N00158.AR.000497
NASJRB WILLOW GROVE
5090.3a

FEDERAL FACILITY AGREEMENT NAS WILLOW GROVE PA
5/24/2005
U S EPA REGION III

5/24/2005

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III

PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

AND THE

UNITED STATES DEPARTMENT OF THE NAVY

IN THE MATTER OF:	)	
	)	
U.S. Department of the Navy	)	**FEDERAL FACILITY AGREEMENT**
Naval Air Station Joint Reserve	)	**Under CERCLA Section 120**
Base	)	**Administrative**
Willow Grove, Pennsylvania	)	**Docket Number: CERC-03-2005-0038FF**

RECEIVED
MAY 26 PM 1:55
CLERK ... REG.

5/24/2005

TABLE OF CONTENTS

Section		Page
I.	JURISDICTION	1
II.	DEFINITIONS	2
III.	PARTIES BOUND	7
IV.	PURPOSE	7
V.	SCOPE OF AGREEMENT	9
VI.	FINDINGS OF FACT	10
VII.	EPA DETERMINATIONS	13
VIII.	STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION	14
IX.	WORK TO BE PERFORMED	15
X.	CONSULTATION	25
XI.	DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN	31
XII.	BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN	33
XIII.	EXTENSIONS	38
XIV.	PROJECT MANAGERS	39
XV.	EXEMPTIONS	43
XVI.	ACCESS	43
XVII.	PERMITS	44
XVIII.	REMOVAL AND EMERGENCY ACTIONS	46
XIX.	PERIODIC REVIEW	48

XX. ..... DISPUTE RESOLUTION 49

XXI. ..... STIPULATED PENALTIES 51

XXII. ..... FORCE MAJEURE 53

XXIII. ..... ENFORCEABILITY 54

XXIV. ..... OTHER CLAIMS 56

XXV. ..... RESERVATION OF RIGHTS 57

XXVI. ..... PROPERTY TRANSFER 57

XXVII. ..... FUNDING 57

XXVIII. ..... REIMBURSEMENT OF COMMONWEALTH SERVICES 58

XXIX. ..... RECOVERY OF EPA EXPENSES 58

XXX. ..... QUALITY ASSURANCE 58

XXXI. ..... RECORD PRESERVATION 59

XXXII. ..... SAMPLING AND DATA/DOCUMENT AVAILABILITY 59

XXXIII. ..... PROTECTED INFORMATION 60

XXXIV. ..... COMMUNITY RELATIONS 60

XXXV. ..... PUBLIC COMMENT ON THIS AGREEMENT 61

XXXVI. ..... RESTORATION ADVISORY BOARD 63

XXXVII. ..... EFFECTIVE DATE 64

XXXVIII. ..... AMENDMENT OF AGREEMENT 64

XXXIX. ..... PADEP RESERVATION OF RIGHTS 65

XL. ..... SEVERABILITY 66

XLI. ..... TERMINATION AND SATISFACTION 66

5/24/2005

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III

PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

AND THE

UNITED STATES DEPARTMENT OF THE NAVY

IN THE MATTER OF:	)	
	)	
U.S. Department of the Navy	)	**FEDERAL FACILITY AGREEMENT**
Naval Air Station Joint Reserve	)	**Under CERCLA Section 120**
Base	)	**Administrative**
Willow Grove, Pennsylvania	)	**Docket Number: CERC-03-2005-0038FF**

Based on the information available to the Parties on the Effective Date of this Federal Facility Agreement (Agreement), and without trial or adjudication of any issues of fact or law, the Parties agree as follows:

I. JURISDICTION

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

A. The U.S. Environmental Protection Agency (EPA) Region III enters into those portions of this Agreement that relate to the Remedial Investigation/Feasibility Study (RI/FS) pursuant to Section 120(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. No. 99-499 (hereinafter jointly referred to as CERCLA), 42 U.S.C. Section 9620(e)(1), and Sections 6001, 3008(h) and 3004(u) and (v) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v) as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) (hereinafter jointly referred to as RCRA), and Executive Order 12580;

B. EPA Region III enters into those portions of this Agreement that relate to interim

remedial actions and final remedial actions pursuant to CERCLA Section 120(e)(2), 42 U.S.C. Section 9620(e)(2), RCRA Sections 6001, 3008(h) and 3004(u) and (v), 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v), and Executive Order 12580;

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

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

E. The Pennsylvania Department of Environmental Protection (PADEP), enters into this Agreement pursuant to CERCLA Sections 120(f) and 121(f), 42 U.S.C. Sections 9620(f) and 9621(f), Section 3006 of RCRA, 42 U.S.C. Section 6926, and the Hazardous Sites Cleanup Act of 1988 (HSCA), P.L. No. 756, No. 108, as amended by the Land Recycling and Environmental Remediation Standards Act of 1995, P.L. No. 4, No.2.

II. DEFINITIONS

2.1 Except as noted below or otherwise explicitly stated, the definitions provided in CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) shall control the meaning of terms used in this Agreement.

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

B. "Agreement" shall refer to this document and shall include all Attachments and Appendices to this document. All such Attachments and Appendices are integral parts of this Agreement and shall be enforceable to the extent provided herein.

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

D. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, (SARA) Public Law No. 99-499, and any amendments thereto.

E. "Commonwealth" or "State" shall mean the Commonwealth of Pennsylvania, including all departments, offices and agencies thereof.

F. "Community Relations" shall mean the program to inform and involve the public in the installation restoration, Superfund, and RCRA process and to respond to community concerns.

G. "Corrective Action Permit" shall mean the corrective action portion of any RCRA Permit issued to the Navy Air Station Joint Reserve Base (NASJRB) Willow Grove, by EPA pursuant to HSWA.

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

I. "Deadlines" shall mean the Near Term Milestones specifically established for the current fiscal year under the Site Management Plan. Deadlines are subject to stipulated penalties in accordance with Section XXI - STIPULATED PENALTIES.

J. "Deliverable Document" shall mean those required documents listed as Primary and Secondary Documents under this Agreement.

K. "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.

L. "EPA" or "U.S. EPA" or "Agency" shall mean the United States Environmental Protection Agency, its employees, agents, authorized representatives, successors and assigns.

M. "Facility" shall mean that property owned by the United States Navy and operated by the U. S. Department of the Navy, including that portion known as Naval Air Station Joint Reserve Base (NASJRB), Willow Grove located in Montgomery County, Pennsylvania and

including all areas identified in the Findings of Facts and the Site Management Plan. This definition is for the purpose of describing a geographical area and not a governmental entity.

N. "Fiscal year" shall mean the time period used by the United States Government for budget management and commences on October 1 and ends September 30th of the following calendar year.

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

P. "Guidance" shall mean any requirements or policy directives issued by EPA or which may be issued by the PADEP which are of general application to environmental matters and which are otherwise applicable to the Navy's work under this Agreement.

Q. "Interim Remedial Action" shall mean all discrete Remedial Actions, including, but not limited to, Accelerated Operable Units (AOUs), implemented prior to a final remedial action which are taken to prevent or minimize the release of hazardous substances, pollutants, or contaminants.

R. "Land use controls" shall mean any restriction or administrative action, including engineering and institutional controls, arising from the need to reduce risk to human health and the environment.

S. "Milestones" shall mean the dates established by the Parties in the Site Management Plan for the initiation or completion of Primary Actions and the submission of Primary Documents and Project End Dates. Milestones shall include Near Term Milestones, Out Year Milestones, Primary Actions, and Project End Dates.

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

U. "Navy" shall mean the U. S. Department of the Navy, including Engineering Field Activity Northeast (EFANE), NASJRB Willow Grove, their employees, members, successors and authorized representatives, and assigns. The Navy shall also include the United States Department of Defense (DOD) to the extent necessary to effectuate the terms of the Agreement, including, but not limited to, appropriations and Congressional reporting requirements.

V. "Near Term Milestones" shall mean the Milestones within the current fiscal year (FY), the next fiscal year or "budget year" (FY+1), and the year for which the budget is being developed or "planning year" (FY+2).

