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Attachment 1

Attachment 2

*Model Language that was agreed upon between the USEPA and the Department of Defense at the respective Headquarters level on June 17, 1988.

I.

Purpose*

1.1 The general purposes of this Agreement are to:

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

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

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

1.2 Specifically, the purposes of this Agreement are to:

(a) Identify remedial alternatives for Operable Units which are appropriate at the Site prior to the implementation of final remedial action(s) for the Site. The remedial alternatives shall be identified and proposed to the Parties as early as possible prior to formal proposal of remedial action(s) for Operable Units to USEPA pursuant to CERCLA and applicable State law. This process is designed to promote cooperation among the Parties in identifying remedial alternatives for Operable Units prior to selection of final remedial action(s);

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

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

(d) Implement the selected remedial action(s) in accordance with CERCLA and applicable State law and meet the requirements of CERCLA §120(e)(2) for an interagency agreement between USEPA and the Navy;

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

(f) Coordinate response actions at the Site with the mission and support activities at NWS Earle;

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

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

II.

Jurisdiction*

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

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

(b) USEPA enters into those portions of this Agreement that relate to operable units and final remedial actions pursuant to CERCLA Section 120(e)(2), RCRA §§ 6001, 3008(h) and 3004(u) and (v) and Executive Order 12580;

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

(d) The Navy enters into those portions of this Agreement that relate to operable units and final remedial actions pursuant to CERCLA Section 120(e)(2), RCRA §§ 6001, 3008(h) and 3004(u) and (v), Executive Order 12580 and the DERP.

III.

Definitions

All other words and phrases used in this Agreement shall have either their conventional meaning or the meaning as used or as defined in CERCLA and the NCP, unless the context clearly requires some other meaning, the following terms shall have the meaning specified below:

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

(b) "ARAR" shall mean "legally applicable" or "relevant and appropriate" laws, standards, requirements, criteria, or limitations as those terms are used in CERCLA Section 121(d), 42 U.S.C. §9621(d).

(c) "Authorized representative" of USEPA shall mean any agents, employees or contractors who have been duly authorized by USEPA to perform some activity related to this Agreement.

(d) "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499.

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

(f) "Deadlines" shall mean date(s) by which primary documents are to be submitted to USEPA.

(g) "Documents" or "records" shall mean any documents, writings, correspondence and all other tangible things on which information has been stored which relates to this Agreement or to any activities to be undertaken relating to this Agreement.

(h) "Feasibility Study" or "FS" means those studies conducted by the Navy which fully evaluate and develop remedial action alternatives to prevent and/or remediate the release of hazardous substances, pollutants and contaminants at the Site.

(i) "Hazardous substance" shall mean any substance (or any mixture containing any substance) that falls within the definition of a "hazardous substance" as defined in CERCLA Section 101(14), 42 U.S.C. §9601(14).

(j) "NWS Earle" or "the Site" shall mean the Naval Weapons Station Earle facility which is located in Colt's Neck, New Jersey, which is presently owned by the United States and operated by the U.S. Navy and which occupies approximately 11,134 acres of real property in Monmouth County, New Jersey, as shown in Attachment 1. The term "Site" shall also include for the purposes of this Agreement, any other areas immediately adjoining the NWS Earle facility into which hazardous substances have or may have migrated from the NWS Earle facility.

(k) "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 et seq., and any amendments thereof.

(l) "Navy" or "U.S. Navy" shall mean the Department of the Navy, Naval Facilities Engineering Command Northern Division, and the Naval Weapons Station Earle at Colt's Neck, New Jersey, their employees, agents, successors and assigns.

(m) "NJDEP" shall mean the New Jersey Department of Environmental Protection.

(n) "Operable Unit" shall mean a discrete action that comprises an incremental step toward comprehensively addressing NWS Earle. Operable Units may address geographic portions of the Site, specific Site problems, or initial phases of an action such as an "interim remedial measure," or may consist of any set of actions performed over time or any actions that are concurrent but located in different parts of NWS Earle. An Operable Unit as an interim remedial measure will not impede implementation of subsequent actions, including final actions at the Site. All Operable Units shall be addressed in accordance with the NCP and with the requirements of CERCLA.

(o) "Parties" shall mean the United States Environmental Protection Agency ("USEPA"), and the United States Department of the Navy ("the Navy").

(p) "Quality Assurance Program Plan" or "QAPP" shall mean a plan that indicates prime responsibilities and prescribes requirements for assuring the specific field investigations undertaken at the Site are planned and executed in a manner consistent with quality assurance objectives. The content and format of the QAPP shall be based on "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans - QAMS-005/80" by USEPA and shall establish the procedures to be followed for conducting Remedial Investigations.

(g) "Quality Assurance Project Plan" or "QAPjP" shall mean a plan, similar in format to the QAPP; but the content should be uniquely relevant to a specific RI/FS Workplan.

(r) "Record(s) of Decision" shall be the public document(s) that explain(s) which cleanup alternative(s) will be implemented at the Site, and include(s) the bases for the selection of such remedy(ies). The bases include information and technical analyses generated during the Remedial Investigation and Feasibility Study and consideration of public comments and community concerns.

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

(t) "Submittal" shall mean every document, report, schedule, deliverable, work plan or any other item to be submitted by any Party to any other Party pursuant to this Agreement.

(u) "Target dates" shall mean the dates for submittal of secondary documents. The purpose of target dates is to assist the Parties in meeting deadlines for submittal of draft primary documents.

(v) "Timetables" shall mean a series of deadlines.

(w) "USEPA" shall mean the United States Environmental Protection Agency, its employees, agents and authorized representatives.

IV.

Parties

The Parties to this Agreement are USEPA and the Navy. The terms of this Agreement shall be binding upon the Navy and USEPA.

V.

Findings

5.1 NWS Earle is located in Colt's Neck, New Jersey, is owned by the United States and operated by the Navy.

5.2 On August 3, 1981, the NWS Earle was designated for an "Initial Assessment Study" ("IAS") by the Chief of Naval Operations letter ser 451/397464.

5.3 In late 1982, the Navy initiated the IAS for the NWS Earle. The purpose of this study was to collect and evaluate evidence which indicates the existence of pollutants which may pose a potential threat to human health or the environment either on or off the installation.

5.4 In October 1983, the Navy submitted to the USEPA and the NJDEP the results of the IAS. The report identified a total of 29 waste disposal sites or spills at NWS Earle, and four were recommended for further study. These sites are potentially contaminated, and pose a potential threat to human health or the environment on and off the station.

5.5 On October 15, 1984, (49 FR 40320) NWS Earle was listed on the proposed National Priorities List ("NPL").

5.6 On April 2, 1985, the USEPA, NJDEP and the Navy agreed that 11 sites would be addressed in the Confirmation Study. An examination of additional Navy data and files revealed that of the 29 waste sites originally identified, these 11 have the potential for contamination of soils and groundwater.

5.7 On May 17, 1985, the NJDEP took surface water and sediment samples as they exit the base towards the Manasquan River.

5.8 On July 29, 1985, the Navy submitted to the USEPA the Health/Safety Plan and POAM Confirmation Study to Determine Existence and Possible Migration of Specific Chemicals in Situ.

5.9 On October 8, 1985, the NJDEP transmitted to the Navy the results of the May 17, 1985 sampling data for the Manasquan Reservoir Project. The NJDEP has reviewed the data in relation to anticipated background levels for the observed contaminants, and has found most of the pollutants observed are within background ranges. The exception to this is the volatile organic, chlorobenzene, in the surface water sample taken from the stream which intersects Route 34.

5.10 Between October 1984 and January 1986, the Navy conducted field work for the Confirmation Study. The purpose of

this study was to determine the existence, concentration, and extent of previously identified contaminants of health and environmental concern at NWS Earle.

