any request, and response thereto, for extensions under Section XXIX (Extensions) of this Agreement.

6. Any notice of Force Majeure under Section XXX (Force Majeure) of this Agreement.

7. Any notice of cessation of work due to an imminent

and substantial endangerment situation under Section XIII (Emergency Actions) of this Agreement.

B. The items listed in Paragraph A above shall be transmitted as shown below:

1. Mail:

USEPA: U.S. Environmental Protection Agency Region IV
Waste Management Division
Attn: Camp Lejeune Remedial Project Manager
345 Courtland Street N.E.
Atlanta, Georgia 30365

DEHNR: Department of Environment, Health and Natural Resources
Division of Solid Waste Management
Superfund Section
P.O. Box 27687
Raleigh, NC 27611-7687

Marine Corps: Atlantic Division
Naval Facilities Engineering

December 6, 1989; Section XV

Command

Code 1822, Camp Lejeune Project Manager

Norfolk, Virginia 23511-6287

2. Facsimile Machine:

USEPA: (404) 347-3035

Attn: [Project Manager's Name]

DEHNR: (919) 733-4811

Attn: [Project Manager's Name]

Marine Corps: (804) 445-6662

Attn: [Project Manager's Name]

3. Hand Delivery:

USEPA: U.S. Environmental Protection Agency, Region IV

Waste Management Division

Attn: Camp Lejeune Remedial Project Manager

345 Courtland Street N.E.

Atlanta, GA 30365

DEHNR: Department of Environment, Health and Natural Resources

Division of Solid Waste Management

401 Oberlin Road

December 6, 1989; Section XV

Suite 150

Raleigh, NC 27605

Marine Corps: Atlantic Division, Naval Facilities
Engineering Command
Code 1822
Building IAA, Room 202
Naval Base Norfolk
Norfolk, Virginia 23511

C. Unless otherwise requested, all routine correspondences, including quarterly progress reports, may be sent via regular mail to the above-named persons. Any time limitations shall commence upon posting.

D. Telephones:

1. USEPA: (404) 347-5059 (Project Manager)
2. DEHNR: (919) 733-2801 (Project Manager)
3. Marine Corps: (804) 445-1814 (Project Manager)
   (919) 451-3034 (On-Site Coordinator)

XVI. PROJECT MANAGERS

A. The USEPA, DEHNR and the Marine Corps shall each designate a Project Manager and Alternate for the purpose of overseeing the implementation of this Agreement. Within ten (10) days of the effective date of this Agreement, each Party shall notify the other Parties in writing of the name and address of their Project Manager/Alternate. Any Party may change its designated Project Manager/Alternate by notifying the other Parties, in writing, within five (5) days of the change. To the maximum extent possible, communications between the parties concerning the implementation of this Agreement shall be directed through the Project Managers as set forth in Section XV (Notification) of this Agreement. As a matter of course, all written communications shall be sent to the primary point of contact as described in Section XV (Notification) above. Each Project Manager shall be responsible for assuring that all communications from the other Project Managers are appropriately disseminated and processed by the entities which the Project Manager represents.

B. The Project Managers or their designees shall have the authority to:

1. Take samples, request split samples and ensure that work is performed properly and pursuant to Section XVII (Sampling and Data Document Availability) of this Agreement as well as pursuant to the Appendices and plans incorporated into this Agreement;

2. Observe all activities performed pursuant to this Agreement;

3. Take photographs subject to national security-related restrictions that may be imposed by military authorities at specific locations pursuant to Section 120(j) of CERCLA, 42 U.S.C. Section 9620(j);

4. Make such other reports on the progress of the work as are appropriate; and

5. Review records, files and documents relevant to this Agreement.

C. Any Project Manager may request minor field modifications to the work to be 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. Any minor field modifications requested by any Party must be approved orally by all three (3) Project Managers to be effective. If unanimous agreement cannot be reached on the proposed minor field modification, the Parties shall use the procedures of Section XI (Resolution of Disputes) of this Agreement. Within seven (7) days following a modification made pursuant to this paragraph, the Project Manager who requested the modification shall provide written notification to the other Project Managers which delineates the modification and reasons therefore.

D. The Marine Corps On-Site Coordinator or his designated representative shall be physically present on Site or reasonably available to supervise work performed at Camp Lejeune/New River during implementation of the work performed pursuant to this Agreement.

E. Each Project Manager shall make himself reasonably available to the other Project Managers for the pendency of this Agreement.

XVII. SAMPLING AND DATA DOCUMENT AVAILABILITY

A. The Parties shall provide as soon as possible, but no later than 120 days after collection, quality assured results of sampling, tests or other data generated by such Party, or on their behalf, with respect to the implementation of this Agreement. The Marine Corps shall use USEPA/State-approved quality assurance, quality control and chain of custody procedures throughout all sample collection and analysis activities.

B. At the request of any Party the sampling Party shall allow split samples to be taken by any other Party during sample collection conducted during the implementation of this Agreement. The Project Manager obtaining the sample shall notify the other Project Managers not less than fourteen (14) days in advance of any sample collection to the maximum extent practicable. If it is not possible to provide fourteen (14) day notification, the Project Manager shall notify the other Project Managers as soon as possible after becoming aware that samples will be collected.

XVIII. RETENTION OF RECORDS

Each Party to this Agreement shall preserve all records and documents forming the Administrative Record which relate in any way to the presence of hazardous substances, pollutants, contaminants or constituents at the Site or to the implementation of this Agreement for a minimum of ten (10) years after termination of this Agreement despite any other document retention policy to the contrary. After the ten (10) year period, any Party desiring to destroy/dispose of document(s)/ record(s) shall notify the other Parties at least forty-five (45) days prior to destruction/disposal of any such documents or records. Upon request by any Party, all records/documents pending destruction/disposal shall be made available for the requesting Party's review and retention. Notwithstanding the requirement to retain records established by this Section, the execution of this Agreement does not constitute a waiver of any Freedom of Information Act (FOIA) privilege.

XIX. SITE ACCESS

A. USEPA and DEHNR authorized representatives shall have authority to enter and move about the Site at all reasonable times for any purpose consistent with this Agreement including, among other things:

1. Inspecting records, operating logs, contracts and other documents relevant to implementation of this Agreement;

2. Reviewing the progress of the Marine Corps, its response action contractors or lessees in implementing this Agreement;

3. Gathering samples and conducting such analyses of those samples as is necessary to implement this Agreement; and

4. Verifying the data submitted to the USEPA and DEHNR by the Marine Corps.

The Marine Corps shall honor all reasonable requests for such access by the USEPA and DEHNR conditioned only upon presentation of proper credentials. However, such access shall be obtained in conformance with Marine Corps security regulations and in a

manner minimizing interference with any military operations at Camp Lejeune/New River. The Parties recognize that the Site is a National Security installation thereby requiring that the USEPA and DEHNR shall refrain from using cameras or recording devices at the Site without the prior permission of the Marine Corps. Such permission shall not be unreasonably withheld. The Marine Corps shall provide an escort whenever USEPA or DEHNR requires access to the Site for purposes consistent with the provisions of this Agreement. The USEPA and DEHNR shall provide reasonable notice to the Marine Corps On-Site Coordinator to request any necessary escorts.

B. To the extent that access is required to areas of the Site presently owned by or leased to parties other than the Marine Corps, the Marine Corps agrees to initiate negotiations and exercise any authority it may have to obtain access pursuant to Section 104(e) of CERCLA/SARA, 42 U.S.C. Section 9604(e), from the present owners and/or lessees within thirty (30) days after the relevant submittals which require access are finalized. The Marine Corps shall use its best efforts to obtain access agreements which shall provide reasonable access to the authorized representatives of all Parties.

C. The access agreements shall provide that the owners of any property where Marine Corps monitoring wells, pumping wells,

treatment facilities or other response actions are located shall notify the Parties by registered/return receipt mail, at least forty-five (45) calendar days prior to any conveyance or any other transfer of any interest in the property. The Marine Corps will take those steps necessary to insure the continued operation of the monitoring wells, treatment facilities, or other response actions installed pursuant to this Agreement.

D. Should the Marine Corps be denied access to non-federal property, it will advise the Parties of that denial and will describe those actions taken to gain access within thirty (30) days of the denial. Within fifteen (15) days of such notice, the Marine Corps shall submit appropriate modification(s) to affected Work Plans.

E. The Marine Corps Project Manager may request the assistance of the other Parties' Project Managers in obtaining access to non-federal property as appropriate.

XX. FIVE YEAR REVIEW

A. Consistent with Section 121(c) of CERCLA/SARA, 42 U.S.C. Section 9621(c) and Office of Solid Waste and Emergency Response Directive 9320.2-3A, the Parties agree that they will conduct an initial review of the status of each remedial action five years after the initiation of such final remedial action(s) to assure that human health and the environment are being protected. Such review will be conducted each five years thereafter until all remediation is determined by each of the Parties to have been effective. If during any such review it is determined that additional action or modification of the remedial action is appropriate, the Marine Corps shall take such steps as are necessary to address the identified shortcoming.

B. Any dispute under this Section shall be resolved under Section XI (Resolution of Disputes) of this Agreement.

XXI. OTHER CLAIMS

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

B. Neither the USEPA nor the State shall be held as a party to any contract entered into by the Marine Corps to implement the requirements of this Agreement.

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

XXII. CONFIDENTIAL INFORMATION

A. Should the Marine Corps provide confidential information it may request that the information be withheld from public release pursuant to 40 C.F.R. Section 2.203(b) (1988).

B. Analytical data shall not be claimed as confidential by the Marine Corps.

C. Information determined to be confidential by USEPA pursuant to 40 C.F.R. Part 2 (1988) shall be afforded the protection specified therein and such information shall be treated by all Parties to the extent permitted by law as confidential when so marked.