W. "Onsite" shall have the meaning as defined in the NCP.

X. "Operable Unit" or "OU" shall mean a discrete action that comprises an incremental step toward comprehensively remediating the Site. This discrete portion of a remedial response manages migration, or eliminates or mitigates a release, threat of release, or pathway of exposure related to the Site. Operable Units may address geographical portions of the Site, specific Site problems, or initial phases of an action, or may consist of any set of actions performed over time or any actions that are concurrent but located in different parts of the Site. The cleanup of the Site can be divided into a number of Operable Units, depending on the complexity of the problems associated with the Site. The term "Operable Unit" is not intended to refer to the term "operating unit" as used in RCRA. All Operable Units shall be addressed in accordance with the NCP, EPA Guidance and the requirements of CERCLA.

Y. "Out Year Milestones" shall mean the Milestones within those years occurring after the planning year until the completion of the cleanup or phase of the cleanup (FY+3 through Project End Date).

Z. "Parties" shall mean the Navy, EPA, and the Pennsylvania Department of Environmental Protection.

AA. "PADEP" shall mean the Pennsylvania Department of Environmental Protection, its authorized employees, and authorized representatives.

BB. "Primary Actions" as used in this Agreement shall mean those specified major, discrete actions that the Parties identify as such in the Site Management Plan. The Parties should identify all major, discrete actions for which there is sufficient information to be confident that the date for taking such action is implementable.

CC. "Project End Dates" shall mean the dates established by the Parties in the Site Management Plan for the completion of major portions of the cleanup or completion of the cleanup of the Facility. The Parties recognize that, in many cases, a higher degree of flexibility is appropriate with Project End Dates due to uncertainties associated with establishing such dates.

DD. "Project Manager" shall mean each person designated by the Parties to represent that Parties' interests and manage all response actions undertaken at the Site.

EE. "Public Stakeholder" shall mean members of the public including residents, environmentalists, community leaders, public officials, citizens' action groups, and any other interested party.

FF. "RCRA" shall mean the Resource Conservation and Recovery Act, 42 U.S.C.

Section 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984, (HSWA), Public Law No. 98-616, and any amendments thereto.

GG. "Record(s) of Decision" or "ROD(s)" shall be the public document(s) that select(s) and explain(s) which cleanup alternative(s) will be implemented at the Site, and includes the basis for the selection of such remedy(ies). The bases include, but are not limited to, information and technical analyses generated during the RI/FS and consideration of public comments and community concerns.

HH. "Schedule" shall mean a timetable or plan that indicates the time and sequence of events.

II. "Site" shall include the Facility and any other areas where a hazardous substance, hazardous waste, hazardous constituent, pollutant, or contaminant from the Facility has been deposited, stored, disposed of, or placed, or has migrated or otherwise come to be located. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9). This definition is not intended to include hazardous substances or wastes intentionally transported from the Facility by motor vehicle.

JJ. "Site Management Plan" or "SMP" shall mean a planning document, prepared specifically under Section XII - SITE MANAGEMENT PLAN, that contains a timetable, plan, or Schedule which indicates the time and sequence of events. The Site Management Plan will be used as a management tool in planning, reviewing and setting priorities for all response activities at the Facility. Deadlines developed under the terms of this Agreement are listed in the SMP. Final Deadlines listed in the SMP are subject to stipulated penalties.

KK. "Site-Screening Areas" or "SSAs" shall mean those geographical areas that are either RCRA Solid Waste Management Units (SWMUs) or RCRA Areas of Concern or CERCLA Areas of Concern (AOCs). When the Parties agree, SSAs may expand or contract in size as information becomes available indicating the extent of contamination and the geographical area needed to be studied.

LL "Site-Screening Process" or "SSP" refers to the mechanism described in Subsection 9.3 for evaluating whether identified SSAs should proceed with a Remedial Investigation and Feasibility Study (RI and FS). The Site-Screening Process encompasses both the Facility's RCRA AOCs and SWMU areas and newly discovered CERCLA Areas of Concern (AOCs) within the Facility.

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

NN. "Target Dates" shall mean dates established for the completion and transmission of Secondary Documents. Target Dates are not subject to dispute resolution and they are not Milestones.

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

PP. "Work" shall mean all activities the Navy is required to perform under this Agreement, except those required by Section XXXI - RECORD PRESERVATION.

III. PARTIES BOUND

3.1 This Agreement shall apply to and be binding upon EPA, the PADEP, and the Navy. Under this Agreement, PADEP is acting pursuant to its power and duties under 35 P.S. Section 6020.301 of the Pennsylvania Hazardous Sites Cleanup Act, and Sections 120(f) and 121(f) of CERCLA, 42 U.S.C. Sections 9620(f) and 9621(f). The Navy agrees to include the notices required by Section 120(h) of CERCLA in any contract for the sale or transfer of real property affected by this Agreement. Transfer (sale or lease) of property affected by this Paragraph shall not relieve the Navy of its applicable obligations under this Agreement.

3.2 The Navy shall notify EPA and the PADEP of the identity and assigned tasks of each of its contractors performing Work under this Agreement upon their selection. The Navy shall provide copies of this Agreement to all contractors performing any Work called for by this Agreement. Each Party shall be responsible for ensuring that its contractors comply with the terms and conditions of this Agreement.

3.3 This Section shall not be construed as an agreement to indemnify any person.

IV. PURPOSE

4.1 The general purposes of this Agreement are to:

A. Ensure that the environmental impacts associated with the past and present activities at the Site are thoroughly investigated and the appropriate remedial action is 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, as amended by SARA, 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.

4.2 Specifically, the purposes of this Agreement are to:

A. Identify interim and final remedial action alternatives which are appropriate at the Site. The interim remedial action alternatives shall be identified and proposed to the Parties as early as possible prior to formal proposal of interim remedial action(s) to EPA and the PADEP pursuant to CERCLA. This process is designed to promote cooperation among the Parties in identifying remedial alternatives for Operable Units prior to selection of final remedial actions.

B. Establish requirements for the performance of Remedial Investigations (RIs) to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release and threatened release of hazardous substances, pollutants or contaminants at the Site and to establish requirements for the performance of Feasibility Studies (FSs) for the Site to identify, evaluate and select alternatives for the appropriate remedial 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 the NCP.

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 and the NCP.

D. Implement the selected interim remedial and final remedial action(s) at the Site in accordance with CERCLA and the NCP, and meet the requirements of CERCLA Section 120(e)(2) for an interagency agreement among the Parties.

E. Ensure compliance, through this Agreement, with RCRA and other Federal and PADEP hazardous waste laws and regulations for matters covered herein.

F. Coordinate response actions at the Site with the mission and support activities at NASJRB.

G. Expedite the cleanup process to the extent consistent with protection of human health and the environment.

H. Provide, in accordance with CERCLA and the NCP, for PADEP involvement in

the initiation, development, selection, and enforcement of remedial actions to be undertaken at the Site, including the review of all applicable data as it becomes available, and the development of studies, reports, and action plans; and to identify and integrate PADEP ARARs into the remedial action process.

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

V. SCOPE OF AGREEMENT

5.1 This Agreement is entered into by the Parties to enable the Navy to meet the provisions of CERCLA, 42 U.S.C. Section 9601 et seq., and Sections 3004(u) and (v) and 3008(h) of the Resource Conservation and Recovery Act (RCRA) as amended, 42 U.S.C. Sections 6924(u) and (v) and 6928(h).

5.2 This Agreement is intended to cover the investigation, development, selection, and implementation of response actions for releases or threatened releases of hazardous substances, contaminants, hazardous wastes, hazardous constituents, or pollutants at or from the Site. This Agreement covers all phases of remediation for these releases, bringing together into one agreement the requirements for remediation as well as the system the Parties will use to determine and accomplish remediation, ensuring the necessary and proper level of participation by each Party. Although all such releases at the Site are not currently known, the Agreement establishes the system for dealing with those undiscovered releases. To accomplish remediation of those undiscovered releases, the Parties will establish Schedules and Deadlines as necessary and as information becomes available and, if required, amend this Agreement as needed.

5.3 This Agreement is intended to address and satisfy NASJRB RCRA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes, hazardous constituents, pollutants, or contaminants at or from all areas addressed under future Corrective Action Permits. This Agreement is not intended to limit any requirements under RCRA or any other law or regulation to obtain permits, and is not intended to affect any permitted or regulated activities at the Facility not occurring in conjunction with CERCLA removal actions or remedial actions pursuant to this Agreement. This Agreement is not intended to encompass response to spills of hazardous substances from ongoing operations unless those spills occur in conjunction with CERCLA removal actions or remedial actions pursuant to this Agreement.