5.11 On May 11, 1987, the Navy submitted to the USEPA, the draft "Interim Report, Confirmation Study to Determine Existence and Possible Migration of Specific Chemicals In Situ". The following conclusions were reached:

- with the exception of pH, no New Jersey or Federal drinking water guidelines were exceeded in any groundwater sample.
- A spring sampled at Site 4, contained concentrations of petroleum hydrocarbons and total organic carbon (TOC) as well as a base/neutral organic compound.
- The same base neutral compound was also found in a stream sample at Site 10.
- Sediment and soil samples at Site 19 contained elevated levels of petroleum hydrocarbons, volatiles and metals.

5.12 On July 9, 1987, the NJDEP prepared a Resource Conservation and Recovery Act (RCRA) Facility Assessment for NWS Earle. A total of 34 SWMU's have been identified at NWS Earle, including 5 RCRA regulated units. Twenty-nine of these sites were identified during an IAS which was performed as part of the Navy Assessment and Control of Installation Pollutants program by Fred C. Hart Associates in 1983.

5.13 On November 13, 1987, the NJDEP submitted the results from the Sampling of the Mingamahone Brook:

- Surface water and sediment sampling was performed on May 17, 1985. Elevated levels of chlorobenzene were detected in the surface water. Additional sampling was conducted by the NJDEP at NWS Earle on July 14, 1987, to confirm these results and determine whether there might be a potential source of this contamination.
- The results of this confirmatory sampling episode have indicated that there is no surface water contamination and therefore, the NJDEP is not planning further investigation of this brook.

5.14 On July 28, 1988, combined comments of the USEPA and NJDEP were sent to the Navy concerning the draft "Interim Report, Confirmation Study to Determine Existence and Possible Migration of Specific Chemicals In Situ". The regulatory agencies reviewed the IAS to evaluate whether the proposed study of 11 sites would be adequate. The determination is that the 18 sites not currently included in the Confirmation Study must be addressed in

some manner. Specifically, this includes recommendations for additional documentation at some sites and actual sampling at others.

5.15 On November 1, 1988, the Navy informed the USEPA that the 11 sites addressed in the "Interim Report, Confirmation Study to Determine Existence and Possible Migration of Specific Chemicals In Situ" of December 1986 will be included in the Remedial Investigation/Feasibility Study. The Navy proposed the development of a Site Inspection (SI) workplan for 16 of the remaining Installation Restoration Sites. Two sites, #18 and #21, Demilitarization Furnace and Baghouse and Cyclone Dust Storage Area adjacent to Building S-589 respectively, will be addressed as current Resource Conservation and Recovery Act permitted operations and therefore will not be included in the Installation Restoration Program or the SI workplan.

5.16 On February 7, 1989, the Navy submitted to the USEPA a Report of the Current Situation and Draft Plan of Action:

- The IAS identified 29 sites. Eleven of these sites were investigated during the Confirmation Study.

- The following interpretations were made from the analyses of geological, hydrogeological, and chemical conditions encountered during the Confirmation Study field investigation at NWS Earle:

- with the exception of pH, no New Jersey or Federal drinking water guidelines were exceeded in any groundwater sample. The pH of the groundwater samples at Site 3 is within the normal range of pH for formations in Monmouth County. A volatile organic was found in upgradient monitor wells at Site 5 and Site 11.

- Spring sample 4-A exceeded the 10^{-6} cancer risk criterion for the base neutral detected. An oily film was observed on the water surface, and petroleum hydrocarbons were present. Specific conductance and TOC concentrations both were elevated.

- Other than the base neutral compound detected in the stream sample at Site 10, all other analytes were detected below State and Federal drinking water guidelines.

The low concentrations of volatile organic compounds in groundwater and surface water pose no adverse impact to the environment or public health.

- At site 19, the stream sediments and soil samples contained elevated levels of volatiles, metals and petroleum hydrocarbons.

5.17 In October 1989, the Navy submitted to USEPA the Quality Assurance Project Plan, the Health and Safety Plan/Site Security Plan and the Phase III - Remedial Investigation/Feasibility Study (RI/FS). The purpose of this study is to perform extensive on-site investigations, including physical and analytical monitoring, to quantify the extent of the problem and to develop alternatives for possible corrective measures. The 11 sites that were investigated during the previously conducted Confirmation Study are addressed in this RI/FS.

5.18 On August 30, 1990, (55 FR 35502) NWS Earle was finalized on the NPL.

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

VI.

USEPA Determinations

(a) NWS Earle constitutes a "facility" within the meaning of that term as defined in CERCLA Section 101(9), 42 U.S.C. §9601(9).

(b) The Navy is a "person" within the meaning of that term as defined in CERCLA Section 101(21), 42 U.S.C. §9601(21).

(c) Many of the chemicals and contaminants which are referred to in the Findings part above are "hazardous substances" within the meaning of that term as defined in CERCLA Section 101(14), 42 U.S.C. §9601(14).

(d) Hazardous substances, pollutants or contaminants within the meaning of CERCLA Sections 101(14) and (33), respectively, 42 U.S.C. §§9601(14) and (33), have been disposed of at NWS Earle.

(e) The observed releases of hazardous substances onto the soil and into the groundwater at the Site (as noted in the Findings part above) are releases within the meaning of the term "release" as defined in CERCLA Section 101(22), 42 U.S.C. §6901(22).

(f) The potential future migration of hazardous substances into the groundwater at and under NWS Earle constitutes a "threatened release of a hazardous substance from a facility" as that phrase is used in CERCLA Section 106(a), 42 U.S.C. §9606(a).

(g) The Navy is a responsible party within the meaning of CERCLA Section 107, 42 U.S.C. §9607, with respect to the releases and threatened releases of hazardous substances at NWS Earle.

(h) The actions to be taken pursuant to this Agreement are reasonable and necessary to protect the public health, welfare and/or the environment and are consistent with the NCP.

(i) The schedule for completing the actions required by this Agreement complies with the requirements of CERCLA Section 120(e), 42 U.S.C. §9620(e).

(j) USEPA has determined that the submittals, actions, and other elements of work to be performed by the Navy pursuant to this Agreement are necessary to protect the public health and welfare, and/or the environment.

VII.

Navy Determinations

(a) NWS Earle is a facility under the jurisdiction, custody, or control of the Department of Defense within the meaning of Executive Order 12580, 52 Fed. Reg. 2923, Jan. 29, 1987. The Department of the Navy is authorized to act on behalf of the Secretary of Defense for all functions which are relevant to this Agreement delegated by the President through Executive Order 12580.

(b) NWS Earle is a facility under the jurisdiction of the Secretary of Defense within the meaning of CERCLA Section 211, 10 U.S.C §2701, et seq., and subject to the Defense Environmental Restoration Program therein.

VIII.

Statutory Compliance/RCRA-CERCLA Integration*

8.1 The Parties intend to integrate the Navy's CERCLA response obligations and RCRA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes, pollutants or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will be deemed to achieve compliance with CERCLA Section 104, 42 U.S.C. §9604 *et seq.*; satisfy the corrective action requirements of RCRA Sections 3004(u) and (v), 42 U.S.C §§6924(u) and (v), for a RCRA permit, and RCRA Section 3008(h), 42 U.S.C. §6928(h), for interim status facilities; and to meet or exceed all applicable or relevant and appropriate Federal and State laws and regulations, to the extent required by CERCLA Section 121, 42 U.S.C. §9621 and applicable state law.