D. If no claim of confidentiality accompanies Marine Corps information when it is submitted to the USEPA or DEHNR, the information may be made available to the public without further notice to the Marine Corps.

E. Marine Corps information may also be subject to national security classification. Notwithstanding any other provisions of this Agreement, all requirements concerning the handling and "need to know" of national security information and restricted

data shall be complied with in accordance with Section 120(j)(2) of CERCLA, 42 U.S.C. Section 9620(j)(2).

XXIII. EXHAUSTION OF ADMINISTRATIVE REMEDIES

It is the intent of the Parties to exhaust administrative remedies provided in Section X (Consultation with USEPA and DEHNR), Section XI (Resolution of Disputes), Section XXVI (Enforceability), Section XXVII (Stipulated Penalties) and Section XXIV (The State's Reservation of Rights) of this Agreement before initiating any enforcement action for matters within the Scope of this Agreement.

XXIV. THE STATE'S RESERVATION OF RIGHTS

Nothing herein shall be construed to affect the State's rights to seek appropriate relief, to the extent authorized by law and this Agreement, against USEPA, the Marine Corps, or any other party, to obtain compliance with the law at the Site, including, but not limited to, North Carolina law (1) governing hazardous or solid waste generation, storage, treatment, or disposal, (2) concerning removal or remedial actions, or (3) liability or compliance with respect to the release of hazardous substances or other pollutants or contaminants, including petroleum.

By entering into this Agreement, the State does not waive any right or authority it may have under North Carolina law, but expressly reserves all of the rights and authority it may have thereunder, including the right to order abatement of an imminent hazard to the public health or the environment, and reserves all rights it may have under Section 121 of CERCLA, 42 U.S.C. Section 9621. The State expressly agrees to exhaust any applicable remedies provided in Section X (Consultation with USEPA and DEHNR) and Section XI (Resolution of Disputes) of this Agreement before pursuing any remedies it may have under the statutes which provide the jurisdictional basis for this Agreement. Unless

expressly waived by law, North Carolina does not waive its Sovereign Immunity by entering into this Agreement.

XXV. TOTAL INTEGRATION

There are no promises, verbal understandings or agreements of any kind pertaining to this Agreement other than specified herein. This Agreement shall constitute the entire integrated agreement of the Parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.

XXVI. ENFORCEABILITY

A. The Parties agree that:

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

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

3. All terms and conditions of this Agreement which relate to remedial actions, including corresponding timetables, deadlines or schedules, and all work associated with remedial actions, shall be enforceable by any person pursuant to Section 310(c) of CERCLA, 42 U.S.C. Section 9659(c), and any violation of

such terms or conditions will be subject to civil penalties under Sections 310(c) and 109 of CERCLA, 42 U.S.C. Sections 9659(c) and 9609; and

4. Any final resolution of a dispute pursuant to Section XI (Resolution of Disputes) of this Agreement which establishes a term, condition, timetable, deadline or schedule shall be enforceable by any person pursuant to Section 310(c) of CERCLA, 42 U.S.C. Section 9659(c) and any violation of such term, condition, timetable, deadline or schedule will be subject to civil penalties under Sections 310(c) and 109 CERCLA, 42 U.S.C. Sections 9659(c) and 9609.

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

C. Nothing in this Agreement shall be construed as a restriction or waiver of any rights the USEPA or the State may have under CERCLA, including but not limited to any rights under Sections 113 and 310, 42 U.S.C. Sections 9613 and 9659. The Department of Defense (DOD) does not waive any rights it may have under CERCLA Section 120, 42 U.S.C. Section 9620, SARA Section 211, 42 U.S.C. Section 2701 et seq. and Executive Order 12580.

D. The Parties agree to exhaust their rights under Section XI (Resolution of Disputes) prior to exercising any rights to judicial review that they may have.

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

XXVII. STIPULATED PENALTIES

[Note: This Section may be revisited in the future pending national resolution of this issue.]

A. In the event that the Marine Corps fails to submit a primary document to USEPA pursuant to the appropriate timetable or deadline in accordance with the requirements of this Agreement, or fails to comply with a material term or condition (including any deadlines or schedules for work under this Agreement) which relates to a CERCLA response action at the Site, USEPA may assess a stipulated penalty against the Marine Corps. A stipulated penalty may be assessed in an amount not to exceed $5,000 for the first week (or part thereof), and $10,000 for each additional week (or part thereof) for which a failure set forth in this Section occurs.

B. Upon determining that the Marine Corps has failed in a manner set forth in Paragraph A above, USEPA shall so notify the Marine Corps in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the Marine Corps shall have fifteen (15) days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. The Marine Corps shall not be liable for the stipulated penalty assessed by

USEPA if the failure is determined, through the dispute resolution process, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.

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

1. The facility responsible for the failure;

2. A statement of the facts and circumstances giving rise to the failure;

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

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

5. The total dollar amount of the stipulated penalty

assessed for the particular failure.

D. Stipulated penalties assessed pursuant to this Section shall be payable to the Hazardous Substances Response Trust Fund only in the manner and to the extent expressly provided for in Acts authorizing funds for and appropriations to the DOD.

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

F. This Section shall not affect the Marine Corps' ability to obtain an extension of a timetable, deadline or schedule pursuant to Section XXIX (Extensions) of this Agreement.

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

XXVIII. DEADLINES

A. The following deadline has been established by the Parties for the submittal of the following draft primary document pursuant to this Agreement:

1. Site Scope of Work: Within thirty (30) days of the Effective Date of this Agreement.

B. Within the Site Scope of Work, the Marine Corps shall propose deadlines for completion of each of the draft primary documents which shall be submitted during the following fiscal year including, but not limited to:

1. Site Community Relations Plan
2. Location-specific RI/FS Work Plans
3. Location-specific Baseline Risk Assessments.

C. No later than June 1 of each year thereafter, the Marine Corps shall submit an amendment to the Site Scope of Work which shall propose deadlines for completion of each of the draft primary documents to be submitted in the following fiscal year.

D. Within fifteen (15) days of receipt, USEPA and DEHNR shall review and provide comments to the Marine Corps regarding

the proposed deadlines. Within fifteen (15) days following receipt of the comments the Marine Corps 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 thirty (30) days on the proposed deadlines, the matter shall immediately be submitted for dispute resolution pursuant to Section XI (Resolution of Disputes) of this Agreement.

E. The final deadlines established pursuant to this Section shall be published by USEPA and DEHNR.

F. Within twenty-one (21) days of issuance of the Record of Decision, the Marine Corps shall propose deadlines for completion of each Remedial Design Report and Remedial Action Work Plan. Each deadline shall be proposed, finalized and published utilizing the same procedures set forth in Paragraphs D and E above.

G. Within twenty-one (21) days of receipt of any Final Remedial Investigation or Feasibility Study Work Plans by USEPA and DEHNR, the Marine Corps shall furnish target completion dates for secondary documents listed in the Remedial Investigation and

Feasibility Study Work Plans.

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

XXIX. EXTENSIONS

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

1. The timetable and deadline or the schedule that is sought to be extended;

2. The length of the extension sought;

3. The good cause(s) for the extension; and

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

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

1. An event of force majeure as described in Section XXX (Force Majeure) of this Agreement;

2. A delay caused by another party's failure to meet

any requirement of this Agreement;

3. A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;

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

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

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

D. Within fourteen (14) days of receipt of a request for an extension of a timetable and deadline or a schedule, USEPA and DEHNR shall advise the Marine Corps in writing of their respective positions on the request. If USEPA or DEHNR does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position. Should USEPA or DEHNR not concur in the requested extension and should that Party's notice of nonconcurrence not be

provided within fourteen (14) days of receipt of the Marine Corp's written request for the extension, then the timetable and deadline or schedule which is the subject of the requested extension shall be tolled for the period of time in excess of the fourteen (14) days that it took the noncurring Party to advise the Marine Corps of its position.

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

F. Within fourteen (14) days of receipt of a statement of nonconcurrence with the requested extension, any Party may invoke dispute resolution in accordance with Section XI (Resolution of Disputes) of this Agreement.

G. A timely and good faith request for an extension shall toll any assessment of stipulated penalties or application for judicial enforcement of the affected timetable and deadline or schedule until a decision is reached on whether the requested extension will be approved. If dispute resolution is invoked and

the requested extension is denied, stipulated penalties may be assessed and may accrue from the date of the original timetable, deadline or schedule. Following the grant of an extension, an assessment of stipulated penalties or an application for judicial enforcement may be sought only to compel compliance with the timetable and deadline or schedule as most recently extended.

XXX. FORCE MAJEURE

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

1. Acts of God; fire; war; insurrection; civil disturbance; explosion;

2. Unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance;

3. Adverse weather conditions that could not be reasonably anticipated;

4. Unusual delay in transportation;

5. Restraint by court order or order of public authority;

6. Inability to obtain, 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 Marine Corps or the Navy;

7. Delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; and

8. Insufficient availability of appropriated funds, if the Marine Corps shall have made timely request for such funds as part of the budgetary process as set forth in Section XXXI (Funding) of this Agreement.

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

XXXI. FUNDING

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

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

C. Any requirement for the payment or obligation of funds, including stipulated penalties, by the Marine Corps 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.

D. If appropriated funds are not available to fulfill the Marine Corps' obligations under this Agreement, USEPA and the State reserve the right to initiate an action against any other person, or to take any response/corrective action, which would be appropriate absent this Agreement.