5.4 The scope of this Agreement extends to the entire Site. The Site cannot be removed from the NPL unless it is determined, in accordance with CERCLA/SARA, the NCP, and this Agreement, that the Navy has implemented all appropriate response actions and the Site no longer poses a threat to human health or the environment. All response actions at the Site shall occur in discrete locations termed Site-Screening Areas, or Operable Units (OUs) identified at the Site pursuant to this Agreement.

5.5 Any Response Action in progress on the Effective Date of this Agreement shall be subject to the obligations and procedures of this Agreement.

5.6 The Parties agree to expedite the initiation of response actions at the Site, including Accelerated Operable Units and interim response actions, and to carry out all activities under this Agreement so as to protect the public health, welfare and the environment. Upon request, the Parties agree to provide applicable Guidance or reasonable assistance in obtaining such Guidance relevant to the implementation of this Agreement.

VI. FINDINGS OF FACT

6.1 For purposes of this Agreement, the following constitutes a summary of the findings upon which this Agreement is based. 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.

A. NASJRB Willow Grove is located in southeast Pennsylvania, approximately 25 miles north of Philadelphia in Horsham Township, Montgomery County, Pennsylvania . The facility is generally bordered by State Route 611 on the east, State Route 463 on the southwest, and Keith Valley Road on the north. The area surrounding the facility is primarily residential.

In 1919, a private airfield was established at the site, and, in the 1920s, experimental activities began. The 516-acre site was acquired by the Navy in 1942 and expanded. The majority of the buildings currently on site were constructed during World War II.

Expansion of the facility, primarily for runway clearance, continued in the 1950s. The site area increased to over 1,000 acres, including 161.7 acres deeded to the United States Air Force. The Air Force maintains its own facilities and aircraft but uses the airfield and associated facilities on a joint-user basis. The Navy provides emergency services and flight control operations. In 1976, the United States Army Reserve Command also entered into a host-tenant agreement for the operation of a helicopter unit. The current total acreage of NASJRB Willow Grove is 1,088.6 acres.

The primary mission of the facility is to provide support for operations involving aviation activities and to train Navy reservists.

B. In 1986, the Department of Navy initiated an Initial Assessment Study (IAS) conducted by Rogers, Golden, and Halpern. The IAS was to assess sites posing potential threats to human health or the environment resulting from hazardous materials handling at the facility.

Historical records and aerial photographs were reviewed, interviews with site personnel were conducted, and field inspections were performed. Based on this information, nine potentially contaminated sites were identified. Each of these sites was evaluated for potential health or environmental impacts by evaluating the characteristics of potential contaminants and the migration pathways and potential receptors for these contaminants. The study concluded that five sites (Sites 1, 2, 3, 4, and 5) should be subject to a confirmation study.

C. The confirmation study included site inspections at 10 sites (the 9 sites identified in the IAS and the Navy Fuel Farm). These investigations included electromagnetic (EM) terrain conductivity surveys and soil vapor surveys, both performed in 1988. These surveys indicated that the EM anomalies (related to fill areas) correlated to the areas of elevated soil vapor readings attributable to tetrachloroethylene (PCE) at Site 3.

D. In 1989, additional field activities included the installation of 35 monitoring wells at eight different sites and measurement of water levels from the wells to determine groundwater flow direction. Three rounds of groundwater sampling were conducted. Nineteen test borings in areas of soil vapor or EM anomalies were performed, and samples were obtained. Surface soil samples were also collected at two sites. To evaluate potential surface water impacts, aqueous and sediment samples were obtained along the surface water migration pathway at one off-site and 11 on-site locations.

E. In 1990, results were presented in the Site Inspection Studies Report (EA Engineering, 1990) and the Plan of Action for Extended Site Inspections and Remedial Investigations (EA Engineering, 1991). Recommendations were no further action at Sites 4, 6, 8, and 9 and the performance of an Remedial Investigation (RI) at Sites 1, 2, 3, and 5 and the Fuel Farm (Site 10). In addition, an Extended Site Inspection (ESI) was recommended for Site 7. The installation formed a technical review committee.

F. The ESI field work was conducted at Site 7 in 1991. The fieldwork involved the installation of an additional monitoring well, sampling four test borings in the area of soil vapor readings from the 1988 Site Investigation (SI), and collection of four surface soil samples to determine if the source of contamination was from upgradient, off-site sources. Results indicated no apparent threat to health or the environment, and no further action was recommended (EA Engineering, 1992).

G. In 1992, two 210,000-gallon Underground Storage Tanks (USTs) were removed from Site 10. During the construction of sewer lines and culverts near the aircraft parking apron, construction crews reported volatile odors. Samples analyzed for total petroleum hydrocarbons (TPH) and benzene, toluene, ethylbenzene, and xylene (BTEX) revealed the presence of these contaminants. This site was added as Site 11 (Brown & Root Environmental, 1996).

H. In 1993, an RI for Sites 1, 2, 3, and 5 recommended a Phase II RI and feasibility study (FS).

I. In FY95, a Phase II RI workplan was issued for Sites 1,2,3 and 5. Also, the installation established a Restoration Advisory Board (RAB), which meets regularly.

J. In FY96, the Final Study Report for Product Recovery Pilot System at Site 10 was completed.

K. In 1997, the RI fieldwork was conducted at Sites 1, 2, 3, and 5. The Site 10 Fuel Farm was not included in the scope of work of the RI. As part of RI activities, B&R Environmental installed 18 monitoring wells, completed 28 test borings and 16 hand auger sampling locations, excavated four test pits, and collected surface, subsurface, groundwater, surface water, and sediment samples. A total of 139 soil samples, 40 groundwater samples from new and existing wells, and 43 surface water and sediment samples were obtained. The RI concluded that additional sampling was needed at all four sites to further delineate the extent of contamination and/or the sources at the sites (Halliburton NUS, 1993). Also, a draft site management plan and a community relation plan were developed.

L. In FY98, a draft Phase II RI report for Sites 1,2, 3, and 5 was submitted to regulators for review.

M. In FY99, the Navy decided to break up the installation restoration sites and submit four separate Phase II RI documents. An interim remedial action (IRA) for polychlorinated biphenyl (PCB)–contaminated soil at Site 1 was completed. Approximately 1,100 tons of soil was removed.

N. In FY00, a basewide water-level study was completed. The Navy completed pump replacement on two production wells that are in the vicinity of Site 1 and supplied potable and emergency water to the Willow Grove facility. This project also allowed the Navy to obtain valuable analytical data for Site 1 groundwater, as requested by EPA. Additional fieldwork was completed at Site 5.

O. In FY01, the installation discontinued active operation of the light non-aqueous phase liquids (LNAPL) recovery system at Site 10. Quarterly bailing or recovery of product continued until 2002.

P. In FY02, the installation finalized the FS report for Site 5 and submitted it to regulators and the RAB. The final RI report for Site 5, completed in February 2002, documented halogenated VOC contaminants in groundwater and a range of organic compounds (mainly polynuclear aromatic hydrocarbons (PAHs)) in limited site surface soils. The RI report for Site 1 was finalized and submitted to the regulators and the RAB. A draft (Navy internal) Site 2 RI report was completed in 2002. At about that time, the Navy discovered discarded empty drums

near Site 2. The Navy contracted with RMC Environmental (RMC) to remove the drums, obtain samples of the drum/contents (residues only) and soils that potentially could have been impacted.

Q. In FY03 the installation completed fieldwork at IR Site 10, the Navy Fuel Farm. In addition, when field conditions improved, RMC, Incorporated (SB EMAC) removed drums and sampled beneath the drums at the EPIC anomalies at Site 2. The Navy intends to combine the results and conclusions of the drum removal and confirmatory sampling into the final RI report for Site 2. In January 2003, Quarterly bailing or recovery of product was discontinued at Site 10. PADEP agreed that no further work was necessary at site 10.

R. In June 2004, the Navy completed a draft Proposed Remedial Action Plan (PRAP) for Site 1 soil. The PRAP is presently being reviewed by the Regulators. Site 2 information from the RMC Report was sent to the Navy's contractor TtNUS for tabulation, evaluation, and incorporation into a Final RI Report for Site 2. PADEP determined that No Further Action at This Time for Site 10 soils was appropriate.

VII. EPA DETERMINATIONS

7.1 The following constitutes a summary of the determinations relied upon by EPA to establish its jurisdiction and authority to enter into this Agreement. None of these determinations shall be considered admissions to any person, related or unrelated to this Agreement, for purposes other than determining the basis of this Agreement or establishing the jurisdiction and authority of the Parties to enter into this Agreement.