8.2 Based upon the foregoing, the Parties intend that any remedial action selected, implemented and completed under this Agreement shall be deemed by the Parties to be protective of human health and the environment such that remediation of releases covered by this Agreement shall obviate the need for further corrective action under RCRA (i.e., no further corrective action shall be required). The Parties agree that with respect to releases of hazardous waste covered by this Agreement, RCRA shall be considered an applicable or relevant and appropriate requirement pursuant to CERCLA Section 121, 42 U.S.C. §6921.

8.3 The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties further recognize that on-going hazardous waste management activities at NWS Earle may require the issuance of permits under Federal and State laws. This Agreement does not affect the requirements, if any, to obtain such permits. However, if a permit is issued to NWS Earle for on-going hazardous waste management activities at the Site, USEPA shall reference and incorporate any appropriate provisions, including appropriate schedules (and the provision for extension of such schedules), of this Agreement into such permit. The Parties intend that the judicial review of any permit conditions which reference this Agreement shall, to the extent authorized by law, only be reviewed under the provisions of CERCLA.

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

IX.

Scope of Agreement

The Navy agrees to perform all of the response actions set forth in this Part, Part X (Removal Actions), and Part XI (Records of Decision and Plans for Remedial Action), and in accord with the timetables and deadlines established in Attachment 2 and in the Deadlines part of this Agreement for all of the potentially contaminated areas on the Site. These actions may consist of any or all of the following activities for any or all of the potentially contaminated areas shown on Attachment 1:

(a) Operable Units - The Navy agrees that it shall develop, where appropriate, interim remedial measures or final remedial measures to address operable units. After consultation with USEPA as described in Part XV, the Navy shall publish its proposed interim remedial measure alternative(s) or final remedial measure alternative(s) for public review and comment. Selection of interim measures shall proceed in the same manner as the remedy selection and implementation process described in Part XI (Records of Decisions and Plans for Remedial Action) of this Agreement.

(b) Removal Actions - Any Removal Action conducted on the Site shall be conducted in a manner consistent with Part X (Removal Actions) of this Agreement, CERCLA, and the NCP.

(c) Remedial Investigation - The Navy agrees it shall develop, implement and report upon RIs at the Site. The RI documents shall be subject to the review and comment procedures described in Part XV. The RIs shall be conducted in accordance with the requirements and time schedules set forth in Attachment 2 and Part XII of this Agreement. The RIs shall meet the purposes set forth in Part I (Purpose) of this Agreement.

(d) Feasibility Study - The Navy agrees it shall design, propose, undertake and report upon FSs for the Site. The FS documents shall be subject to the review and comment procedures described in Part XV. The FSs shall be conducted in accordance with the requirements and time schedules set forth in Attachment 2 and Part XII of this Agreement. The FSs shall meet the purposes set forth in Part I (Purpose) of this Agreement.

(e) Remedial Action Selection and Implementation - Following completion of each RI and corresponding FS and in consultation with the USEPA as described in Part XV, the Navy shall publish its proposed remedial action alternative(s) for public comment in accordance with Part XI of this Agreement, CERCLA §117(a), applicable State laws and comply with all other applicable sections of CERCLA §117. Remedial selection and implementation shall proceed in accordance with Part XI (Records

of Decision and Plans for Remedial Action) of this Agreement.

X.

Removal Actions

10.1 (a) The provisions of this Subpart shall apply to all Removal Actions as defined in CERCLA Section 101(23), 42 U.S.C. § 9601(23), including all modifications to, or extensions of, the ongoing Removal Actions, and all new Removal Actions proposed or commenced following the effective date of this Agreement.

(b) Any Removal Actions conducted at the Site shall be conducted in a manner consistent with this Agreement, CERCLA, the NCP and Executive Order 12580.

(c) All reviews conducted by USEPA and NJDEP will be expedited to the extent practicable so as not to unduly jeopardize fiscal resources of the Navy for funding the Removal Actions.

(d) If a Party determines that there may be an endangerment to the public health, welfare or the environment because of an actual or threatened release of a hazardous substance, pollutant or contaminant at or from the Site, the Party may request that the Navy take such response actions as may be necessary to abate such danger or threat and to protect the public health or welfare or the environment.

10.2 Notice and Opportunity to Comment

(a) The Navy shall provide the USEPA and NJDEP with timely notice and opportunity to review and comment upon any proposed Removal Action for the Site, pursuant to CERCLA §211.

(b) For emergency response actions, the Navy shall immediately, or as soon as practicable, but in any event no less than 48 hours, notify the USEPA and NJDEP. Immediate notice can be verbal. Such notification shall include, to the extent practicable, adequate information concerning the Site background, threat to the public health, welfare or the environment (including the need for response), proposed actions and costs (including a comparison of possible alternatives, means of transportation of hazardous substance off-site, and proposed manner of disposal), expected change in the situation should no action be taken or should action be delayed (including associated environmental impacts), any important policy issues, and the Navy Project Manager recommendations. To the extent that the above information is not known at the time of the notification, such information shall be provided as soon as it becomes known. Within forty-five (45) days of completion of the emergency actions, the Navy will furnish USEPA and NJDEP with an Action Memorandum or the equivalent Navy document, addressing the information provided in the oral notification, and any other

information required pursuant to CERCLA and the NCP, and in accordance with pertinent USEPA guidance, for such actions.

(c) For any other Removal Actions, the Navy will provide USEPA and NJDEP with any information required by CERCLA, the NCP, and in accordance with pertinent USEPA guidance, such as the Action Memorandum, the Engineering Evaluation/Cost Analysis (EE/CA) (in the case of non-time critical Removals) or the equivalent Navy documents and, to the extent it is not otherwise included, all information required to be provided in accordance with Section 10.2.b of this Subpart. Such information shall be furnished as early as practicable, but not less than forty-five (45) days before the response action is to begin.

(d) All activities related to ongoing Removal Actions shall be reported by the Navy in the progress reports as described in Part XXIV (Reporting).

10.3 Dispute Any dispute among the Parties as to whether a proposed non-emergency Removal Action is a proper Removal Action under CERCLA, or as to the consistency of such a Removal Action with the final Remedial Action, shall be resolved pursuant to Part XVII (Dispute Resolution). Such dispute may be brought directly to the DRC or the SEC at any Party's request.

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

XI.

Records of Decision and Plans for Remedial Action

11.1 This Section shall apply to selection of remedial actions and any disputes relating thereto.

11.2 For each operable unit(s) or the entire site, the Navy shall submit the draft final RI and FS to USEPA and NJDEP for review and comment in accordance with Part XV of this Agreement and within the time schedules set forth in Attachment 2 to this Agreement. After finalization of the RI and FS, the Navy shall prepare a draft Proposed Plan for submission to USEPA as described in Part XV, Consultation with USEPA, of this Agreement. The Navy will then announce a public comment period and the Navy shall make available to the public the FS and distribute the Proposed Plan. The Navy will hold a public information meeting to discuss the preferred alternative for each operable unit. Copies of all written and oral public comments received will be provided to the Parties. Public review and comment shall be conducted in accordance with CERCLA Section 117(a), 42 U.S.C. §9617(a) and applicable USEPA guidance. Following public comment, the Navy in consultation with USEPA will determine if the Proposed Plan should be modified based on the comments received. These modifications will be made by the Navy and the modified documents will be reviewed by USEPA and NJDEP. The Parties may recommend additional public comment be solicited if modifications to the Proposed Plan substantially change the remedy originally proposed to the public.