E. Funds authorized and appropriated annually by Congress under the "Environmental Restoration, Defense" appropriation in the Department of Defense Appropriation Act and allocated by the Deputy Assistant Secretary of Defense (Environment) [DASD(E)] to the Marine Corps will be the source of funds for activities required by this Agreement consistent with Section 211 of SARA, 10 U.S.C. Section 2703. However, should the Environmental Restoration, Defense appropriation be inadequate in any year to meet the total Marine Corps CERCLA implementation requirements, the DOD shall employ and the Marine Corps shall follow a standardized DOD prioritization process which allocated that year's appropriations in a manner which maximizes the protection of human health, welfare and the environment.

XXXII. CONVEYANCE OF TITLE

No conveyance of title, easement, or other interest in the Marine Corps property in which any containment system, treatment system, monitoring system or other response action(s) is installed or implemented pursuant to this Agreement shall be consummated by the Marine Corps without provision for continued maintenance of any such system or other response action(s) in accordance with Section 120(h) of CERCLA, 42 U.S.C. 9620(h). At least thirty (30) days prior to any such conveyance, the Marine Corps shall notify USEPA and DEHNR of the provisions made for the continued operation and maintenance of any response/corrective action(s) or systems installed or implemented pursuant to this Agreement.

XXXIII. ADMINISTRATIVE RECORD AND PUBLIC PARTICIPATION

A. The Parties recognize that this Agreement and all response actions arising thereunder shall comply with the administrative record and public participation requirements of CERCLA/SARA, including Sections 113(k) and 117 of SARA respectively, 42 U.S.C. Sections 9613(k) and 9617, the NCP, the public hearing requirements of Section 3008(h) of RCRA, 42 U.S.C. Section 6928(h), and USEPA/State-issued guidances on administrative records, public participation and public hearings respectively.

B. The Marine Corps shall develop and implement a Community Relations Plan (CRP) consistent with Section 117 of SARA, 42 U.S.C. Section 9617, the NCP, USEPA/State-issued guidance set forth in USEPA's Community Relations Handbook, and any modifications thereto.

C. To the extent practicable, any Party issuing any press release to the media or publishing a notice regarding any of the work required by this Agreement shall advise the other Parties of such press release or notice and the contents thereof at least forty-eight (48) hours before the issuance of such press release or notice and of any subsequent changes prior to release. This

provision for notice, however, does not extend to contract solicitations for work or modifications thereto that are routinely publicized for competition purposes.

D. The administrative record shall be established and maintained in accordance with Section 113(k) of CERCLA, 42 U.S.C. Section 9613(k), and current and future USEPA-issued policy and guidance. A copy of each Marine Corps document placed in the Administrative Record shall be supplied to USEPA and DEHNR. An index of documents in the Administrative Record will be updated on at least a quarterly basis and provided to the USEPA and DEHNR.

XXXIV. PUBLIC COMMENT

A. When the Parties agree that this Agreement or any amendment(s) thereto, is ready for public review and comment, they will sign a Letter of Intent to Execute. USEPA shall then announce the availability of this Agreement, the Letter of Intent to Execute, and any amendment(s) to this Agreement for public review and comment. USEPA shall accept comments from the public for a period of forty-five (45) days after such announcement. At the end of the comment period, the Parties shall review all such comments and shall either:

1. Determine that the Agreement should be made effective in its present form and then be submitted for execution by those Parties; or

2. Determine that further negotiation of the Agreement is necessary, in which case the Parties shall return to negotiation. After further negotiation, if agreement among the Parties is reached, the Agreement and a Responsiveness Summary shall be submitted again for public comment under Paragraph A pursuant to Sections 117 and 211 of CERCLA/SARA, 42 U.S.C. Section 6917 and 10 U.S.C. Section 2705.

B. When the Parties finalize the Agreement, USEPA shall issue an Article of Decision for the Agreement.

XXXV. AMENDMENT OF AGREEMENT

A. Any Party may submit a written request for amendment to the other Parties.

B. This Agreement may be amended by the unanimous written agreement of the Parties. If the Parties do not reach unanimous agreement to the proposed amendment they may enter into negotiations with a view toward resolving all points of disagreement. If, following negotiation, unanimity cannot be achieved, the amendment will not occur. Amendment proposals under this Agreement are not subject to Section XI (Resolution of Disputes) of this Agreement.

C. The notice procedures of CERCLA Section 117, 42 U.S.C Section 9617 and SARA Section 211, 10 U.S.C. Section 2705 shall be followed for all proposed amendments. Public notice is not required for minor ministerial changes to this Agreement (e.g. changes in phone numbers or addresses). The amendment cannot be executed until such time as public participation requirements have been satisfied.

XXXVI. RECOVERY OF USEPA AND STATE EXPENSES

A. Reimbursement of USEPA's Expenses:

The Parties agree to amend this Section at a later date in accordance with subsequent resolution of the national issue of DOD-USEPA cost reimbursement.

B. Reimbursement of North Carolina's Expenses:

1. The Marine Corps agrees to request funding from Congress and to reimburse DEHNR for the costs related to the implementation of this Agreement as provided in this Section. The Marine Corps agrees to advise DEHNR of the status of available funds as soon as the appropriations are enacted and final program allocations are made by DOD to the Marine Corps and the Navy.

a. The amount of reimbursable costs payable under this Agreement shall not exceed seventy-five thousand dollars ($75,000) for federal fiscal year 1990 and shall not exceed seventy-five thousand dollars ($75,000) for federal fiscal year 1991.

b. Prior to the end of the second year, the amount of reimbursable costs for the subsequent years shall be

renegotiated in accordance with any then existing agreement on the subject between DOD and the State of North Carolina.

c. If no such agreement has been reached between DOD and the State, the Marine Corps and DEHNR agree to negotiate in good faith an annual cap for future reimbursable costs. If the Marine Corps and DEHNR are unable to agree to the amount of the annual cap after such negotiations, they shall refer the issue to resolution in accordance with subparagraph 7 of this Section.

d. If the Marine Corps and DEHNR are unable to resolve the issues in dispute through subparagraph 7 of this Section, DEHNR may withdraw as a Party to this Agreement by providing written notice of its withdrawal to each of the remaining Parties. Such withdrawal by DEHNR shall terminate all of the rights and obligations the State or DEHNR may have under this Agreement; provided, however, that any actions taken under or pursuant to this Agreement by DEHNR prior to its withdrawal shall continue to have full force and effect as if DEHNR were still a Party to this Agreement.

e. Nothing in this Agreement constitutes a waiver of claims by DEHNR for costs expended but not reimbursed under this Agreement.

2. Implementation Activities:

a. Reimbursable costs shall consist only of actual expenditures required to be made and actually made by DEHNR to fulfill its participation under this Agreement.

b. All reimbursable costs are subject to Section XXXI (Funding) of this Agreement. Reimbursable costs must be reasonable; they shall not include payment for any activity for which DEHNR receives payment or reimbursement from another agency of the United States Government; they shall not include payment for anything violative of federal or State statutes or regulations; and, they must be allocable to the implementations activities provided in accordance with subparagraph 2.a. above.

c. Travel expenses shall not exceed those expenses allowed by the State for reimbursement of travel expenses.

3. Invoice Submittal:

a. Within thirty (30) days after the effective date of this Agreement DEHNR will submit an invoice for costs incurred by DEHNR for carrying out activities of the type

contemplated by this Agreement for the first quarter of federal fiscal year 1990.

b. Thereafter, within forty-five (45) days after the end of each quarter of the federal fiscal year, DEHNR shall submit to the Marine Corps an invoice for all reimbursable costs incurred during the previous quarter by DEHNR related to subparagraph 2 above.

4. Payment: The Marine Corps shall pay any invoices submitted pursuant to subparagraphs 3.a. and 3.b. above within sixty (60) days of receipt, except for any portion of the invoice that is disputed in accordance with the procedures in subparagraph 7 below. The Marine Corps reserves the right to dispute amounts claimed in said invoices.

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

6. The Marine Corps and DEHNR recognize that a necessity for effectuating sufficient funding for this Agreement is that DEHNR provides timely and accurate estimates of reimbursable costs. Within thirty (30) days of the effective date of this Agreement, DEHNR shall provide the Marine Corps with cost estimates for all anticipated reimbursable expenses to be incurred for the remainder of the current federal fiscal year, 1990. Within ninety (90) days of the effective date of this Agreement, DEHNR shall provide the Marine Corps with cost estimates for all anticipated reimbursable expenses to be incurred during federal fiscal year 1991. DEHNR shall expeditiously notify the Marine Corps if it becomes aware that the cost estimates provided under this subparagraph are no longer substantially accurate and provide in their place new cost estimates.

7. In lieu of Section XI (Resolution of Disputes) of this Agreement, any dispute between the Marine Corps and DEHNR regarding the application of this Section or any matter controlled by said Section XXXVI, including but not limited to allowable expenses and caps of expenses under subparagraph 1.3. above shall be resolved in accordance with this subparagraph.

a. The Marine Corps and DEHNR Project Managers shall be the primary points of contact to coordinate resolution

of disputes under this subparagraph.

b. If the Marine Corps or DEHNR Project Managers are unable to resolve a dispute, the matter shall be referred to the DRC representatives (as provided for in Section XI (Resolution of Disputes) of this Agreement) for the Marine Corps and DEHNR as soon as practicable, but in any event within forty (40) days of receipt of the invoice.

c. Should the DRC representatives be unable to resolve the dispute within ten (10) days, the matter shall be elevated to the SEC representatives (as provided for in Section XI (Resolution of Disputes) of this Agreement) for the Marine Corps and DEHNR who will render their written report on the results of their efforts to resolve the dispute in ten (10) working days.

d. It is the intention of the Marine Corps and DEHNR that all disputes shall be resolved strictly in accordance with this paragraph; however, the use of informal resolution, including use of mediation and arbitration techniques is encouraged. In the event the representatives designated in subparagraph 7.c. above are unable to resolve the dispute, DEHNR retains all of its legal and equitable remedies to recover its costs.