A. The United States Department of the Navy is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).

B. The NASJRB is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9), and 10 U.S.C. Section 2701 et seq., and is subject to the Defense Environmental Restoration Program.

C. The United States is the owner and operator of NASJRB as defined in Sections 101(20) and 107(a)(1) of CERCLA, 42 U.S.C. Sections 9601(20) and 9607(a)(1). The Navy is the DOD component charged with fulfilling the obligations of the owner/operator under CERCLA at NASJRB.

D. There has been a release or a substantial threat of a release of hazardous substances, pollutants, contaminants, hazardous wastes or constituents at or from the Facility.

E. The actions provided for in this Agreement are not inconsistent with the NCP.

F. The actions provided for in this Agreement are necessary to protect the public health, or welfare or the environment.

G. This Agreement provides for the expeditious completion of all necessary response actions.

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 achieve compliance with CERCLA, 42 U.S.C. Section 9601 et seq.; satisfy the corrective action requirements of RCRA Sections 3004(u) and (v), 42 U.S.C. Sections 6924(u) and (v), for a RCRA Permit, and RCRA Section 3008(h), 42 U.S.C. Section 6928(h), for interim status facilities; and meet or exceed ARARs, to the extent required by CERCLA Section 121, 42 U.S.C. Section 9621.

8.2 Based upon the foregoing, the Parties intend that any remedial action selected, implemented and completed under this Agreement will be protective of human health and the environment such that remediation of releases covered by this Agreement shall obviate the need for further corrective action under RCRA (i.e., no further corrective action shall be required). The Parties agree that, with respect to releases of hazardous waste covered by this Agreement that are associated with the NPL portions of the Site, RCRA shall be considered an applicable or relevant and appropriate requirement pursuant to CERCLA Section 121, 42 U.S.C. Section 9621. Releases or other hazardous waste activities not covered by this Agreement remain subject to all applicable Commonwealth and Federal environmental requirements.

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 ongoing hazardous waste management activities at NASJRB may require the issuance of permits under Federal and Commonwealth laws. This Agreement does not affect the requirements, if any, to obtain such permits. However, if a permit is issued to the Navy for on-going hazardous waste management activities at the Site, EPA and/or the PADEP shall reference and incorporate any appropriate provisions, including appropriate Schedules (and the provisions for extension of such Schedules), of this Agreement into such permit. With respect to those portions of this Agreement incorporated by reference into permits, the Parties intend that judicial review of the incorporated portions shall, to the extent authorized by law, only be reviewed under the provisions of CERCLA.

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

IX. WORK TO BE PERFORMED

9.1 A. The Parties recognize that background information exists and must be reviewed prior to developing the Work Plans required by this Agreement. The Navy need not halt currently ongoing Work but may be obligated to modify or supplement Work previously done to meet the requirements of this Agreement. It is the intent of the Parties to this Agreement that Work done and data generated prior to the Effective Date of this Agreement be retained and utilized as elements of the RI/FS to the maximum extent feasible.

B. Any Party may propose that a portion of the Site be designated as a distinct Operable Unit. If all Parties agree, it is not necessary to complete the SSP prior to designating an Operable Unit. This proposal must be in writing to the other Parties, and must stipulate the reasons for such a proposal. The proposal shall be discussed by all Project Managers within forty-five (45) days of receipt of the written notice. Dispute Resolution may be invoked if the Parties are not in agreement on the proposal of a specific Operable Unit. If Dispute Resolution is not invoked by the Parties within thirty (30) days after the Project Manager's discussion concerning the proposal or if the need for an Operable Unit is established through Dispute Resolution, the portion of the Site proposed shall be an Operable Unit as that term is defined in Section II - DEFINITIONS, of this Agreement.

C. Any Party may propose that an established Operable Unit be modified. The proposal must be in writing to the other Parties, and must state the reasons for the modification. Dispute Resolution may be invoked if the Parties are not in agreement on the proposal of modifying a specific Operable Unit. If Dispute Resolution is not invoked within thirty (30) days of the receipt of such a proposal by the Parties or if the need for modifying an Operable Unit is established through Dispute Resolution, the Operable Unit, as defined in Section II, shall be modified.

D. The Navy shall develop, implement and report upon the Site-Screening Areas (SSAs) as defined herein, in order to satisfy its obligations under RCRA/CERCLA integration. The Site-Screening Process (SSP), outlined in Subsection 9.3 of this Agreement, is intended to provide a simplified investigative method whereby identified RCRA units and CERCLA areas of concern can be evaluated to determine whether Remedial Investigations are required for these areas. Additional SSP investigations may be initiated at areas later identified by the Parties. The SSP investigation(s) shall be conducted in accordance with an SSP Work Plan as agreed to by the Parties.

E. SSP Reports(s) shall be subject to the review and comment procedures described in Section X - CONSULTATION. The SSP investigation(s) shall be conducted in accordance with the requirements set forth in Subsection 9.3, and the Deadlines established therein and set forth in Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN.

Remedial Investigations for Previously Identified Sites

9.2 A. The Navy is conducting a remedial investigation and feasibility study (RI and FS) for the Sites listed in Section 6.1.

B. In the Site Management Plan, the Navy shall include a Deadline for submittal of the RI Work Plan for those Sites listed in 9.2 A. above. The RI Work Plan shall contain a proposed Deadline for the submittal of the RI Report and the FS Report(s). The Schedule and Deadlines included in the Final RI Report shall be incorporated into the Site Management Plan in accordance with Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement. The development of the FS(s) will proceed in accordance with Subsection 9.5 of this Agreement.

D. For those sites determined by the Parties not to be included in a Phase 2 RI, the Navy shall include a Deadline in the Site Management Plan for submittal of the FS Report for each of these Operable Units. These Deadlines will be finalized in accordance with Sections XI and XII of this Agreement.

E. For those sites which the Parties determine represent a negligible or minimal impact and are strong candidates for no action, or remediation limited to periodic monitoring, the Navy shall include a Schedule in the Site Management Plan for submittal of a risk screening report and any limited sampling that may be recommended to support the risk screening. If the Parties determine that no further action is required, a no-action Proposed Plan will then be prepared. This Schedule will be finalized in accordance with Section XII of this Agreement.

Site-Screening Areas

9.3 A. Determination of Site-Screening Areas When a Party to this Agreement determines that an area on the Site which has not previously been identified as an area which may pose a threat, or potential threat, to public health, welfare, or the environment, does pose such a threat, or potential threat, such Party shall notify in writing the other Parties of such determination. Notification of the other Parties under this Subsection shall at a minimum include the location of such area on the Site and the reason(s) the Party believes such an area poses a threat, or potential threat, to public health, welfare, or the environment. The Parties shall have forty-five (45) days from the date of receipt of notification to discuss the proposal and to agree whether such area shall be addressed under this Agreement as an SSA. If an agreement on whether to address such an area under the Agreement cannot be reached within forty-five (45) days from the date of receipt of notification, any Party can initiate the dispute resolution process pursuant to Paragraph 20.4 of this Agreement. If dispute resolution is not invoked within forty-five (45) days from the date of receipt of notification or if an SSA is established through the dispute resolution process, the proposed SSA will be addressed as an SSA in accordance with this Section.

B. Any area at the Site which is established as an SSA pursuant to the procedures described in this Section after the Effective Date of this Agreement shall be added to the list of SSAs found in the Site Management Plan. The SSA will be investigated and possibly remediated pursuant to the requirements of this Agreement. For any SSAs established pursuant to this Section after the Effective Date of this Agreement, the Navy shall, in the next draft Amended Site Management Plan, propose Deadlines for the submittal of an SSP Work Plan(s). This Deadline(s) shall be approved in accordance with Section XI and adopted in the Site Management Plan.

C. The Navy shall submit to the EPA and the PADEP SSP Work Plan(s) which shall outline the activities necessary to determine if there have been releases of hazardous substances, pollutants, contaminants, hazardous wastes, or hazardous constituents to the environment from the SSAs. The scope of the SSPs shall be determined by the Parties. The SSP Work Plan(s) shall include a proposed Deadline for the submittal of an SSP Report(s). The Schedule and Deadlines included in the final SSP Work Plan will be incorporated into the Site Management Plan in accordance with Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement.