11.3 Based on comments received from USEPA and the public, the Navy will draft and submit to USEPA a draft Record of Decision for each operable unit or the entire site. The draft Record of Decision will include a Responsiveness Summary, in accordance with applicable USEPA guidance. At a minimum, the Parties shall have 30 days to attempt to jointly select a remedy following the Navy's submission of a draft Record of Decision. If the Parties agree on the draft Record of Decision, USEPA shall co-sign the Record of Decision and the draft Record of Decision shall be adopted by USEPA and the Navy. If the Parties are unable to reach agreement on the draft Record of Decision, selection of a remedial action shall be made by the USEPA Administrator and USEPA shall then prepare the final Record of Decision. The selection of Remedial Action(s) by the USEPA Administrator shall be final and not subject to dispute by the Navy. If a Record of Decision prepared by USEPA departs substantially from the Proposed Plan which was subject to public comment, then USEPA shall subject the new Proposed Plan to public comment.

11.4 Notice of the final Record of Decision shall be published by the Party preparing it and shall be made available to the public prior to commencement of the remedial action, in accordance with CERCLA Section 117(b), 42 U.S.C. §9617(b).

11.5 Upon issuance of the Record of Decision for the final Remedial Action(s), the RI/FS will be deemed completed.

11.6 Within 21 days of issuance of each Record of Decision, the Navy shall propose deadlines for the completion of the Remedial Design and Remedial Action Work Plan to USEPA in accordance with Part XII.

11.7 The Remedial Action Work Plan shall at a minimum contain a proposed schedule for the completion of the remedial action, a Health and Safety Plan, a Sampling and Analysis Plan if necessary, and a Quality Assurance Project Plan if necessary. The Remedial Design shall provide the appropriate plans and specifications describing the intended remedial construction.

11.8 Upon the finalization of the Remedial Design, the Navy shall implement the Remedial Action in accordance with the requirements of this Agreement and the time schedules to be adopted pursuant to Part XII, Deadlines.

11.9 Upon the completion of each Remedial Action, the Navy shall submit a summary of the action taken during the Remedial Action and a detailed description of any action taken that was not included in the Remedial Design.

XII.

Deadlines*

12.1 Prior to the effective date of this Agreement, the Navy has forwarded the following draft primary documents to USEPA:

1. Remedial Investigation/Feasibility Study (RI/FS) Workplan, including Sampling and Analysis Plan and Quality Assurance Project Plan (QAPjP) (sites 2-5, 7, 10, 11, 19, 20, 22 and 26).

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

1. RI/FS Workplan(s), including Sampling and Analysis Plan and QAPjP (for sites other than 2-5, 7, 10, 11, 19, 20, 22 and 26)
2. Baseline Risk Assessment(s)
3. Remedial Investigation (RI) Report(s)
4. Initial Screening of Alternatives
5. Feasibility Study (FS) Report(s) (including Risk Assessment)
6. Proposed Plan(s)
7. Record(s) of Decision

12.3 Within fifteen (15) days of receipt, USEPA shall review and provide comments to the Navy regarding the proposed deadlines. Within fifteen (15) days following receipt of the comments the Navy shall, as appropriate, make revisions and reissue the proposal. The Parties shall meet as necessary to discuss and finalize the proposed deadlines. 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 Part XVII of this Agreement. The final deadlines established pursuant to this Paragraph shall be published by USEPA.

12.4 If the Parties agree that any supplemental work or any treatability studies are to be undertaken pursuant to this Agreement, the Navy shall provide target dates for submission of the secondary documents listed below within twenty-one (21) days of written request by USEPA for such target dates:

1. Supplemental Workplans and Studies
2. Supplemental Reports
3. Treatability Studies

12.5 Within twenty-one (21) days of issuance of the Record of Decision, the Navy shall propose deadlines for completion of the following draft primary documents:

1. Remedial Design Work Plan
2. Remedial Action Work Plan

These deadlines shall be proposed, finalized and published utilizing the same procedures set forth in Section 12.3 above.

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

XIII.

Project Managers

13.1 The Project Managers for the Navy and USEPA are identified in Part XIV (Notification). Any Party may change its designated Project Manager by notifying the other Party, in writing, within five days of the change. To the maximum extent possible, communications between the Parties concerning the terms and conditions of this Agreement shall be directed through the Project Managers as set forth in Part XIV of this Agreement. Each Project Manager shall be responsible for assuring that all communications from the other Project Manager are appropriately disseminated and processed by the entities which the Project Managers represent.

13.2 Subject to the limitations set forth in Part XXI (Site Access), Section 21.1, the USEPA Project Manager shall have the authority to: (1) have samples taken and/or obtain split samples of any Navy samples collected at the site relating to this Agreement; (2) observe all activities performed pursuant to this Agreement, take photographs (with the specific permission of the NWS Earle Security Office) and make such other reports on the progress of the work as the Project Manager deems appropriate; (3) review records, files and documents relevant to this Agreement; and, (4) recommend and request minor field modifications to the work to be performed pursuant to this Agreement, or in techniques, procedures or design utilized in carrying out this Agreement, which are necessary to the completion of the project.

13.3 At the request of the Navy Project Manager, USEPA similarly shall allow the Navy to take split or duplicate samples of samples collected by USEPA.

13.4 The Project Manager of any Party may recommend and request minor field modifications to the work to be performed pursuant to this Agreement, or in techniques, procedures or design utilized in carrying out this Agreement, which are necessary to the completion of the project. Any minor field modifications proposed under this Part by any Party must be approved orally by Project Managers for the Navy and USEPA to be effective. If agreement cannot be reached among the Navy and USEPA on any proposed additional work or modification to work, the dispute resolution procedures as set forth in Part XVII may be used in addition to this Part.

13.5 Within ten (10) business days following an agreement for any minor field modification made pursuant to this Part, the Project Manager who requested the modification shall prepare a memorandum detailing the modification and the reasons therefore

and shall provide a copy of the memorandum to the other Project Manager.

13.6 The Project Manager for the Navy shall supervise all work performed at NWS Earle during implementation of the work performed pursuant to this Agreement. The Project Manager for the Navy shall be available to the USEPA Project Manager throughout the performance of all work required by this Agreement. The absence of the USEPA Project Manager from the Site shall not be cause for work stoppage.

13.7 The Project Managers shall meet formally approximately every 45 days pursuant to Section 15.5 of this Agreement to discuss issues relating to the performance of work under this Agreement. In addition, Project Managers may also meet informally as necessary.

13.8 The Navy Project Manager shall have all the authority vested in the On-Scene Coordinator (OSC) and Remedial Project Manager by the NCP.

XIV.

Notification

14.1 Unless otherwise specified, any report or Submittal provided pursuant to a schedule or deadline identified in or developed under this Agreement shall be sent by certified mail or next day mail, return receipt requested and addressed or hand delivered. All time periods specified in Part XV for review and/or comment of any Primary or Secondary document by any Party under this Agreement shall commence on the date any such document is received by that Party.

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

(a) For the Navy:
Mr. Gerald F. Hoover
Project Engineer, Code 142
Environmental Restoration Branch
Northern Division
Naval Facilities Engineering Command
U.S. Navy
U.S. Naval Base, Bldg. 77 Low
Philadelphia, PA 19112-5094

(b) For USEPA:
Mr. Paul G. Ingrisano
NWS Earle Project Manager (ERRD-PSB)
U.S. Environmental Protection Agency
Region II
26 Federal Plaza
New York, New York 10278

Unless otherwise requested, all routine correspondences may be sent via regular mail to the above-named persons.

14.3 It is the responsibility of the Project Managers who are identified above to assure that all documents relating to this Agreement are disseminated to all relevant agents and employees of their respective agencies, as needed to facilitate the actions required by this Agreement.

14.4 Written notice by USEPA to the Project Manager for the Navy will be deemed notification to the Navy for any matters relating to this Agreement unless otherwise stated in this Agreement.

14.5 Written notice by the Navy to the Project Manager for USEPA will be deemed notification to USEPA for any matters relating to this Agreement unless otherwise stated in this Agreement.