XXXVII. TERMINATION

The provisions of this Agreement shall only be deemed satisfied and terminated upon receipt by the Marine Corps of written notice from USEPA and DEHNR that the Marine Corps has demonstrated, to the satisfaction of the USEPA and DEHNR, that all the terms of this Agreement have been completed. Termination procedures shall be in accordance with Section XXXV (Amendment of Agreement) of this Agreement.

XXXVIII. EFFECTIVE DATE

A. This Agreement is effective upon its execution by all Parties.

B. This Agreement will not be executed until such time as public participation requirements of Section XXXIV (Public Comment) of this Agreement have been satisfied.

IT IS SO AGREED:

FOR U.S. DEPARTMENT OF THE NAVY

By: _____ Date: 13 February 1991

Jacqueline E. Schafer

Assistant Secretary of the Navy

(Installations and Environment)

FOR THE NORTH CAROLINA DEPARTMENT OF ENVIRONMENT, HEALTH AND NATURAL RESOURCES

By: _____ Date: 2/13/91

Edythe McKinney

Assistant Secretary for Environmental Protection

Department of Environment, Health and Natural Resources

For Form and Format:

By: _____ Date: 2-14-91

Lacy H. Thornburg

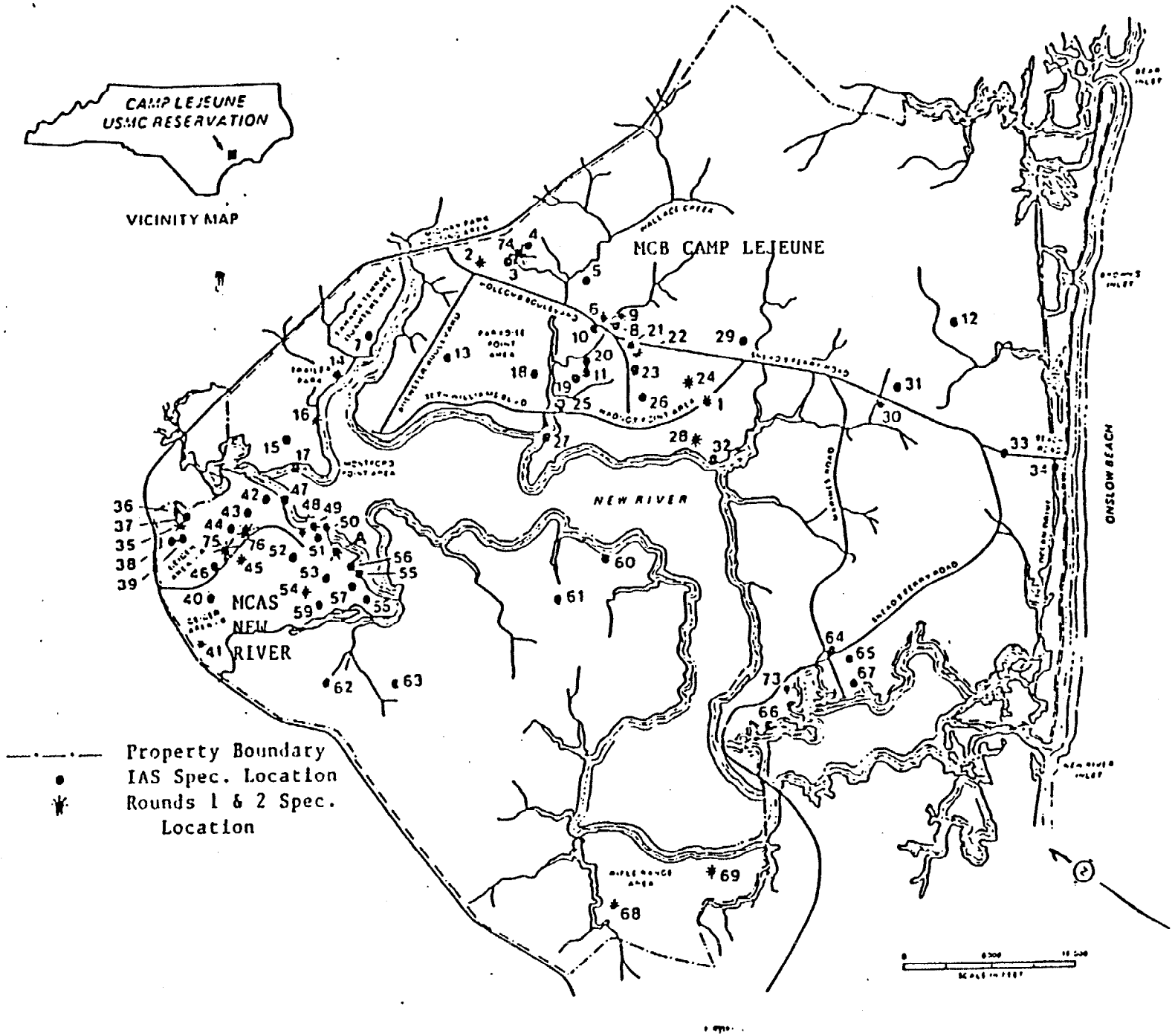
Attorney General for the State of North Carolina

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

By: _____ Date: 2-13-91

Greer C. Tidwell, Regional Administrator

Region IV



MCB CAMP LEJEUNE/MCAS NEW RIVER COMPLEX
Site Map Showing Specific Locations

DOC.No.:CLEJ-00180-8.02-01/01/01

MCB CAMP LEJEUNE/MCAS NEW RIVER
SPECIFIC LOCATION LISTING

Location	Location Description
1*	French Creek Liquids Disposal Area
2*	Former Nursery/Day-Care Center
3	Old Creosote Plant
4	Sawmill Road Construction Debris Dump
5	Piney Green Road
6*	Storage Lots 201 and 203
7	Tarawa Terrace Dump
8	Flammable Storage Warehouse, Bldg TP-451 and TP-452
9*	Fire Fighting Training Pit at Piney Green Road
10	Original Base Dump
11	Pest Control Shop
12	EOD (G-4)
13	Golf Course Construction Dump Site
14	Knox Area Rip-Rap
15	Montford Point Dump Site (1948-1958)
16*	Montford Point Burn Dump (1958-1972)
17	Montford Point Area Rip-Rap
18	Watkins Village (E) Site
19	Naval Research Lab Dump
20	Naval Research Lab Incinerator
21**	Transformer Storage Lot 140
22***	Industrial Area Tank Farm
23	Roads and Grounds, Building 1105
24*	Industrial Area Fly Ash Dump
25	Base Incinerator
26	Coal Storage Area
27	Naval Hospital Area Rip-Rap
28*	Hadnot Point Burn Dump
29	Base Sanitary Landfill
30*	Sneads Ferry Road - Fuel Tank Sludge Area
31	Engineering Stockade - G4 Range Road
32	Frenchs Creek
33	Onslow Beach Road
34	Ocean Drive
35*	Camp Geiger Area Fuel Farm
36*	Camp Geiger Area Dump near Sewage Treatment Plant
37	Camp Geiger Area Surface Dump
38	Camp Geiger Construction Dump
39	Camp Geiger Construction Slab Dump
40	Camp Geiger Area Borrow Pit
41*	Camp Geiger Dump near former Trailer Park
42	Building 705, BOQ Dump
43	Agan Street Dump
44	Jones Street Dump

MCB CAMP LEJEUNE/MCAS NEW RIVER
SPECIFIC LOCATION LISTING

Location	Location Description
45*	Campbell Street Underground AVGAS Storage and Adjacent JP Fuel Farm at Air Station
46	MCAS Main Gate Dump
47	MCAS Rip-Rap Near Stick Creek
48*	MCAS New River Mercury Dump Site
49	MCAS Suspected Minor Dump
50	MCAS Small-Craft Berthing Rip-Rap
51	MCAS Football Field
52	MCAS Direct Refuel Depot
53	MCAS Warehouse Building 3525 Area (Oiled Roads)
54*	Crash Crew Fire Training Burn Pit
55	Air Station East Perimeter Dump
56	MCAS Oiled Roads to Marina
57	Runway 36 Dump
58	MCAS Tank Training Area
59	MCAS Infantry Training Area
60	EOD K-326 Range
61	Rhodes Point Road Dump
62	Race Course Area Dump
63	Vernon Road Dump
64	Marines Road - Sneads Ferry Road MOGAS Spill
65	Engineer Area Dump
66	AMTRAC Landing Site and Storage Area
67	Engineers TNT Burn Site
68*	Rifle Range Dump
69*	Rifle Range Chemical Dump
70	Oak Grove Field - Surface Dump
71	Oak Grove Buried Dump
72	Oak Grove Coal Pile
73*	Courthouse Bay Liquids Disposal Area
74*	Mess Hall Grease Pit Area
75*	MCAS Basketball Court Site
76*	MCAS Curtin Road Site
A*	MCAS (H) Officer's Housing Area

* Initial Assessment Study recommended further investigation; location included in Rounds One and Two Studies.

** Location Number 21, Transformer Storage Lot 140, was location designated in National Priorities List Proposal 6/24/88.