(1) In planning SSPs, the Navy shall consider current CERCLA and RCRA Guidance to determine if there have been releases of hazardous substances, pollutants, contaminants, hazardous wastes or hazardous constituents to the environment from the SSAs. Upon conclusion of an SSP, the Navy shall submit to the EPA and the PADEP a draft SSP Report which shall provide the basis for a determination that either: (1) a RI/FS be performed on the area addressed by the SSP or, (2) the area does not pose a threat, or potential threat to public health, welfare, or the environment and therefore the area should be removed from further study under this Agreement.

(2) Unless otherwise agreed to by the Parties within sixty (60) days of receipt by the Parties of the final SSP Report(s), the Parties shall determine which (if any) of the SSAs established pursuant to Subsection 9.3 will require an RI/FS.

(3) For those SSAs which the Parties agree do not warrant an RI/FS, the Navy shall prepare, with EPA and PADEP assistance, a brief decision document reflecting that agreement. This agreement must be signed by all the Project Managers.

(4) The Parties may designate Operable Units for those SSAs that are to proceed with an RI/FS. If the Parties cannot agree on the determination of whether an SSA(s) shall proceed to a RI/FS, dispute resolution may be invoked in accordance with Section XX - DISPUTE RESOLUTION. If an RI/FS is required, the Navy shall, within the next draft Amended Site Management Plan, propose to EPA and the PADEP a Deadline for the submission of the RI/FS Work Plan for each Operable Unit. The Schedule and Deadlines included in the final RI/FS Work Plan(s) will be incorporated into the next update of the

Site Management Plan and will be the enforceable Schedule for the submittal of the draft RI/FS.

Remedial Investigation and Feasibility Study

9.4 The Navy agrees it shall develop, implement and report upon a Remedial Investigation (RI) for areas identified in Subsections 9.2 and 9.3. RIs shall be conducted in accordance with the requirements and Schedules set forth in the approved RI/FS Work Plan and Site Management Plan. RIs shall meet the purposes set forth in Section IV - PURPOSE, of this Agreement. A Baseline Risk Assessment shall be a component of the RIs. Final Site clean-up level criteria will only be determined following completion of the Baseline Risk Assessment.

9.5 The Navy agrees it shall develop, implement and report upon a Feasibility Study (FS) for areas subject to an RI. The FS shall be conducted in accordance with the requirements and Schedules set forth in the approved RI/FS Work Plan and Site Management Plan. The FS shall meet the purposes set forth in Section IV - PURPOSE, of this Agreement.

Procedures for Interim Remedial Actions

9.6 A. The Navy shall implement those Interim Remedial Actions (IRA) necessary to prevent, minimize, or eliminate risks to human health and the environment caused by the release of hazardous substances, pollutants, or contaminants. An Interim Remedial Action is identified, proposed, and implemented prior to a final remedial action. An IRA shall attain ARARs to the extent required by CERCLA or the NCP and be consistent with and contribute to the efficient performance of a final Remedial Action(s) taken at an area or Operable Unit. An IRA must be protective of human health and the environment, and comply with CERCLA, the NCP, and Commonwealth laws to the extent that they are legally applicable, or relevant and appropriate requirements in accordance with Section 121 of CERCLA, and this Agreement.

B. When a Party to this Agreement determines that an Interim Remedial Action is necessary for an area(s) within the Facility, such Party shall notify, in writing, the other Parties, of the proposal. The Proposal Notification to the other Parties under this Subsection shall at a minimum include the location of such area(s) on the Facility and the reason(s) the Party believes an IRA is required. Any Party may propose an IRA for those Operable Unit(s) or SSAs most suitable for an Interim Remedial Action.

Within thirty (30) days of notification, any Party may request a meeting of the Parties to assist in expediting the decision to proceed with an IRA. If a dispute(s) arises over whether to address such an area(s) under this Agreement which cannot be settled between the Parties within thirty (30) days from receipt of notification, the dispute(s) shall be immediately brought to the Dispute Resolution Committee (DRC) pursuant to Section XX - DISPUTE RESOLUTION of this Agreement.

C. After the determination that an Interim Remedial Action is required under this Agreement, the Navy shall, in the next draft Amended Site Management Plan, submit to EPA and the PADEP proposed Deadlines for the submission of Work Plan(s) for the performance of a Focused Feasibility Study (FFS) for the identified area(s). The Deadlines will be finalized in accordance with Section XI. Each FFS Work Plan shall contain a proposed Deadline for the submittal of the FFS. The Schedule and Deadlines included in the approved, final FFS Work Plan will immediately be incorporated in the Site Management Plan. The FFS shall include a limited number of proposed IRA alternatives. To the extent possible, the FFS shall provide an assessment of the degree to which these alternatives were analyzed during their development and screening. The Navy shall develop, implement, and report upon each FFS in accordance with the requirements set forth in the final FFS Work Plan. The Navy shall follow the steps outlined in Paragraphs 9.7B through 9.14 below.

Records of Decision and Plans for Remedial Action

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

B. Within thirty (30) days after finalization of an RI and FS or FFS, the Navy shall submit a draft Proposed Plan to EPA and the PADEP for review and comment as described in Section X - CONSULTATION, of this Agreement. Within seven (7) days after receiving EPA acceptance and the PADEP's comments on the Proposed Plan, the Navy shall publish its Proposed Plan for forty-five (45) days of public review and comment. During the public comment period, the Navy shall make the Administrative Record available to the public and distribute the Proposed Plan.

The Navy shall hold a public information meeting during the public comment period to discuss the preferred alternative for each remedial action. 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 Section 117(a) of CERCLA, 42 U.S.C. Section 9617(a), and applicable EPA and PADEP Guidance.

C. Following public comment, the Navy, in consultation with EPA and the PADEP, 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 EPA and the PADEP . The Parties may recommend that additional public comment be solicited if modifications to the Proposed Plan substantially change the remedy originally proposed to the public. The determination concerning whether a Proposed Plan should be modified or whether additional public comment is necessary is subject to the dispute resolution provisions of this Agreement, Section XX - DISPUTE RESOLUTION.

D. The Navy shall submit its draft ROD to EPA and the PADEP within thirty (30) days following the close of the public comment period, including any extensions, on the

Proposed Plan. The draft ROD will include a Responsiveness Summary, in accordance with applicable EPA Guidance. Pursuant to CERCLA Section 120(e)(4)(A), 42 U.S.C. Section 9620(e)(4)(A), the EPA and the Navy in consultation with the PADEP, shall make the final selection of the remedial action(s).

E. At a minimum, EPA and the Navy, in consultation with the PADEP, shall have thirty (30) days to attempt to select a remedy following the Navy's submission of a draft ROD.

F. The selection of a remedy that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria or limitation is one basis on which the PADEP may determine not to concur with a final remedial action plan.

In accordance with CERCLA Section 121(f)(3)(A), 42 U.S.C. Section 9621(f)(3)(A), at least thirty (30) days prior to the publication of the Navy's final remedial action plan, if the Navy proposes to select a remedy that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria or limitation, the Navy shall provide an opportunity for the PADEP to concur or not concur in the selection of such plan. If the PADEP concurs or does not act within thirty (30) days of receipt of notification by the Navy of pending publication of the final remedial action plan, the remedial action may proceed. If the PADEP does not concur, it may act pursuant to Section 121(f)(3)(B) of CERCLA, 42 U.S.C. Section 9621(f)(3)(B).

G. If the EPA and the Navy are unable to reach agreement on the selection of the remedy, the Administrator shall select the remedy in accordance with all applicable laws and procedures. EPA shall then prepare and issue the final ROD. EPA shall comply with the public participation requirements of the NCP.

H. Notice of the final ROD 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 Section 117(b) of CERCLA, 42 U.S.C. Section 9617(b). The final ROD shall include a statement that the PADEP has concurred or not concurred with the selection of the remedy.

Remedial Design and Remedial Action

9.8 A. The Site Management Plan shall include a Target Date for submission of a preliminary/conceptual Remedial Design document [thirty (30) percent design report]; a Target Date for submission of a ninety (90) percent or prefinal Remedial Design; and a Deadline for the final Remedial Design (including a land use control component where such controls are employed as part of the remedy), which documents shall be prepared in accordance with this Agreement and applicable Guidance issued by EPA, including the EPA-Navy *Principles and Procedures for Specifying, Monitoring and Enforcement of Land Use Controls and Other Post-ROD Actions* (October 2003).