14.6 The Parties agree that the NJDEP may designate a Project Manager for NWS Earle. Such Project Manager will be invited to attend and participate in the meetings of the Parties' Project Managers. The Navy will provide to the NJDEP two (2) copies of all primary and secondary documents as specified in Section XV (Consultation with USEPA).

XV.

Consultation with USEPA:*
Review and Comment Process for Draft and Final Documents

15.1 Applicability:

The provisions of this Part establish the procedures that shall be used by the Navy and USEPA to provide the Parties with appropriate notice, review, comment, and response to comments regarding RI/FS and RD/RA documents, specified herein as either primary or secondary documents. In accordance with CERCLA Section 120 and 10 U.S.C. §2705, the Navy will normally be responsible for issuing primary and secondary documents to USEPA. As of the effective date of this Agreement, all draft and final reports for any deliverable document identified herein shall be prepared, distributed and subject to dispute in accordance with Sections 15.2 through 15.10 below.

The designation of a document as "draft" or "final" is solely for purposes of consultation with USEPA in accordance with this Part. Such designation does not affect the obligation of the Parties to issue documents, which may be referred to herein as "final", to the public for review and comment as appropriate and as required by law.

15.2 General Process for RI/FS and RD/RA documents:

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

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

15.3 Primary Reports:

(a) Prior to the effective date of this Agreement, the Navy has forwarded the following draft primary documents to USEPA:

1. RI/FS Workplan, including Sampling and Analysis Plan and QAPjP (sites 2-5, 7, 10, 11, 19, 20, 22 and 26).

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

1. RI/FS Workplan, including Sampling and Analysis Plan and QAPjP (for sites other than 2-5, 7, 10, 11, 19, 20, 22 and 26).
2. Baseline Risk Assessment(s)
3. RI Report(s)
4. Initial Screening of Alternatives
5. FS Report(s) (including Risk Assessment)
6. Proposed Plan(s)
7. Record(s) of Decision
8. Remedial Design Work Plan(s)
9. Remedial Action Work Plan(s)

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

15.4 Secondary Documents:

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

1. Supplemental Workplans and Studies
2. Supplemental Reports
3. Treatability Studies

(b) Although USEPA may comment on the draft reports for the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by Section 15.2 hereof. Target dates shall be established for the completion and transmission of draft secondary reports pursuant to Part XII of this Agreement.

15.5 Meetings of the Project Managers on Development of Reports:

The Project Managers shall meet approximately every 45 days, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the site on the

primary and secondary documents. Prior to preparing any draft report specified in Sections 15.3 and 15.4 above, the Project Managers shall meet to discuss the report results in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft report.

15.6 Identification and Determination of Potential ARARs:

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

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

15.7 Review and Comment on Draft Reports:

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

(b) Unless the Parties mutually agree to another time period, all draft reports shall be subject to a 30-day period for review and comment. Review of any document by USEPA may concern all aspects of the report (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP and any pertinent guidance or policy promulgated by USEPA. Comments by USEPA shall be provided with adequate specificity so that the Navy may respond to the comments and, if appropriate, make changes to the draft report. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of the Navy, USEPA shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy reports, USEPA may extend the 30-day comment period for an additional 20 days by written notice to the Navy prior to the end of the 30-day period. On or before the close of the comment period, USEPA shall transmit by

next day mail their written comments to the Navy. In appropriate circumstances, this time period may be further extended in accordance with Part XVI hereof.

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

(d) In commenting on a draft report which contains a proposed ARAR determination, USEPA shall include a reasoned statement of whether they object to any portion of the proposed ARAR determination. To the extent that USEPA does object, it shall explain the bases for its objection in detail and shall identify any ARARs which it believes were not properly addressed in the proposed ARAR determination.

(e) Following the close of the comment period for a draft report, the Navy shall give full consideration to all written comments on the draft report submitted during the comment period. Within 30 days of the close of the comment period on a draft secondary report, the Navy shall transmit to USEPA its written response to comments received within the comment period. Within 30 days of the close of the comment period on a draft primary report, the Navy shall transmit to USEPA a draft final primary report, which shall include the Navy's response to all written comments, received within the comment period. While the resulting draft final report shall be the responsibility of the Navy, it shall be the product of consensus to the maximum extent possible.

(f) The Navy may extend the 30-day period for either responding to comments on a draft report or for issuing the draft final primary report for an additional 20 days by providing notice to USEPA. In appropriate circumstances, this time period may be further extended in accordance with Part XVI hereof.

15.8 Availability of Dispute Resolution for Draft Final Primary Documents:

(a) Dispute resolution shall be available to the Parties for draft final primary reports as set forth in Part XVII.

(b) When dispute resolution is invoked on a draft primary report, work may be stopped in accordance with the procedures set forth in Part XVII regarding dispute resolution.

15.9 Finalization of Reports:

The draft final primary report shall serve as the final primary report if no party invokes dispute resolution regarding the document or, if invoked, at completion of the dispute resolution process should the Navy's position be sustained. If the Navy's determination is not sustained in the dispute resolution process, the Navy shall prepare, within not more than 35 days, a revision of the draft final report which conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Part XVI (Extensions) hereof.

15.10 Subsequent Modifications of Final Reports:

Following finalization of any primary report pursuant to Section 15.9 above, USEPA or the Navy may seek to modify the report, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in Paragraphs (a) and (b) below.

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

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

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

XVI.

Extensions*

16.1 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 Navy shall be submitted in writing and shall specify:

- (a) The timetable and deadline or the schedule that is sought to be extended;
- (b) The length of the extension sought;
- (c) The good cause(s) for the extension; and,
- (d) Any related timetable and deadline or schedule that would be affected if the extension were granted.

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

- (a) An event of Force Majeure;
- (b) A delay caused by another Party's failure to meet any requirement of this agreement;
- (c) A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;
- (d) A delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and deadline or schedule; and,
- (e) Any other event or series of events mutually agreed to by the Parties as constituting good cause.

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

16.4 Within seven (7) days of receipt of a request for an extension of a timetable and deadline or a schedule, USEPA shall advise the Navy in writing of its position on the request. Any failure by USEPA to respond within the 7-day period shall be deemed to constitute concurrence in the request for extension. If USEPA does not concur in the requested extension, it shall

include in its statement of nonconcurrence an explanation of the basis for its position.

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

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

16.7 A timely and good faith request for an extension shall toll any assessment of stipulated penalties or application for judicial enforcement of the affected timetable and deadline or schedule until a decision is reached on whether the requested extension will be approved. If dispute resolution is invoked and the requested extension is denied, stipulated penalties may be assessed and may accrue from the date of the original timetable, deadline or schedule. Following the grant of an extension, an assessment of stipulated penalties or an application for judicial enforcement may be sought only to compel compliance with the timetable and deadline or schedule as most recently extended.

XVII.

Dispute Resolution*

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

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

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

17.3 The DRC will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (SES or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The USEPA representative on the DRC is the Enforcement and Remedial Response Division Director of USEPA's Region II. The Navy's designated member is the Commanding Officer, Northern Division, Naval Facilities Engineering Command. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to the other Party.

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

17.5 The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The USEPA representative on the SEC is the Regional Administrator of USEPA's Region II. The Navy's representative on the SEC is the Deputy Director for Environment, Office of the Assistant Secretary of the Navy (Installations and Environment). The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision. If unanimous resolution of the dispute is not reached within twenty-one (21) days, USEPA's Regional Administrator shall issue a written position on the dispute. The Navy may, within fourteen (14) 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 the Navy elects not to elevate the dispute to the Administrator within the designated fourteen (14) day escalation period, the Navy shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.

17.6 Upon escalation of a dispute to the Administrator of USEPA pursuant to Section 17.5, 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 Navy's Secretariat Representative to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the Navy 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.