*** Location Number 22, Industrial Area Tank Farm, is focus of Hadnot Point Industrial Area RI/FS activities.

RCRA/CERCLA TERMINOLOGY

RCRA CORRECTIVE ACTION [3004(u)] *	CERCLA REMEDIAL ACTION [NCP]	COMBINATION [RCRA/CERCLA]
ACRONYMS:		
RFA: RCRA Facility Assessment	PA/SI Preliminary Assessment/ Site Inspection	RFA-PA/SI
RFI: RCRA Facility Investigation	RI: Remedial Investigation	RFI/RI
CMS: Corrective Measure Study	FS: Feasibility Study	CMS/FS
CMP: Corrective Measures Plan	RAP: Remedial Action Plan	CMP/RAP
CMD: Corrective Measures Design	RD: Remedial Design	CMD/RD
CM: Corrective Measures	RA: Remedial Action	CM/RA

General Terminology:

Corrective Action: RCRA term for all activities conducted under requirements of Section 3004(u) & (v) or 3008(h)

Closure: RCRA term for requirements of 40 CFR Parts 264/265 Subpart G for RCRA regulated TSD units only.

Site: CERCLA term as defined in NCP and IAG/FFA.

Solid Waste Management Unit (SWMU): RCRA term as defined in RCRA permit.

* To be proposed as 40 CFR Part 264 Subpart S.

SOLID WASTE MANAGEMENT UNITS/OPERABLE UNITS
COVERED BY THIS AGREEMENT

Sp. Loc.	Location Description
1	French Creek Liquids Disposal Area
2	Former Nursery/Day-Care Center
6	Storage Lots 201 and 203
9	Fire Fighting Training Pit at Piney Green Road
16	Montford Point Burn Dump (1958-1972)
21	Transformer Storage Lot 140
22	Industrial Area Tank Farm
24	Industrial Area Fly Ash Dump
28	Hadnot Point Burn Dump
30	Sneads Ferry Road - Fuel Tank Sludge Area
35	Camp Geiger Area Fuel Farm
36	Camp Geiger Area Dump near Sewage Treatment Plant
41	Camp Geiger Dump near former Trailer Park
45	Campbell Street Underground AVGAS Storage and Adjacent JP Fuel Farm at Air Station
48	MCAS New River Mercury Dump Site
54	Crash Crew Fire Training Burn Pit
68	Rifle Range Dump
69	Rifle Range Chemical Dump
73	Courthouse Bay Liquids Disposal Area
74	Mess Hall Grease Pit Area
75	MCAS Basketball Court Site
76	MCAS Curtin Road Site
A	MCAS (H) Officer's Housing Area

NOTE: Other specific locations may be added to the above list upon identification of the need to perform a RI/FS at those locations resulting in the corresponding modification to the Scope of Work Primary Document (described in the Agreement).

DESCRIPTION OF DOCUMENTS
REQUIRED FOR SUBMISSION UNDER THIS AGREEMENT

Miscellaneous:

1. Remedial Investigation/Feasibility Study (RI/FS) Project Planning and Scoping:

a. The initial Project Planning phase of the RI/FS process is designed to scope the following:

(1) Interim actions necessary to mitigate potential threats to human health or the environment;

(2) Future actions that may be required to address location-specific problems; and

(3) The optimal sequence of location-specific actions and investigative activities.

b. RI/FS Project Planning is done to:

(1) Determine the types of decisions that must be made;

(2) Identify the data quality objectives needed to support those decisions;

(3) Describe the methods by which the required data will be obtained and analyzed; and

(4) Prepare project plans to document methods and procedures.

2. Site Administrative Record (SAR):

a. Provides the basis for the selected response action(s) at specific locations on the Site. Any issue under judicial review concerning the adequacy of a response action is strictly limited to the SAR.

b. Serves as a vehicle for public participation in the selection of location-specific response action(s).

c. Notice of the availability of the SAR must be published in a major local newspaper of general circulation.

DESCRIPTION OF DOCUMENTS
REQUIRED FOR SUBMISSION UNDER THIS AGREEMENT

Primary Documents:

1. Site Scope of Work (SOW):

a. Documents the decisions and evaluation made during the Project Planning and Scoping process.

b. Provides the basis for the development of the Location-specific Statement of Work.

2. Site Community Relations Plan (CRP):

a. Provides guidelines for community relations activities at the Site implemented by the Marine Corps to keep the concerned public informed of the response action activities at the Site.

b. The Site CRP incorporates concerns expressed during interviews with people from the local community and encourages the public to contribute to agency response action decisions providing a forum where conflict can be constructively resolved.

3. Location-specific Remedial Investigation and Feasibility Study (RI/FS) Work Plan:

a. Presents anticipated future tasks and associated schedules and cost estimates based on the Location-specific Statement of Work.

b. Summarizes the initial evaluation of existing data and background information performed during Project Planning and Scoping, and presents the location-specific conceptual model.

c. Describes the general scope and objectives of the RI/FS, with detailed descriptions provided in the Site Sampling and Analysis Plan.

d. Because the RI/FS process is dynamic, the RI/FS Work Plan should be constructed to allow for scoping flexability and work modification.

DESCRIPTION OF DOCUMENTS
REQUIRED FOR SUBMISSION UNDER THIS AGREEMENT

4. Location-specific Baseline Risk Assessment:

a. Provides an evaluation of the potential threat to human health and the environment in the absence of any remedial action.

b. Provides the basis for determining whether or not remedial action is necessary and the justification for conducting remedial actions.

c. Is used to support a finding of imminent and substantial endangerment or justify no further remedial action.

d. Provides the basis for the Location-specific Risk Assessment Report.

e. Determines location-specific indicator chemicals, estimates exposure point concentrations of indicator chemicals and chemical intakes and assesses toxicity.

5. Location-specific Risk Assessment:

a. Expands on the Baseline Risk Assessment Report.

b. Characterizes the risk and uncertainties concerning noncarcinogenic and potential carcinogenic effects associated with location-specific contamination.

c. Develops performance goals and provides risk analysis for potential remedial alternatives based on location-specific Applicable or Relevant and Appropriate Requirements (ARARs).

d. Supports the Location-specific Feasibility Study Report.

6. Location-specific Remedial Investigation (RI) Report:

a. Presents the physical characteristics of the specific location.

b. Defines the sources of contamination at the specific location.

c. Characterizes the nature and extent of the location-specific contamination for all media.

DESCRIPTION OF DOCUMENTS
REQUIRED FOR SUBMISSION UNDER THIS AGREEMENT

6. Location-specific Remedial Investigation (RI) Report (Continued):

d. Presents the results from the development and initial screening of alternatives.

e. Supports the Location-specific Feasibility Study Report.

f. Notice of the availability of the RI Report must be published in a major local newspaper of general circulation.

7. Location-specific Feasibility Study (FS) Report (including Detailed Analysis of Alternatives):

a. Presents the results of the detailed analysis of alternatives.

b. Supports the Location-specific Proposed Remedial Action Plan and Record of Decision.

c. Notice of the availability of the FS Report must be published in a major local newspaper of general circulation.

8. Location-specific Proposed Remedial Action Plan (PRAP):

a. Highlights the RI and FS Reports.

b. Provides a brief analysis of remedial alternatives under consideration for a specific location or operable unit and proposes the preferred alternative(s).

c. Provides the public with information and an opportunity to participate in the remedy selection process. Notice of the availability of the PRAP must be published in a major local newspaper of general circulation.

9. Location-specific Record of Decision:

a. Documents the final remedial action decision for a specific location or operable unit.

b. Summarizes the problems posed by a specific location and provides an analysis of the alternative ways to address those problems.

DESCRIPTION OF DOCUMENTS
REQUIRED FOR SUBMISSION UNDER THIS AGREEMENT

9. Location-specific Record of Decision (Continued):

c. Addresses public comment expressed concerning the Proposed Remedial Action Plan, Remedial Investigation and Feasibility Study Reports and other information made available in the Site Administrative Record.

10. Location-specific Remedial Design Report (including Design Plans and Specifications):

a. Describes how the design will implement and accomplish the goal(s) of the approved Remedial Action Plan and the selected remedy.

b. Provides the schedule for completion of various components of the preliminary and final designs and implementation of work (e.g., site selection, site preparation, construction, testing, start-up, etc.).

c. Provides the Design Plans and Specifications:

(1) Preliminary design addressing not less than 30% of the total design based on the information in the Remedial Design Report (for review).

(2) Prefinal design at 90% completion which shall include all functional details, specifications and drawings (for review).

(3) Final design at 100% completion with final construction drawings and specifications.

11. Location-specific Remedial Action Work Plan:

a. Provides a plan which will explain in detail how the approved remedial action will be implemented.

b. Includes:

(1) Remedial Action-specific Health and Safety Plan.

(2) Remedial Action-specific Sampling and Analysis Plan.

(3) Remedial Action-specific Quality Assurance/Quality Control Plan which includes all field installation and construction.

DESCRIPTION OF DOCUMENTS
REQUIRED FOR SUBMISSION UNDER THIS AGREEMENT

11. Location-specific Remedial Action Work Plan (Continued):

(4) Permitting Plan which provides for satisfaction of all permitting requirements, both administrative and technical including ARARs and actions exempt from permitting.

(5) Environmental Monitoring Plan to address all potentially affected media as appropriate.

(6) Schedule for the construction and operation of the approved remedy and remedial design and submission of the final Remedial Action Report.

12. Location-specific Final Remediation Report (including Notice of Intent to Delete):

Upon completion of the remediation of the specific location or operable unit the following information will be provided:

a. How the remediation has met the goal(s) of the approved Remedial Action Plan.

b. A summary of location-specific conditions including monitoring results and a detailed description of any remaining contamination or releases.

c. A description of any operation and maintenance requirements and assurances of applicable institutional controls that will be necessary.

d. Any recommendations for further action or monitoring at the specific location or operable unit.

e. As appropriate, a Notice of Intent to Delete when the specific location or operable unit is intended to be deleted from the National Priority List and a projected date for submission of the NPL Closeout Report.