B. The Remedial Design shall provide the appropriate plans and specifications describing the intended remedial construction and shall include provisions necessary to ensure that the remedial action will achieve ARARs and performance standards identified in the ROD. The Remedial Design shall describe short and long-term implementation actions, and responsibilities for the actions, to ensure long-term viability of the remedy, which may include both Land Use Controls and an engineered portion (e.g., landfill caps, treatment systems) of the remedy. The term "implementation actions" includes all actions to implement, operate, maintain, and enforce the remedy.

C. The RA Work Plan(s) shall at a minimum contain a Schedule for the completion of the Remedial Action, a Health and Safety Plan, a Sampling and Analysis Plan, and a Quality Assurance Project Plan, Remedial Action Specifications, Erosion Control and Sedimentation Plan, Decontamination Plan, Remedial Action Contingency Plan, and an Operations and Maintenance Plan, if necessary. The Schedule contained in the final RA Work Plan(s) will be immediately incorporated in the Site Management Plan.

D. After the final design document is approved, pursuant to Section X - CONSULTATION, the Navy shall begin performance of the Remedial Action (RA) in accordance with the final Remedial Design and the RA Work Plan. The Remedial Action shall be completed in accordance with the approved final Remedial Design and RA Work Plan and all applicable EPA and PADEP Guidance.

Finalization of Remedial Actions

9.9 A. The Navy agrees that it shall submit to EPA and PADEP a primary document memorializing remedial action completion in accordance with the Schedule in the Site Management Plan following the completion of the Remedial Action for each Operable Unit (OU). The primary document memorializing remedial action completion shall document the cleanup activities that took place at the OU, and that performance standards specified in the ROD have been met. For each Long Term Response Action (LTRA), an Interim Remedial Action Completion Report shall be prepared when the physical construction of the system is complete and the unit is operating as designed. Such primary document memorializing remedial action completion shall be amended and finalized when the LTRA performance standards specified in the ROD are achieved.

B. The primary document memorializing remedial action completion shall outline in detail, and provide an explanation for, any activities that were not conducted in accordance with the final RD and/or RA Work Plan(s).

Accelerated Operable Unit

9.10 Accelerated Operable Units (AOUs), as defined in Section II - DEFINITIONS, will

follow a streamlined remedial process as set forth below. Any Party may propose in writing that an OU be conducted as an AOU. The Party proposing an AOU shall be responsible for drafting an AOU proposal which shall clearly define the purpose, scope and goals of the AOU. The Navy shall evaluate all proposed AOUs.

Within thirty (30) days of notification, any Party may request a meeting of the Parties to assist in expediting selection of an AOU. If dispute resolution is not invoked within thirty (30) days following receipt of a proposal for an AOU by the Parties, or thirty (30) days after the meeting, or if the need for an AOU is established through Section XX - DISPUTE RESOLUTION, the proposed AOU shall be incorporated into the Site Management Plan as an AOU. The Navy agrees to pursue additional funding within ten (10) days to initiate the AOU(s).

A. Within fifteen (15) days after the determination that an AOU is required under this Agreement, the Navy shall submit to EPA and PADEP proposed Deadlines for the submission of Work Plan(s) for the performance of an AOU Focused Feasibility Study (FFS) for the identified AOU(s). Each AOU FFS Work Plan shall contain a proposed Deadline for submittal of the AOU FFS and Proposed Plan. The Schedule and Deadlines included in the final AOU FFS Work Plan will be incorporated in the next draft Amended Site Management Plan. The Navy shall develop, implement and report upon each AOU FFS in accordance with the requirements set forth in the final AOU FFS Work Plan. The Navy shall follow the steps outlined in Subsections 9.7B through 9.9.

Supplemental Response Action

9.11 The Parties recognize that subsequent to finalization of a ROD, a need may arise for one or more supplemental response actions to remedy continuing or additional releases or threats of releases of hazardous substances, pollutants or contaminants at or from the Site. If such release or threat of release may present an immediate threat to public health or welfare or the environment, it shall be addressed pursuant to Section XVIII - REMOVALS AND EMERGENCY ACTIONS. If such release or threat of release does not present an immediate threat to public health or welfare or the environment, it shall be addressed pursuant to Subsections 9.12 through 9.15.

9.12 A supplemental response action shall be undertaken only when:

A. A determination is made that:

(1) As a result of the release or threat of release of a hazardous substance, pollutant or contaminant at or from the Site, an additional response action is necessary and appropriate to assure the protection of human health or the environment; or,

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

B. Either of the following conditions is met for any determination made pursuant to Subsection 9.12.A., above:

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

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

9.13 If, subsequent to ROD signature, any Party concludes that a supplemental response action is necessary, based on the criteria set forth in Subsection 9.12, such Party shall promptly notify the others of its conclusion in writing. The notification shall specify the nature of the modification needed and the new information on which it is based. The Project Managers shall confer and attempt to reach consensus on the need for such an action within a thirty (30) day period after receipt of the written notification. If the Project Managers have failed to reach consensus, any Party may notify the other Parties in writing within ten (10) days after the initial thirty (30) day period that it intends to invoke dispute resolution. If notification of intent to invoke dispute resolution has not been provided within ten (10) days, then no action will occur.

If the Project Managers are still unable to reach consensus within fourteen (14) days of the notice invoking dispute resolution, the question of the need for the supplemental response action shall be resolved through dispute resolution.

9.14 If the Project Managers agree, or if it is determined through dispute resolution, that a supplemental response action is needed based on the criteria set forth in Paragraph 9.12, the Navy shall propose a Deadline for submittal of the Supplemental Work Plan(s) and a Schedule for performance of the Work thereunder to the EPA and PADEP in the next draft Amended Site Management Plan.

9.15 After finalization of a Supplemental Work Plan, the Navy shall conduct a Supplemental Response Action RI/FS. Following finalization of the Supplemental Response Action RI/FS, the procedures described in Sections 9.7 through 9.9 shall be followed.

Construction Completion/Site Completion/EPA Certification

9.16. EPA, the Navy, and the Commonwealth have committed to streamlining procedures and documentation for post-ROD activities. Revised procedures may be amended to this agreement upon consensus by the Parties. Until any new procedures and documentation are agreed upon, the following provisions will be applicable.

9.17. Construction Completion. The Navy agrees that it shall submit to EPA and PADEP information required to document completion of physical construction of the remedial action for all OUs within thirty (30) days of completing physical construction at the Site as part of the final, amended primary document memorializing remedial action completion. This information must satisfy the NCP and provide a schedule for any remaining activities necessary to reach Site completion. The information will also address any five-year review requirements.

9.18. Remedial Action/ Site Completion.

A. When the Navy determines that remedial actions at all OUs have been completed, it shall document this event by amending the final primary document memorializing remedial action completion and submitting it to EPA and PADEP for review. The information provided therein shall document compliance with statutory requirements and provide a consolidated record of all remedial activities for all OUs at the Site. In order for a Site to be eligible for completion, the following criteria must be met:

1. Performance standards specified in all RODs have been met, and all cleanup actions and other measures identified in the RODs have been successfully implemented.

2. The constructed remedies are operational and performing according to engineering specifications.

3. All sites are protective of human health and the environment.

4. The only remaining activities, if any, at the site are operation and maintenance activities (which may include long-term monitoring).

B. Information provided shall summarize work at the entire site (i.e., all OUs). As outlined in Section 9.9 of this Agreement, the primary document memorializing remedial action completion for each OU, including the final OU, is required to document that Work was performed according to design specifications. Information amended to the final primary document memorializing remedial action completion to indicate remedial action completion shall include a discussion regarding any operation and maintenance requirements and/or land use restrictions at the Site.

C. Information provided for remedial action completion shall be signed by the Navy's signatory authority or designee, certifying that remedial activities have been completed in

full satisfaction of the requirements of this Agreement, and shall include a request for EPA certification of remedial action completion at the Site. Within ninety (90) days of EPA's receipt of the Navy's request for certification of Site completion, EPA, in consultation with PADEP, shall:

1. Certify that all response actions have been completed at the Site in accordance with CERCLA, the NCP and this Agreement, based on conditions known at the time of certification; or

2. Deny the Navy's request for certification of Site completion, stating the basis of its denial and detailing the additional Work needed for completion and certification.