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

17.8 When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Enforcement and Remedial Response Division Director for USEPA's Region II 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 or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. To the extent possible, USEPA shall consult with the Navy prior to initiating a work stoppage request. After stoppage of work, if the Navy believes that the

work stoppage is inappropriate or may have potential significant adverse impacts, the Navy may meet with the Division Director to discuss the work stoppage. Following this meeting, and further consideration of the issues, the Division Director will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the Division Director may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the Navy.

17.9 Within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this Part, the Navy shall incorporate the resolution and final determination into the appropriate plan, schedule or procedures and proceed to implement this Agreement according to the amended plan, schedule or procedures.

17.10 Resolution of a dispute pursuant to this Part of the Agreement constitutes a final resolution of any dispute arising under this Agreement. All Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Part of this Agreement.

XVIII.

Force Majeure*

A Force Majeure shall mean any event arising from causes beyond the control of a Party that causes a delay in or prevents the performance of any obligation under this Agreement, including, but not limited to, acts of God; fire; war; insurrection; civil disturbance; explosion; unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance; adverse weather conditions that could not be reasonably anticipated; unusual delay in transportation; restraint by court order or order of public authority; inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority other than the Navy; delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; and insufficient availability of appropriated funds, if the Navy shall have made timely request for such funds as part of the budgetary process as set forth in Part XXXVI (Funding) of this Agreement. A Force Majeure shall also include any strike or other labor dispute, whether or not within the control of the Parties affected thereby. Force Majeure shall not include increased costs or expenses of Response Actions, whether or not anticipated at the time such Response Actions were initiated.

XIX.

Enforceability*

19.1 The Parties agree that:

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

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

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

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

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

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

XX.

Stipulated Penalties*

20.1 In the event that the Navy 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 term or condition of this Agreement which relates to an interim or final remedial action, USEPA may assess a stipulated penalty against the Navy. A stipulated penalty may be assessed in an amount not to exceed \$5,000 for the first week (or part thereof), and \$10,000 for each additional week (or part thereof) for which a failure set forth in this Paragraph occurs.

20.2 Upon determining that the Navy has failed in a manner set forth in Section 20.1, USEPA shall so notify the Navy in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the Navy shall have fifteen (15) days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. The Navy shall not be liable for the stipulated penalty assessed by 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.

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

- (a) The facility responsible for the failure;
- (b) A statement of the facts and circumstances giving rise to the failure;
- (c) A statement of any administrative or other corrective action taken at the relevant facility, or a statement of why such measures were determined to be inappropriate;
- (d) A statement of any additional action taken by or at the facility to prevent recurrence of the same type of failure; and,
- (e) The total dollar amount of the stipulated penalty assessed for the particular failure.

20.4 Stipulated penalties assessed pursuant to this Part 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.

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

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

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

XXI.

Site Access

21.1 The Navy will allow the USEPA, and/or its authorized representatives, to enter the Site at all reasonable times for the purposes of, among other things:

- (a) inspecting records, operating logs, contracts and other documents relevant to implementation of this Agreement;
- (b) reviewing the progress of the Navy, its response action contractors or lessees in implementing this Agreement;
- (c) conducting such tests as the Project Managers deem necessary;
- (d) verifying the data submitted to the USEPA by the Navy; and/or,
- (e) observing the performance of any or all sampling, testing, response actions, removals, remedial actions, pilot studies and/or any other actions taken at the NWS Earle pursuant to the terms of this Agreement.

21.2 The Navy shall honor all reasonable requests for access by the USEPA to exercise their right of access pursuant to Section 21.1 above, conditioned only upon presentation of proper credentials to the Navy. However, such access shall be obtained in conformance with Navy security and safety regulations and in a manner minimizing interference with any military operations at NWS Earle. USEPA will give the Navy notice prior to entering NWS Earle.

21.3 The Navy assumes all responsibility for obtaining access to all areas located within the boundaries of the NWS Earle facility and all real property and structures occupied by non-government entities, for the purposes of performing all activities and implementing all other measures required by this Agreement.

21.4 The Navy shall use its best efforts to gain access to all areas located outside the legal boundaries of the NWS Earle facility onto which access is needed to perform any and all activities under this Agreement, including obtaining access for the Navy and for USEPA and NJDEP onto all real property and structures which are not owned by the United States or the Navy. "Best efforts" for the purposes of this paragraph shall include identifying and locating the owner(s) and lessees of areas, offering consideration to the owner(s) and/or lessees for access to areas, making attempts to obtain access agreements from the owners and/or lessees of all areas onto which access is needed

under this Agreement and asserting all authority which the Navy possesses under CERCLA Section 104(e), 42 U.S.C. §9604(e), including issuing administrative orders and initiating judicial action(s) to obtain access pursuant to the authority of the Navy under CERCLA §104 and other Sections of CERCLA and any other federal laws or regulations.

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

21.6 The Navy shall ensure that USEPA and its authorized representatives shall be allowed to enter and move about all areas where any activities are to be or are being performed under this Agreement.

21.7 The Navy shall provide USEPA with at least ninety (90) days prior notice of any conveyance of title to or any transfer of an interest in real property which may affect this Agreement or any activities to be taken pursuant to it. The Navy shall ensure that all activities or remedial measures to be undertaken pursuant to this Agreement will not be impeded or impaired by any transfer of title or any transfer of any other interest in real property relating to NWS Earle or any structures located thereon.

21.8 USEPA and the Navy recognize that access to certain areas of the site may be restricted based upon National Security concerns if so stipulated in an executive order issued by the President pursuant to CERCLA Section 120(j)(1), 42 U.S.C. §9620(j)(1).

XXII.

Quality Assurance, Sampling and Data/Document Availability

22.1 The Parties shall use Quality Assurance, Quality Control (hereinafter "QA/QC"), and chain-of-custody procedures throughout all field investigation, sample collection and laboratory analysis activities. A Quality Assurance Project Plan (QAPjP) shall be submitted as a component of each RI/FS Work Plan or RD/RA Work Plan as appropriate. QAPjPs shall be prepared in accordance with applicable USEPA guidance.

22.2 In order to demonstrate quality assurance and maintain quality control regarding all samples collected pursuant to this Agreement, the Navy has submitted and will continue to submit all protocols to be used for sampling and analysis to USEPA and NJDEP for review and comment. The Navy also ensures that any laboratory used for analysis is a participant in a QA/QC program that is consistent with USEPA guidance.

22.3 The Navy shall ensure that lab audits are conducted as appropriate and available to USEPA upon request.

22.4 The Parties shall make available to each other quality assured results of sampling, tests or other data generated by any Party, or on their behalf, with respect to the implementation of this Agreement within sixty (60) days of performance of such sampling event or test. If quality assurance is not completed within sixty (60) days, raw data or results shall be submitted within the sixty (60) day period and quality assured data or results shall be submitted as soon as they become available.

22.5 At the request of the USEPA Project Manager, the Navy shall take split or duplicate samples and provide them to the USEPA and NJDEP should they request it during sample collection conducted during the implementation of this Agreement. At the request of the Navy, USEPA similarly shall allow the Navy to take split or duplicate samples of samples collected by USEPA. The Project Manager of the Party intending to take samples shall endeavor to notify the Project Manager of the other Party not less than ten (10) business days in advance of any sample collection. If it is not possible to provide ten (10) business days prior notification, the Project Manager of the Party intending to collect samples shall notify the Project Manager of the other Party as soon as possible after becoming aware that samples will be collected.

XXIII.