13. Location-specific Five Year Review (FYR) Report:

a. Provides a summary of the findings of the FYR.

b. Describes in detail any further actions (which may include the "no action" decision) required for the specific location.

DESCRIPTION OF DOCUMENTS
REQUIRED FOR SUBMISSION UNDER THIS AGREEMENT

13. Location-specific Five Year Review (FYR) Report (Continued):

c. Provides a timeframe for the next FYR, if appropriate.

d. Notice of the availability of the FYR Report must be published in a major local newspaper of general circulation.

14. NPL Close-Out Report:

a. Begins the process for deletion of specific location or operable unit or Site from the National Priority List.

b. Contains all information required by USEPA guidance and directives for completion of the process.

Secondary Documents:

1. Location-specific Statement of Work

a. Provides detailed description of location-specific work to be performed.

b. Is based on the general work description contained in the Site Scope of Work.

2. Location-specific Preliminary Characterization Summary Report:

a. Summarizes location-specific data following the completion of initial sampling and analysis activity.

b. Used for evaluating the development and initial screening of remedial alternatives.

c. Assists in the identification of potential Applicable or Relevant and Appropriate Requirements (ARARs).

d. Provides the basis for the Site Health Assessment conducted by the Agency for Toxic Substances and Disease Registry (ATSDR).

e. Supports the Baseline Risk Assessment Report(s).

DESCRIPTION OF DOCUMENTS
REQUIRED FOR SUBMISSION UNDER THIS AGREEMENT

3. Site Health and Safety Plan (HSP):

a. Evaluates the risk associated with existing Site conditions, identifies Site control measures and key Site health and safety personnel.

b. Provides for a contingency plan which satisfies OSHA requirements, and details Site standard operating procedures (SOPs).

c. The Site HSP is developed concurrently with the Site Sampling and Analysis Plan to ensure safe field activity and to identify potential problems and special Site requirements.

d. The HSP should provide for Site safety briefings and inspections.

4. Site Sampling and Analysis Plan (including Quality Assurance Project Plan and Field Sampling Plan):

a. Ensures that field sample collection and laboratory analysis, and data analysis and interpretation activities will be comparable to and compatible with previous collection, analysis and interpretation activities performed at the Site while providing a mechanism for planning and approving field activities.

b. Includes the following:

(1) Field Sampling Plan which provides for all field procedures by defining in detail the sampling methods and decontamination procedures to be used.

(2) Quality Assurance Project Plan which describes the policy, organization, functional activities, and quality assurance and quality control protocols necessary to achieve the data quality objectives dictated by the scope and objectives of the RI/FS.

5. Site Quarterly Progress Report:

Describes the on-Site response action progress.

DESCRIPTION OF DOCUMENTS
REQUIRED FOR SUBMISSION UNDER THIS AGREEMENT

6. Location-specific Treatability Study Report:

a. Used to gather adequate location-specific and/or treatment data to assess the feasibility of a technology.

b. May include bench-scale and/or pilot-scale testing to gather performance data and to develop cost estimates to support the detailed analysis of alternatives during the feasibility study.

7. Location-specific Remedial Action Progress Report:

a. Describes the on-Site progress during remedial action activities.

b. Includes information on:

(1) The progress of the remedy.

(2) Operation and Maintenance requirements.

(3) Environmental Monitoring requirements.

8. Site Remedial Design Implementation Plan:

a. Describes how, prior to the initiation of design, the Marine Corps will initiate and/or revise the Community Relations Plan (CRP) to address community concerns anticipated during the Remedial Design/Remedial Action (RD/RA) process or indicate how they are addressed by the CRP.

b. Describes in general terms how the design will meet the scope and goal(s) of the approved remedial action plan for the specific location or operable unit.

c. Provides the schedules for the submission of the remedial pre-design and design reports and related activities.

DESCRIPTION OF DOCUMENTS
REQUIRED FOR SUBMISSION UNDER THIS AGREEMENT

9. Location-specific Remedial Pre-Design Report:

a. Provides a specific location or operable unit description including a topographic map and preliminary layout of remedial activities.

b. Provides a summary of the factors of the selected remedy that will affect the design, construction and completion of the remedial action including:

(1) Description of remedy.

(2) Scope and goal(s) of remedy.

(3) Preliminary design criteria and rational.

(4) General operation and maintenance requirements.

(5) Short and long term environmental monitoring requirements.

(6) Specific factors from the RI/FS affecting remedy.

(7) Results and impacts of applicable tests or studies.

(8) Description of additional tests or studies needed to design or implement the remedial action.

c. Provides special design or implementation considerations including:

(1) Special technical considerations.

(2) Additional engineering or specific location data required.

(3) Permit and/or regulatory requirements (including ARARs).

(4) Access, easements, right-of-way needs.

(5) Health and safety considerations.

DESCRIPTION OF DOCUMENTS
REQUIRED FOR SUBMISSION UNDER THIS AGREEMENT

10. Location-specific Remedial Action Post-Construction Report:

Provides a closeout report that includes but is not limited to:

a. A final construction inspection report.

b. A brief description of any outstanding construction and/or testing items.

c. Certification by a registered professional engineer that the remedy is fully operational and functional as designed and planned.

d. Explanation of any changes in design, installation or operation from that described in previously submitted reports or plans.

e. As-built design drawings and specifications and Final Operation and Maintenance Plan(s).

LIST OF ACRONYMS

AMTRAC	Amphibious Tractor
ARAR	Applicable or Relevant and Appropriate Requirement
BOQ	Bachelor Officers' Quarters
CERCLA	Comprehensive Environmental Response Compensation and Liability Act
CRD	Code of Federal REgualtions
CM	Corrective Measures
CMD	Corrective Measures Design
CMP	Corrective Measures Plan
CMS	Corrective Measures Study
CRP	Community Relations Plan
DASD(E)	Deputy Assistant Secretary of Defense (Environment)
DEHNR	Department of Environment, Health and Natural Resources
DERP	Defense Environmental Restoration Program
DOD	Department of Defense
DRC	Dispute Resolution Committee
EOD	Explosive Ordnance Disposal
FOIA	Freedom of Information Act
FS	Feasibility Study
HPIA	Hadnot Point Industrial Area
HS	Hazardous Substance
HSWA	Hazardous and Solid Waste Amendments
IAS	Initial Assessment Study
MCAS	Marine Corps Air Station
MCB	Marine Corps Base
NCP	National Contingency Plan
OSWER	Office of Solid Waste and Emergency Response
PRAP	Proposed Remedial Action Plan
QAPP	Quality Assurance Project Plan
QA/QC	Quality Assurance/Quality Control
RA	Remedial Action
RCRA	Resource Conservation and Recovery Act
RD	Remedial Design
RFA	RCRA Facility Assessment
RFI	RCRA Facility Investigation
RI	Remedial Investigation
ROD	Record of Decision
SARA	Superfund Amendments and Reauthorization Act
SEC	Senior Executive Committee
SES	Senior Executive Service
SWMU	Solid Waste Management Unit
TCE	1,1,1-Trichloroethylene
USC	United States Code
USEPA	United States Environmental Protection Agency

DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
WASHINGTON D.C 20380-0001

IN REPLY REFER TO

6280
LFL/U-20
6 JAN 1989

From: Commandant of the Marine Corps

Subj: DEPARTMENT OF THE NAVY POLICY ON NATIONAL PRIORITIES LIST SITE AGREEMENTS

Ref: (a) CMC ltr 6280/7 LFL/U-14 of 15 Jul 88

Encl: (1) Guidance on National Priorities List Interagency Agreements

1. The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Section 120 requires interagency agreements with the Environmental Protection Agency (EPA) before actual cleanup can commence at National Priorities List (NPL) sites. The Deputy Assistant Secretary of Defense (Environment) has negotiated with Headquarters, EPA boiler plate language for these agreements. Therefore, the specific policy and guidance contained in the enclosure should be used as a basis for negotiating these agreements.

2. Over the past year, DoD has established policy in this area. These policies are not changed by the enclosed guidance. Pertinent DoD/Department of the Navy policy is summarized below:

a. Installations shall enter into Federal Facility Agreements at NPL sites as early as possible during the Remedial Investigation/ Feasibility Study. These agreements are a high priority and contain many benefits if they are properly structured. They are intended to improve communications between all parties by allowing EPA and the state to review all work, and ultimately improve the process for selection of any remedial action.

b. Federal Facility Agreements for NPL sites should establish a reasonable working relationship between the states, EPA, and the installation. They should clearly lay out mutual obligations. The agreements should satisfy CERCLA Section 120 requirements <u>and</u> address other aspects of CERCLA. Although much emphasis has been given to our relationship with EPA, the states are critical participants in our program and we should incorporate their interests to the extent possible.

c. Installations will enter into agreements only if the provisions are realistically attainable and are structured to avoid excessive reporting, duplication of effort, and other administrative practices that reduce the efficiency of the overall remedial response.

d. Certain services requested by EPA and the states can be reimbursed by the Department of the Navy. Examples are, specified special studies and assistance in obtaining entry rights for remedial responses on private property. We will <u>not</u> reimburse EPA

Subj: DEPARTMENT OF THE NAVY POLICY ON NATIONAL PRIORITIES LIST SITE AGREEMENTS

or the states for enforcement and related oversight costs, such as the review of documents. This issue is non-negotiable at the local level and should be referred to Headquarters Marine Corps (LFL) if problems arise.

e. We will continue efforts to define problems at our sites and move aggressively to determine what remedial actions are appropriate. In line with current DoD policy, if an imminent threat to human health is found during site investigations, the installation shall address and remedy that problem immediately. Negotiations on an agreement will in no way impede our responsibility to protect the public from harmful exposures or halt efforts to get remedial action decisions to address our sites.

f. We will consult fully with EPA and the states in the course of continuing our installation restoration efforts while negotiating the terms of the Federal Facility Agreements. We recognize the value of their reviews and recommendations throughout the cleanup process. Records should be maintained of our interactions with EPA and states whether or not a Federal Facility Agreement has been finalized.