D. If EPA, in consultation with PADEP, denies the Navy's request for certification for Site completion in accordance with this Agreement, the Navy may invoke dispute resolution in accordance with Section XX - DISPUTE RESOLUTION of this Agreement within twenty (20) days of receipt of the written denial of certification or determination that additional Work is necessary. If the denial of certification is upheld through the dispute resolution process, the Navy will perform the requested additional Work.

E. If dispute resolution is not invoked, or if a denial of certification is upheld through dispute resolution, the Navy shall, in the next draft Amended Site Management Plan submitted after receipt of the written denial of certification or dispute resolution finding, propose a Deadline for the submittal of a draft Supplemental Work Plan. The draft Supplemental Work Plan shall contain a Schedule for completion of the additional Work required. This Schedule, once approved, will be incorporated in the Site Management Plan. After performing the additional Work, the Navy may resubmit a request for certification to EPA as outlined in this Subsection. EPA, in consultation with PADEP, shall then grant or deny certification pursuant to the process set forth in this Subsection.

X. CONSULTATION

Review and Comment Process for Draft and Final Documents

10.1 Applicability:

The provisions of this Section establish the procedures that shall be used by the Parties to provide each other with appropriate notice, review, comment, and response to comments regarding RI/FS and RD/RA documents, specified herein as either Primary or Secondary Documents. The Navy will normally be responsible for issuing Primary and Secondary Documents to EPA and the PADEP. 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 10.2 through 10.10 below.

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

10.2 General Process for RI/FS and RD/RA Documents:

A. Primary Documents include those documents that are major, discrete portions of RI/FS or RD/RA activities. Primary Documents are initially issued by the Navy in draft subject to review and comment by EPA and the PADEP. 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 thirty (30) days after issuance if dispute resolution is not invoked or as modified by decision of the dispute resolution process.

B. Secondary Documents include those documents that are discrete portions of the Primary Documents and are typically input or feeder documents. Secondary Documents are issued by the Navy in draft subject to review and comment by EPA and the PADEP. Although the Navy will respond to comments received, the draft Secondary Documents may be finalized in the context of the corresponding draft final Primary Documents. A Secondary Document may be disputed at the time the corresponding draft final Primary Document is issued.

10.3 Primary Documents:

B. All Primary Documents shall be prepared in accordance with the NCP and applicable EPA Guidance. The Navy shall complete and transmit drafts of the following Primary Documents to EPA and the PADEP for review and comment in accordance with the provisions of this Section:

(1) RI/FS (including Baseline Risk Assessment for human health and the environment) and FFS Work Plans

(2) Remedial Investigation Reports (including Baseline Risk Assessments for human health and the environment)

(3) FS and FFS Reports

(4) Proposed Plans

(5) Records of Decision

(6) Land Use Control Implementation Plans (LUCIPs)

(7) Final Remedial Designs (including a land use control component where such controls are employed as part of the remedy)

(8) Remedial Action Work Plans

(9) Document Memorializing Remedial Action Completion

(10) Site Management Plan

C. Only the draft final Primary Documents identified above (and their amendments) shall be subject to dispute resolution in accordance with Section XX - DISPUTE RESOLUTION of this Agreement. The Navy shall complete and transmit draft Primary Documents in accordance with the Schedule and Deadlines established in Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN, of this Agreement.

10.4 Secondary Documents:

A. All Secondary Documents shall be prepared in accordance with the NCP and applicable EPA Guidance. The Navy shall complete and transmit drafts of the following Secondary Documents to EPA and the PADEP for review and comment in accordance with the provisions of this Section:

(1) Health and Safety Plans

(2) Non-Time Critical Removal Action Plans (40 C.F.R. § 300.415(b)(4)(ii))

(3) Pilot/Treatability Study Work Plans

(4) Pilot/Treatability Study Reports

(5) Engineering Evaluation/Cost Analysis Report

(6) Well Closure Methods and Procedures

(7) Preliminary/Conceptual Designs, or Equivalents

(8) Prefinal Remedial Designs

(9) Removal Action Memoranda

B. Although EPA and the PADEP may comment on the draft Secondary Documents listed above, such documents shall not be subject to dispute resolution except as provided by Subsection 10.2 hereof. Target Dates shall be established for the completion and transmission of draft Secondary Documents pursuant to Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN, of this Agreement.

10.5 Meetings of the Project Managers on Development of Documents:

The Project Managers shall meet approximately every ninety (90) days, and confer by telephone every thirty (30) days, except as otherwise agreed by the Parties, to review and discuss the development of Primary and Secondary Documents. Prior to preparing any draft document specified in Subsections 10.3 and 10.4 above, the Project Managers shall meet to discuss the document in an effort to reach a common understanding, to the maximum extent practicable, with respect to the content of draft documents.

10.6 Identification and Determination of Potential ARARs:

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

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

10.7 Review and Comment on Draft Documents:

A. The Navy shall complete and transmit each draft Primary Document to EPA and the PADEP on or before the corresponding Deadline established pursuant to Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement for the issuance of the document. The Navy shall complete and transmit the draft Secondary Document in accordance with the Target Dates established for the issuance of such documents.

B. Unless the Parties mutually agree to another time period, all draft documents, except the Site Management Plan, the prefinal Remedial Design and the final Remedial Design shall be subject to a sixty (60) day period for review and comment. The Site Management Plan shall be reviewed and commented on in accordance with Section XII or as agreed to by the Parties. The Parties recognize that time periods for review and comment on the draft Remedial Design and Remedial Action Work Plans may need to be expedited in order for the Navy to satisfy the requirement of Section 120(e)(2) of CERCLA, 42 U.S.C. Section 9620(e)(2). The prefinal Remedial Design shall be subject to a forty-five (45) day period for review and comment. The final Remedial Design will be subject to a two (2) week period for review and comment by the Parties.

In the event that the final Remedial Design differs substantially from the prefinal Remedial Design, EPA or PADEP may extend the two (2) week review and comment period for an additional two (2) weeks by providing written notice to the Navy prior to the end of the initial two (2) week comment period. Review of any document by EPA and the PADEP may concern all aspects of the document (including completeness) and should include, but not be limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP, and any pertinent policy or Guidance issued by EPA or the PADEP. Comments by EPA and the PADEP shall be provided with adequate specificity so that the Navy may respond to the comment and, if appropriate, make changes to the draft document. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of the Navy, EPA or the PADEP shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy reports, the EPA or the PADEP may extend the sixty (60) day comment period for an additional twenty (20) days by written notice to the Navy prior to the end of the sixty (60) day period. On or before the close of any comment period, EPA and the PADEP shall transmit by next day mail their written comments to the Navy.

C. The review period for documents shall not begin until the submission date specified in the Site Management Plan.

D. In the event documents not Scheduled in the current Site Management Plan are determined by mutual agreement of the program managers to be necessary, review periods, Deadlines, and Target Dates shall be established and shall be incorporated into the amended Site Management Plan.

E. Representatives of the Navy shall make themselves readily available to EPA and the PADEP during the comment period for purposes of informally responding to questions and comments on draft documents. Oral comments made during such discussions need not be the subject of a written response by the Navy at the close of the comment period.

F. In commenting on a draft document which contains a proposed ARAR determination, EPA and/or the PADEP shall include a reasoned statement of whether they object

to any portion of the proposed ARAR determination. To the extent that EPA or the PADEP does object, it shall explain the basis for the objection in detail and shall identify any ARARs which it believes were not properly addressed in the proposed ARAR determination.

G. Following the close of any comment period for a draft document, the Navy shall give full consideration to all written comments on the draft document submitted during the comment period. Within sixty (60) days of the close of the comment period on a draft Secondary Document, the Navy shall transmit to EPA and the PADEP its written response to comments received within the comment period. Within sixty (60) days of the close of the comment period on a draft Primary Document, the Navy shall transmit to EPA and the PADEP a draft final Primary Document, which shall include the Navy's response to all written comments received within the comment period. While the resulting draft final document shall be the responsibility of the Navy, it shall be the product of consensus to the maximum extent possible.

H. The Navy may extend the sixty (60) day period for either responding to comments on a draft document or for issuing the draft final Primary Document for an additional twenty (20) days by providing timely notice to EPA and the PADEP. In appropriate circumstances, this time period may be further extended in accordance with Section XIII - EXTENSIONS, hereof.

10.8 Availability of Dispute Resolution on draft final Primary Documents:

A. Dispute resolution shall be available to the Parties for draft final Primary Documents as set forth in Section XX - DISPUTE RESOLUTION.