Permits

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

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

23.3 When the Navy proposes a response action to be conducted entirely on NWS Earle, which in the absence of CERCLA §121(e)(1) and the NCP would require a Federal or State permit, and for which the Navy does not seek a permit, the Navy shall include in the submittal to the Parties:

- (a) Identification of each permit which would otherwise be required;
- (b) Identification of the standards, requirements, criteria, or limitations which would have had to have been met to obtain each such permit; and,
- (c) Explanation of how the response action proposed will meet the standards, requirements, criteria or limitations identified in (b) immediately above.

Upon request of the Navy, USEPA will provide its position with respect to (b) and (c) above in a timely manner.

23.4 Section 23.2 above is not intended to relieve the Navy from the requirement(s) of obtaining a permit whenever it proposes a response action involving the shipment or movement of a hazardous substance or hazardous waste off NWS Earle.

23.5 The Navy shall notify USEPA in writing of any permits required for any activities it plans to undertake outside NWS Earle as soon as it becomes aware of the requirement. The Navy shall apply for all such permits and provide USEPA copies of all such permits.

23.6 During any appeal by any Party of any permit required to implement this Agreement or during review of any proposed modification(s), the Navy shall continue to implement those portions of this Agreement which can be reasonably implemented independent of final resolution of the permit issue(s) under appeal. However, as to work which cannot be so implemented, any corresponding timetable, deadlines, and schedule will be subject to Part XVI (Extensions) of this Agreement.

XXIV.

Reporting

The Navy shall submit to USEPA and NJDEP quarterly written progress reports which describe the actions which the Navy has taken during the previous quarter to implement the requirements of this Agreement. Progress reports shall also describe the activities scheduled to be taken during the upcoming quarter. Progress reports shall include a detailed 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 Navy shall submit the progress reports to the USEPA and NJDEP within 30 days following the quarter.

XXV.

Five Year Review

25.1 Consistent with CERCLA Section 121(c), 42 U.S.C. §9621(c), if the selected remedial action(s) result(s) in any hazardous substance, pollutants or contaminants remaining at the Site, the Parties shall review such remedial actions no less often than each five years after the initiation of such remedial action to assure that human health and the environment are being protected by the remedial action being implemented. As part of this review, the Navy shall report the findings of their review to the USEPA upon its completion.

25.2 If upon such review it is the conclusion of any of the Parties that additional action(s) or modification(s) to any remedial action(s) are appropriate pursuant to any provision under CERCLA, the Navy shall implement such additional or modified action as agreed upon by all Parties.

25.3 Any dispute by the Parties regarding need for or the scope of additional action or modification shall be resolved under Section XVII, Dispute Resolution, of this Agreement.

25.4 Any action or modification agreed upon pursuant to this Part shall be made a part of this Agreement.

XXVI.

Retention of Records

26.1 The Parties shall preserve for a minimum of ten (10) years after termination of this Agreement all records and documents in its possession or in the possession of its divisions, employees, agents, accountants, contractors or attorneys which relate in any way to the presence of hazardous substances, pollutants and contaminants at the Site or to activities taken pursuant to this Agreement. After this ten (10) year period, any Party wishing to destroy or dispose of any such records or documents shall notify the other Party to this Agreement at least ninety (90) days prior to destruction or disposal of any such documents or records. Upon request by any Party to this Agreement, the Party being notified shall make available any or all of such records or documents to the notifying Party at any time during the performance of the work under this Agreement and up to 10 years after the termination of this Agreement. Either Party to this Agreement shall allow the other Party to make copies of any or all records relating to the Agreement upon request.

26.2. All such records and documents shall be preserved for a period of ten (10) years following the termination of any judicial action regarding the work performed under CERCLA, which is the subject of this Agreement.

XXVII.

Reservation of Rights

27.1 In consideration for the Navy's compliance with this Agreement, and based on the information known to the Parties on the effective date of this Agreement, USEPA agrees that compliance with this Agreement shall stand in lieu of any administrative, legal and equitable remedies against the Navy available to USEPA regarding the currently known release or threatened release of hazardous substances including hazardous wastes, pollutants or contaminants at the Site which are the subject of the RI/FS and which will be addressed by the remedial action provided for under this Agreement.

27.2 Notwithstanding anything in this Agreement, USEPA may initiate any administrative, legal or equitable remedies available to it, including requiring additional response actions by the Navy in the event that: (a) conditions previously unknown or undetected by USEPA arise or are discovered at the Site; or, (b) USEPA receives additional information not previously available concerning the premises which they employed in reaching this Agreement; or (c) the implementation of the requirements of this Agreement are no longer protective of public health and the environment; or, (d) USEPA discovers the presence of conditions on the Site which may constitute an imminent and substantial danger to the public health, welfare, or the environment; or, (e) the Navy fails to meet any of its obligations under this Agreement; or, (f) the Navy fails or refuses to comply with any applicable requirement of CERCLA or RCRA or State laws or related regulations.

27.3 Section 27.1 above shall not affect any claim for natural resource damage assessments or for damages to natural resources.

27.4 The Navy reserves the right to raise or assert any defense, whether procedural or substantive, in law or equity, or to raise any issue to jurisdiction or standing of any Party, or any other matter in any proceeding related to this Agreement, which the Navy might otherwise be entitled to raise or assert.

XXVIII.

Transfer of Property

In the event the Navy determines to enter into any contract for the sale or transfer of any portion of the Site, the Navy will comply with the requirements of CERCLA Section 120(h), 42 U.S.C. §9620(h), in effectuating that sale or transfer, including all notice requirements. In addition, the Navy shall include notice of this Agreement in any document transferring ownership or operation of the Site to any subsequent owner and/or operator of any portion of the Site and shall notify USEPA of any such sale or transfer and the provisions made for any additional remedial action measures, if required, at least ninety (90) days prior to such transfer.

XXIX.

Public Participation

29.1 The Parties agree that this Agreement and any subsequent proposed remedial action alternative and any subsequent plan for remedial action at the Site arising out of this Agreement shall comply with the administrative record and public participation requirements of CERCLA §§113 and 117, the NCP, USEPA guidance issued and regulations with respect to public participation, and all applicable State laws.

29.2 The Navy shall implement its Community Relations Plan (CRP) which responds to the need for an interactive relationship with all interested community elements, both on NWS Earle and off, regarding activities and elements of work undertaken by the Navy. The Navy agrees to implement the CRP in a manner consistent with CERCLA §117, the NCP, USEPA guidelines set forth in USEPA's Community Relations Handbook, and any modifications thereto.

29.3 Any Party issuing a formal press release to the media regarding any of the work required by this Agreement shall advise the other Party of such press release and the contents thereof, at least two (2) business days before the issuance of such press release and of any subsequent changes prior to release.

29.4 USEPA agrees it shall administer and fund the Technical Assistance Grant in accordance with CERCLA §113(k) and regulations issued thereunder.

29.5 The Navy has established and shall continue to maintain an administrative record at or near NWS Earle in accordance with CERCLA §113(k). The administrative record shall be established and maintained in accordance with current and future USEPA policy and guidelines. A copy of each document placed in the administrative record after the effective date of this Agreement shall be provided to USEPA. The administrative record developed by the Navy shall be updated on at least a quarterly basis. An index of documents in the administrative record will be supplied to USEPA with each update of the administrative record. The Navy shall submit to USEPA, upon written request, any document listed on an index of documents that is not contained in the files of USEPA.

XXX.