3. Since the model agreement was recently negotiated and has not been fully established at field level, the following procedures will be followed:

a. COMNAVFACENGCOM will take the lead in negotiating agreements. This will allow a coordinated Department of the Navy position at all levels, i.e., the state and EPA regional and national offices. Proposed agreements shall be coordinated with the installation commander and Assistant General Counsel (Administrative and Environmental Law) Office of the Navy General Counsel, prior to presenting them to the EPA and the states. To ensure achievement of CERCLA goals, installation commanders shall provide technical, legal, and public affairs support, responsive to the peculiar needs of their NPL sites, at every stage of the negotiation and cleanup processes.

b. Once negotiations have been initiated, proposed changes which purport to satisfy the requirements of Section 120 of CERCLA will be discussed with the Assistant General Counsel (Administrative and Environmental Law).

c. Federal Facility Agreements under CERCLA Section 120 will be signed within the Office of the Assistant Secretary of the Navy (Shipbuilding and Logistics) (ASN(S&L)). This guidance supersedes the guidance in the reference which previously provided for interagency agreements to be signed by the installation commander. Final agreements shall be forwarded to Headquarters Marine Corps (LFL) for review and forwarding to ASN(S&L) for signature.

Subj: DEPARTMENT OF THE NAVY POLICY ON NATIONAL PRIORITIES LIST SITE AGREEMENTS

d. Execution of the work required by the agreement will be done by the installation and COMNAVFACENGCOM as per the reference.

4. We are committed to the expeditious cleanup of our NPL sites in coordination and cooperation with the state, EPA, and the local community. These Federal Facility Agreements should allow us to move forward with necessary cleanups. However, we should not let the lack of a formal agreement slow our progress. Your continued efforts in this area will show that the Marine Corps is committed to the cleanup of our nation's environment. Our point of contact is Mr. Robert Warren, LFL on A/V 227-1890.

W. G. Carson Jr

W. G. CARSON, JR.
DEPUTY CHIEF OF STAFF
FOR INSTALLATIONS AND LOGISTICS

Distribution:
CG MCCDC QUANTICO VA
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Copy to:
ASN(S&L)(MS. STEHLE) (8U100708)
COMMARCORBASESPAC
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COMCABEAST CHERRY PT NC
CNO-OP-45
OGC (ADMINISTRATIVE & ENVIRONMENTAL LAW)
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NORTHNAVFACENGCOM
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LANTNAVFACENGCOM
SOUTHNAVFACENGCOM
WESTNAVFACENGCOM
PACNAVFACENGCOM

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: INTENT-TO-SIGN LETTER

Proponent: USMC

Remarks:

The intent-to-sign letter serves the public notice that the Parties are committed to signing an Agreement but will do so only after the public has commented. Thus, the Agreement is not presented as a fait accompli.

The State's position is that only their Division of Solid Waste should sign the Agreement. USMC position is that the entire State should be bound. This will effect the purpose of the Agreement, which is to insure a coordinated and unitary response. The prospect of having other State actors being able to attack remedial actions at the site is unacceptable.

EPA Position:

Adopt (Neutral on issue of state signatories.)

State Position:

Adopt all, except only Division of Solid Waste to sign.

Recommendations:

Adopt all, except entire State to be bound.

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: I. JURISDICTION

Proponent: Model Provision

Remarks:

Changes made reflect North Carolina state law. Rather than using the designation State of North Carolina, State representatives wanted to restrict sub-part "E" as applying to their Division of Solid Waste Management.

EPA Position:

Adopt

State Position:

Adopt

Recommendations:

Adopt, but see comments on "Intent-to-Sign" letter.

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: II. PARTIES

Proponent: USMC

Remarks:

The term "response action contractors" was removed from our original proposal based on an EPA comment that this agreement could not bind contractors.

EPA Position:

Adopt

State Position:

Adopt

Recommendations:

Adopt

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NEGOTIATION POSITIONS

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: III. DEFINITIONS

Proponent: USMC

Remarks:

RCRA closure provisions removed because it was agreed that the FFA did not manage RCRA closure except as an ARAR. The term "hazardous constituents" was left in because NC State law uses this term. "Letter of Intent" reflects parties' desire to present public with our intent to sign the document after public comment.

Parties attempted to have definitions conform with statutes and proposed ~~NPL~~ NCP

"Operable unit" is EPA definition and reflects EPA terminology used in new ~~NPL~~ NCP

"PRAP" replaces Remedial Action Work Plan.

Since "site" means "Camp Lejeune and New River", definitions use term "specific location" to indicate specific points vice entire Camp Lejeune site.

EPA Position:

Adopt

State Position:

Adopt

Recommendations:

Adopt

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NEGOTIATION POSITIONS

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: IV. SITE DESCRIPTIONS

Proponent: USMC

Remarks:

Intent is to cover entire Marine Corps Base, Camp Lejeune and MCAS, New River geographical area, including off-site migrations of hazardous substances, etc. The last sentence reflects the Parties' understanding that substances which migrate on-site from other PRP's (in this case - ABC Cleaners) will not necessarily be the responsibility of the Marine Corps.

EPA Position:

Adopt

State Position:

Adopt

Recommendations:

Adopt

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NEGOTIATION POSITIONS

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: V. IDENTIFIED AND POTENTIAL RELEASES REQUIRING CERCLA RESPONSE/RCRA CORRECTIVE ACTIONS

Proponent: USMC

Remarks:

Originally, this section was proposed as a findings of fact section by EPA. It contained extensive "factual" findings, which read like a criminal indictment. USMC position was that the section was not needed and that we were unwilling to agree that the proposed facts had been established. EPA stated that USMC did not have to join in this section. They insisted on including a section showing factual statements. USMC negotiators believed that accepting a findings section but including a clause preserving our right to challenge the facts later would be little more than window dressing. The public would see only the findings by EPA and State and the fact that we had signed the Agreement. Thus, this section reflects compromise language. It avoids use of the heading "findings of fact" and only lists the one release which we were prepared to agree to (HPIA).

EPA Position:

Adopt

State Position:

Adopt

Recommendations:

Adopt

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: VI. DETERMINATIONS

Proponent: USMC

Remarks:

This was insisted upon by EPA in order to inform the public of EPA's legal basis to act. Originally entitled Findings of Fact in EPA version, it sounded like proof of the indictments contained in the original EPA/State determinations clause. Original EPA version was also a two party finding (EPA/State) and USMC version insured that USMC treated as full/equal party as described above.

EPA Position:

Adopt

State Position:

Adopt

Recommendations:

Adopt

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: VII. SCOPE OF THE AGREEMENT

Proponent: USMC

Remarks:

Sub-part A reflects the Parties' intent that active hazardous materials and waste management is not governed by the FFA but rather under RCRA. Future releases from UST's shall not be governed by the FFA. However, groundwater remediation at the HPIA fuel farm will be governed by the FFA.

EPA Position:

Adopt

State Position:

Adopt

Recommendations:

Adopt

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: VIII. PURPOSE

Proponent: Model

Remarks:

Minor changes were made to reflect terminology of new NPL and EPA guidance. EPA and the Marine Corps are not waiving CERCLA section 121(d)(4) authority.

EPA Position:

Adopt

State Position:

Adopt

Recommendations:

Adopt

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: IX. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

Proponent: Model

Remarks:

Some changes were made in order to clarify that active hazardous waste/material management is not governed by the FFA; but is regulated under RCRA.

EPA Position:

Adopt

State Position:

Adopt

Recommendations:

Adopt

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: X. CONSULTATION WITH USEPA AND THE STATE DSWM

Proponent: Model

Remarks:

Some minor changes were made in order to read consistently with the rest of the document.

Sub-parts K & L were added to clarify that work previously done did not have to be reinitiated.

Primary/Secondary Documents chosen reflect a balance between subjecting USMC to penalties for failure to meet deadlines and the ability of USMC to invoke dispute resolution only for primary documents.

EPA Position:

Adopt

State Position:

Adopt

Recommendations:

Adopt

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: XI. RESOLUTION OF DISPUTES

Proponent: Model

Remarks:

USMC insisted that the State's representative on the SEC would be at Departmental level. State is reluctant to bind any State agency above the DSWM.

Marine Corps position is that failure to bind the Department abrogates one of the purposes of State involvement in the FFA. If only one State Division is involved, other State agencies can issue inconsistent orders and guidance.

EPA Position:

Adopt

State Position:

Adopt, except issue of SEC Rep is still open. — OK

Recommendations:

Adopt. Continue to insist on Departmental Level Official. DONE

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: XII. PERMITS

Proponent: USMC

Remarks:

This section was hotly contested between EPA and USMC. Our position was that CERCLA was intended to expedite clean-ups by removing permit procedural requirements. As such, we felt that EPA and State had an affirmative duty to expedite the remedial actions chosen by mediating between USMC and other divisions of EPA or State. EPA took position that they are incapable of and forbidden to intercede with other divisions. We finally compromised on the given language. It is still our intent to invoke dispute resolution should an irreconcilable conflict arise and force EPA Administrator to decide. Thus, de facto achieving EPA intervention.

EPA Position:

Adopt

State Position:

Adopt

Recommendations:

Adopt

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: XIII. EMERGENCY ACTIONS

Proponent: USMC/EPA

Remarks:

This provision is intended to clarify available authority in an emergency action (i.e., spill responses). The term "Emergency Action" reflects new EPA guidance.