Technical Review Committee

30.1 The Navy shall continue to lead the Technical Review Committee (TRC). The TRC consists of representatives from the Navy, USEPA, NJDEP, the Monmouth County Department of Health, Colts Neck Township, the Township of Wall, the Township of Howell, Middletown Township, Tinton Falls, the U.S. Fish and Wildlife Service and concerned local citizens. The committee shall meet bimonthly at NWS Earle to review progress of the RI/FS and RD/RA. Copies of all draft technical submissions shall be distributed for review and comment prior to the preparation of the final report. However, all Primary and Secondary documents, as defined and submitted pursuant to Part XV of this Agreement, are subject to the deadlines (Part XII) and dispute resolution process (Part XVII) set forth in this Agreement. Minutes of the TRC meetings shall be written by the Navy and distributed to the members of the TRC and the Parties to this Agreement and become part of the Administrative Record. The minutes shall be defined and submitted pursuant to Part XXIV (Reporting) of this Agreement.

30.2 Copies of the minutes shall be made available to the public at the Shrewsbury Branch of the Monmouth County Library. The Project Managers shall discuss all potential disagreements related to the progress of the study with the TRC in an attempt to reach consensus prior to entering the dispute resolution procedure.

XXXI.

Public Comment

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

- (a) the Agreement shall be made effective without any modifications; or,
- (b) the Agreement shall be modified prior to being made effective.

31.2 If the Parties decide that the Agreement shall be made effective without any modifications, USEPA shall transmit a copy of the signed Agreement to the Navy and shall notify the Navy in writing that the Agreement is effective. The effective date of the Agreement shall be the date of that letter from USEPA to the Navy.

31.3 If the Parties agree that modifications are needed and agree upon the modifications and amend the Agreement by mutual consent within 60 days after the expiration of the public comment period, USEPA will determine whether the modified Agreement requires additional public notice and comment pursuant to any provision of CERCLA. If USEPA determines that no additional notice and comment are required, USEPA shall transmit a copy of the modified Agreement to the Navy and shall notify the Navy in writing that the modified Agreement is effective. The effective date of the Agreement shall be the date of that letter from USEPA to the Navy. If the Parties amend the Agreement within this 60 day period and if USEPA concludes that such modifications require that the public receive additional opportunity for notice and comment, such additional notice and comment will be provided consistent with the provisions stated in Section 31.1 above. If the Parties agree, after such additional notice and comment has been provided, that the Agreement does not require any further modification, USEPA shall send a copy of the mutually agreed upon Agreement to the Navy and shall notify the Navy that the Agreement is effective. The effective date of the Agreement shall be the date of that letter from USEPA to the Navy.

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

- (a) whether modifications to the Agreement are needed; or,
- (b) what modifications to the Agreement should be made; or,
- (c) any language, any provisions, any deadlines, any work to be performed or any of the content of the Agreement or any attachments to the Agreement,

the matters which are in dispute shall be resolved by the dispute resolution procedures of Part XVII, above. For the purposes of this Part, the Agreement shall not be effective while the dispute resolution proceedings are underway. After these proceedings are completed, Administrative Notice shall be provided to the Parties indicating the results of the dispute resolution proceedings. The Navy and USEPA reserve the right to withdraw from the Agreement by providing written notice to the other Party within 20 days after receiving the Administrative Notice of the resolution of the matters in dispute. Failure by a Party to provide such a written notice of withdrawal within this 20 day period shall act as a waiver of the right of that Party to withdraw from the Agreement. If neither Party withdraws from the Agreement within this 20 day period, USEPA shall thereafter send a copy of the final Agreement to the Navy and shall notify the Navy that the Agreement is effective. The effective date of the Agreement shall be the date of that letter from USEPA to the Navy.

XXXII.

Amendment of Agreement

32.1 Any and all modifications to this Agreement must be in writing which is executed by duly authorized official(s) of the Navy and USEPA.

32.2 USEPA will be the last signatory to execute all modifications to this Agreement.

32.3 The effective date of all modifications to this Agreement shall be the date on which it is executed by USEPA, unless otherwise explicitly stated in any modification.

32.4 No written or oral advice, guidance, suggestions or informal comments by USEPA regarding reports, plans, specifications, schedules, any other writing submitted by the Navy or on any other matter relating to this Agreement will be construed as modifying this Agreement or as relieving the Navy from any of its obligations under this Agreement, including the need to obtain approvals as may be required by this Agreement.

XXXIII.

Notice Of Completion

33.1 Except as provided in Part XXV hereof (Five Year Review), to the extent that remedial actions are conducted pursuant to the provisions of this Agreement, following the completion of all remedial actions and upon written request by the Navy, USEPA will send to the Navy a written notice of satisfaction of the terms of this Agreement within ninety (90) days of the request. The notice shall state that, in the opinion of USEPA, the Navy has satisfied all of the terms of this Agreement in accordance with the requirements of CERCLA, the NCP and all related regulations and guidance, and applicable State laws, and that the remedial work performed by the Navy was consistent with the remedial actions agreed upon by USEPA.

33.2 If USEPA fails to provide the written notice of completion to the Navy after the Navy has requested it, USEPA will respond to the Navy in writing as to the reasons why that notice of completion has not been provided. USEPA's written denial of completion shall be subject to Part XVII (Dispute Resolution) of this Agreement for 60 days following the Navy's receipt of USEPA's written denial.

XXXIV.

Exemptions

34.1 The Parties recognize that the President may issue an Executive Order, as needed to protect national security interests, regarding response actions at NWS Earle (or at any areas therein), pursuant to CERCLA Section 120(j), 42 U.S.C. §9620(j)(1). Such an Executive Order may exempt such area(s) from the requirements of CERCLA for a period of time not to exceed one (1) year after the issuance of that Order. The Navy shall obtain access to and perform all actions required by this Agreement within all areas inside NWS Earle, which are not the subject of any such Executive Order issued by the President.

XXXV.

Other Provisions

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

35.2 Nothing contained in this Agreement is intended to mean that the Navy is the only potentially responsible party with respect to the release and/or threatened release(s) of hazardous substances at NWS Earle.

35.3 Nothing contained in this Agreement shall affect any right, claim, interest, defense or cause of action which the USEPA or the Navy may have at present or which may arise in the future against any other entity which is not a signatory to this Agreement.

35.4 Nothing herein shall affect the right of USEPA to issue any Order or initiate any action against any entity which is not a party to this Agreement.

35.5 All work performed pursuant to this Agreement shall be performed in accordance with all applicable federal and state laws and regulations.

35.6 All work performed pursuant to this Agreement shall comply with all applicable provisions of CERCLA, the National Contingency Plan, 40 C.F.R. 300.600 et seq., and other federal regulations and guidance related to CERCLA and actions taken pursuant to CERCLA at federal facilities.

35.7 The USEPA shall not be a party to any contract entered into by the Navy or any agents of the Navy for any matters relating to this Agreement.

XXXVI.

Funding*

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

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

36.3 Any requirement for the payment or obligation of funds, including stipulated penalties, by the Navy established by the terms of this Agreement shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. §1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted. If appropriated funds are not available to fulfill the Navy's obligations under this Agreement, USEPA reserves the right to initiate an action against any other person, or to take any response action, which would be appropriate absent this Agreement.

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

XXXVII.

Recovery of Expenses

The Parties agree to amend this Agreement at a later date in accordance with any subsequent national resolution of the issue of USEPA cost reimbursement. Pending such resolution, USEPA reserves any rights it may have with respect to cost reimbursement pursuant to CERCLA §107.

XXXVIII.

Effective Date

This Agreement is effective upon the date of receipt of a letter to the Navy by USEPA in accordance with Part XXXI (Public Comment).

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

IT IS SO AGREED:

By:

Jacqueline E. Schäfer
Jacqueline E. Schäfer
Department of the Navy
Assistant Secretary of the Navy
(Installations and Environment)

December 10, 1990
Date

By:

Constantine Sidamon-Eristoff
Constantine Sidamon-Eristoff
Regional Administrator
U.S. Environmental Protection Agency, Region II

2/16/91
Date