EPA Position:

Adopt

State Position:

Adopt

Recommendations:

Adopt

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: XIV. REPORTING

Proponent: USMC

Remarks:

Last sentence was added by EPA.

EPA Position:

Adopt

State Position:

Adopt

Recommendations:

Adopt

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: XV. NOTIFICATION

Proponent: USMC

Remarks:

Self-evident.

EPA Position:

Adopt

State Position:

Adopt

Recommendations:

Adopt

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: XVI. PROJECT MANAGERS

Proponent: USMC

Remarks:

The Marine Corps will have an on-site coordinator.

EPA Position:

Adopt

State Position:

Adopt

Recommendations:

Adopt

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: XVII. SAMPLING AND DATA DOCUMENT AVAILABILITY

Proponent: USMC

Remarks:

This does not preclude the use of Navy Quality Assurance Requirements provided they are approved by EPA and State.

Any Party may request split samples.

EPA Position:

Adopt

State Position:

Adopt

Recommendations:

Adopt

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: XVIII. RETENTION OF RECORDS

Proponent: USMC

Remarks:

Only documents that form the Admin Record need be retained. The last sentence preserves USMC ability to invoke privileges, including attorney work product.

EPA Position:

Adopt

State Position:

Adopt

Recommendations:

Adopt

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: XIX. SITE ACCESS

Proponent: EPA

Remarks:

Subpart B reflects a requirement to begin negotiations or to begin the exercise of authorities. It does not mean that actions need to be accomplished within 30 days.

EPA Position:

Adopt

State Position:

Adopt

Recommendations:

Adopt

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: XX. FIVE YEAR REVIEW

Proponent: USMC

Remarks:

This requirement fulfills CERCLA and EPA guidance requiring 5 year review. The review is for each remedial action. All parties must agree the remediation has been effective.

Given the long-term nature of CERCLA remedial actions, there is a good likelihood that this requirement could be modified as EPA gains more CERCLA experience. The key long-range event will be NPL delisting.

Original EPA position was that EPA/State would conduct all 5 year reviews. DoN negotiation team insisted that USMC have full/equal status.

EPA Position:

Adopt

State Position:

Adopt

Recommendations:

Adopt

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: XXI. OTHER CLAIMS

Proponent: USMC (except sub-part C - EPA)

Remarks:

Sub-part A preserves USMC right to proceed against other PRP's, if any. This clarifies that the Agreement is not a release.

Sub-part C reflects current law. The EPA cannot settle for natural resources trustee. It is our understanding that NOAA may have cognizance over some natural resources. This is a separate issue which will have to be addressed as appropriate.

EPA Position:

Adopt

State Position:

Adopt

Recommendations:

Adopt

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: XXII. CONFIDENTIAL INFORMATION

Proponent: USMC

Remarks:

This provision protects trade secrets (probably gained through contractor information) and National security information. The State does not have specific State law allowing the protection of national security information.

State opines it may be compelled by State law to release all information other than traditional "trade secrets". USMC may have to withhold any information with national security concerns if State not entitled to access/will not provide adequate safeguards.

EPA Position:

Adopt

State Position:

Adopt

Recommendations:

Adopt

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: XXIII. EXHAUSTION OF ADMINISTRATIVE REMEDIES

Proponent: USMC

Remarks:

USMC feeling is that this section achieves the bottom line, which is exhaustion of administrative remedies. Original EPA proposal on "covenant not to sue", although sounding good to the uninitiated, on close examination was illusory. It purported to covenant not to sue, but in reality did not bind EPA to this. In the end, EPA did not want to issue a covenant not to sue anyway. They did agree to the "Exhaustion" section. We feel it achieves the bottom line goal. Given the unitary executive theory and given that EPA Administrator has the final say in Dispute Resolution it is unlikely the EPA will sue.

More importantly, this section, when read in conjunction with Section XXIV, binds the State to exhaust admin remedies. If State has 'lost' before highest Dispute resolution, we feel it is unlikely they will proceed to litigation.

EPA Position:

Adopt

State Position:

Adopt

Recommendations:

Adopt

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: XXIV. THE STATES RESERVATION OF RIGHTS

Proponent: State of North Carolina

Remarks:

This section for the most part reads consistently with the Scope of the Agreement. The State's main concern during negotiations was preserving its Statutory (CERCLA and RCRA) rights and insuring it had the right to order abatement of imminent hazards. This section serves USMC interests by binding the State to exhaust Admin remedies.

EPA Position:

Adopt

State Position:

Adopt

Recommendations:

Adopt

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: XXV. TOTAL INTEGRATION

Proponent: USMC

Remarks:

Effects parole evidence rule.

EPA Position:

Adopt

State Position:

Adopt

Recommendations:

Adopt

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: XXVI. ENFORCEABILITY

Proponent: Model

Remarks:

No changes.

EPA Position:

Adopt

State Position:

Adopt

Recommendations:

Adopt

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: XXVII. STIPULATED PENALTIES

Proponent: Model

Remarks:

The term "CERCLA Response" is used in order to be consistent with EPA guidance and proposed NPL.

As noted, this issue may be revisited at National level.

EPA Position:

Adopt

State Position:

Adopt

Recommendations:

Adopt

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: XXVIII. DEADLINES

Proponent: Model

Remarks:

The Parties agreed that deadlines should be proposed in the Scope of Work, rather than 21 days after the Agreement was effective. Given the broad scope of activity which exists at Camp Lejeune/New River, the section's language reflects the flexibility required in addressing such a geographically broad area.

Part G is based on Robbins Agreement.

EPA Position:

Adopt

State Position:

Adopt

Recommendations:

Adopt

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: XXIX. EXTENSIONS

Proponent: Model

Remarks:

Last sentence of Part D was added to address ambiguity should EPA/State not respond within 14 days and yet later not concur.

EPA Position:

Adopt

State Position:

Adopt

Recommendations:

Adopt

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: XXX. FORCE MAJEURE

Proponent: Model

Remarks:

Part A was modified to accommodate State concern that the broad Force Majeure language could bind them in negotiations with other Parties. State was also concerned about increased costs or expenses becoming a force majeure. Despite the changes, State is still not comfortable with the Force Majeure clause and wants to use traditional language. Our position was that any more changes would be a usurpation of the model language and therefore beyond our control. We feel that the model language is a significantly important concession to USMC concerns and should not be changed. Additionally, should this section be changed the way the State desires, it will set precedent which will have wide ramifications on other DoD installations. We attempted to educate the State that the invocation of Force Majeure did not excuse full action to effect cleanup; but rather served only as automatic "good cause" for an extension of a deadline.

EPA Position:

Adopt

State Position:

Reject

Recommendations:

Adopt. Do not change to accommodate State desires.

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: XXXI. FUNDING

Proponent: Model

Remarks:

One minor grammatical modification.

EPA Position:

Adopt

State Position:

Adopt

Recommendations:

Adopt

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: XXXII. CONVEYANCE OF TITLE

Proponent: USMC

Remarks:

Effects section 120(h) of CERCLA.

EPA Position:

Adopt

State Position:

Adopt

Recommendations:

Adopt

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: XXXIII. ADMINISTRATIVE RECORD AND PUBLIC PARTICIPATION

Proponent: USMC

Remarks:

This provision is designed to inform the public of Admin Record and Public participation requirements. It also binds EPA and State to give us prior notice of press releases.

EPA Position:

Adopt

State Position:

Adopt

Recommendations:

Adopt

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: XXXIV. PUBLIC COMMENT

Proponent: USMC

Remarks:

USMC felt that, no matter what public comment was received, we would be obligated to enter an Agreement. Thus, this section reflects that reality. This provision also makes clear to the public that their comments will be addressed. If the Agreement was presented to the public after signature, it would give the appearance of a fait accompli. The "Notice of Intent to execute" letter addresses this issue by informing the public that we intend to sign the Agreement and that we also intend to respond to their comments.

EPA Position:

Adopt

State Position:

Adopt

Recommendations:

Adopt

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: XXXV. AMENDMENT OF AGREEMENT

Proponent: USMC

Remarks:

It was felt that if Agreement could be modified through Dispute Resolution, then this document would not be a contract so much as the beginning of a changing process. USMC/NC desire to avoid this possibility.

EPA Position:

Adopt

State Position:

Adopt

Recommendations:

Adopt

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: XXXVI. RECOVERY OF USEPA AND STATE EXPENSES

Proponent: State

Remarks:

This is the most important section to the State and is their walk-away clause. They have a strong desire to ensure $75,000 funding per year, in advance, with a carryover of unused amounts to next FY. USMC position was that this was beyond our control and would have to be addressed at DoD level. It is our understanding that the State is not agreeable to executing a DoD-State MOU.

Although our position is neutral, two items are noted. First failure to compromise may result in this Agreement becoming bilateral. Second, close scrutiny of the burden-shifting in paragraph I is warranted, especially given that the State will possess documentation.

EPA Position:

Neutral

State Position:

Adopt

Now used Moffett Field language

Recommendations:

Neutral (except for shift-of-burden provision which is opposed)

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: XXXVII. TERMINATION

Proponent: USMC

Remarks:

Given the open-ended nature of the remedial actions and the anticipated long time required to clean-up, the Parties felt that no definite termination could be established.

Termination will be proposed as an amendment. It should be noted that even delisting may not terminate because of the 5-year review process.

EPA Position:

Adopt

State Position:

Adopt

Recommendations:

Adopt

CAMP LEJEUNE FEDERAL FACILITIES AGREEMENT

Section by Section Comment

Section: XXXVIII. EFFECTIVE DATE

Proponent: USMC

Remarks:

Effective upon signature.

EPA Position:

Adopt

State Position:

Adopt

Recommendations:

Adopt