B. When dispute resolution is invoked on a draft final Primary Document, Work may be stopped in accordance with the procedures set forth in Section XX - DISPUTE RESOLUTION.

10.9 Finalization of Documents:

The draft final Primary Document shall serve as the final Primary Document if no Party invokes dispute resolution regarding the document or, if invoked, at the completion of the dispute resolution process should the Navy's position be sustained.

If the Navy's determination is not sustained in the dispute resolution process, the Navy shall prepare, within not more than thirty-five (35) days, a revision of the draft final document which conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Section XIII - EXTENSIONS, hereof.

10.10 Subsequent Modification of Final Document:

Following finalization of any Primary Document pursuant to Subsection 10.9 above, any Party to this Agreement may seek to modify the document, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in Subsections A. and B. below.

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

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

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

(2) The requested modification could be of 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 Subsection shall alter EPA's or the PADEP'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.

XI. DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN

11.1 The SMP and each annual Amendment to the SMP shall be Primary Documents. Milestones established in a SMP or established in a final Amendment to a SMP remain unchanged unless otherwise agreed to by the Parties or unless directed to be changed pursuant to the agreed dispute resolution process set out in Subsections 12.5 or 12.6. In addition, if an activity is fully funded in the current FY, Milestones associated with the performance of Work and submittal of Primary Documents associated with such activity (even if they extend beyond the current FY) shall be enforceable.

11.2 The SMP includes proposed actions for both CERCLA responses and actions which would otherwise be handled pursuant to RCRA corrective actions per Section VIII - STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION, and outlines all response

activities and associated documentation to be undertaken at the Facility. The SMP incorporates all existing Milestones contained in approved Work Plans, and all Milestones approved in future Work Plans immediately become incorporated into the SMP.

11.3 Milestones in the SMP reflect the priorities agreed to by the Parties through a process of "Risk Plus Other Factors" Priority Setting. Site activities have been prioritized by weighing and balancing a variety of factors including, but not limited to: (i) the DOD relative risk rankings for the Site; (ii) current, planned, or potential uses of the Facility; (iii) ecological impacts; (iv) impacts on human health; (v) intrinsic and future value of affected resources; (vi) cost effectiveness of the proposed activities; (vii) environmental justice considerations; (viii) regulatory requirements; and, (ix) actual and anticipated funding levels. While Milestones should not be driven by budget targets, such targets should be considered when setting Milestones. Furthermore, in setting and modifying Milestones, the Parties agree to make good faith efforts to accommodate Federal fiscal constraints, which include budget targets established by the Navy.

11.4 The SMP and its annual Amendments include:

11.4.1 A description of actions necessary to mitigate any immediate threat to human health or the environment;

11.4.2 A listing of all currently identified Site Screening Areas (SSAs), Operable Units (including Accelerated Operable Units (AOUs)), Interim Remedial Actions, Supplemental Response Actions, and Critical and Non-Time Critical Removal Actions covered or identified pursuant to this Agreement;

11.4.3 Activities and schedules for response actions covered by the SMP, including at a minimum:

1. Identification of any Primary Actions;

2. All Deadlines;

3. All Near Term Milestones;

4. All Out Year Milestones;

5. All Target dates;

6. Schedule for initiation of Remedial Designs, Interim Remedial Actions, Non-Time Critical Removal Actions, AOUs, and any initiation of other planned response action(s) covered by this Agreement; and,

7. All Project End Dates.

11.5 The Navy shall submit an Amendment to the SMP on an annual basis as provided in Section XII - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN. All Amendments to the SMP shall conform to all of the requirements set forth in this Section.

11.6 The Milestones established in accordance with this Section and Section XII - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN remain the same unless otherwise agreed by the Parties, or unless changed in accordance with the dispute resolution procedures set out in Subsections 12.5 and 12.6. The Parties recognize that possible bases for requests for changes or extensions of the Milestones include but are not limited to—(i) the identification of significant new Site conditions at this installation; (ii) reprioritization of activities under this Agreement caused by changing priorities or new site conditions elsewhere in the Navy; (iii) reprioritization of activities under this Agreement caused by budget adjustments (e.g., rescissions, inflation adjustments, and reduced Congressional appropriations); (iv) an event of force majeure; (v) a delay caused by another Party's failure to meet any requirement of this Agreement; (vi) a delay caused by the good faith invocation of dispute resolution or the initiation of judicial action; (vii) 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 (viii) any other event or series of events mutually agreed to by the Parties as constituting good cause.

11.7 The Deadlines established in the SMP and its Amendments shall be published by EPA and PADEP.

XII. BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN

12.1 The Navy, as a Federal agency, is subject to fiscal controls, hereinafter referred to as the Future Years Defense Plan (FYDP). The planning, programming, and budgeting process, hereinafter referred to as the POM process, is used to review total requirements for DOD programs and make appropriate adjustments within the FYDP for each program while adhering to the overall FYDP control. The Parties recognize that the POM process is a multi-year process. The Parties also agree that all Parties should be involved in the full cycle of POM activities as specified in this Agreement. Further, the Parties agree that each Party should consider the factors listed in Subsection 11.3, including Federal fiscal constraints as well as each of the other factors, in their priority-setting decisions. Initial efforts to close any gap between cleanup needs and funding availability shall be focused on the identification and implementation of cost savings.

Facility-Specific Budget Building

12.2 In order to promote effective involvement by the Parties in the POM process, the Parties

will meet at the Project Manager level for the purpose of (1) reviewing the FYDP controls; (2) developing a list of requirements/Work to be performed at the Site for inclusion in the Navy POM process; and, (3) participating in development of the Navy submission to the President's proposed budget, based on POM decisions for the year currently under consideration. Unless the Parties agree to a different time frame, the Navy agrees to notify the other Parties within ten (10) days of receipt, at the Project Manager level, that budget controls have been received. Unless the Parties agree to a different time frame or agree that a meeting is not necessary, the Parties will meet, at the Project Manager level, within five (5) days of receiving such notification to discuss the budget controls. However, this consultation must occur at least ten (10) days prior to the Navy's initial budget submission to Engineering Field Activity Northeast (EFANE). In the event that the Project Managers cannot agree on funding levels required to perform all Work outlined in the SMP, the Parties agree to make reasonable efforts to informally resolve these disagreements, either at the immediate or secondary supervisor level; this would also include discussions, as necessary, with EFANE. If agreement cannot be reached informally within a reasonable period of time, the Navy shall resolve the disagreement, if possible with the concurrence of EPA, and notify each Party. If all Parties do not concur in the resolution, the Navy will forward through EFANE to the Navy Headquarters its budget request with the views of the Parties not in agreement and also inform Navy Headquarters of the possibility of future enforcement action should the money requested not be sufficient to perform the Work subject to disagreement. In addition, if the Navy's budget submission to EFANE relating to the terms and conditions of this Agreement does not include sufficient funds to complete all Work in the existing SMP, such budget submission shall include supplemental reports that fully disclose the Work required by the existing SMP, but not included in the budget request due to fiscal controls (e.g., a projected budget shortfall). These supplemental reports shall accompany the cleanup budget that the Navy submits through its higher Headquarters levels until the budget shortfall has been satisfied. If the budget shortfall is not satisfied, the supplemental reports shall be included in the Navy's budget submission to the DOD Comptroller. The Deputy Under Secretary of Defense (Environment and Safety) shall receive information copies of any supplemental reports submitted to the DOD Comptroller.

Navy Budget for Clean Up Activities

12.3 The Navy shall forward to the other Parties documentation of the budget requests (and any supplemental reports) for the Site, as submitted by the Navy to EFANE, and by EFANE to the Navy Headquarters, within fourteen (14) days after the submittal of such documentation to the Navy Headquarters by EFANE. If the Navy proposes a budget request relating to the terms and conditions of this Agreement that impacts other installations, discussions with other affected EPA Regions and States regarding the proposed budget request need to take place.

Amended SMP

12.4 No later than June 15 of each year after the initial adoption of the SMP, the Navy shall submit to the other Parties a draft Amendment to the SMP. When formulating the draft

Amendment to the SMP, the Navy shall consider funding circumstances (including OMB targets/guidance) and "risk plus other factors" outlined in Subsection 11.3 to evaluate whether the previously agreed upon Milestones should change. Prior to proposing changes to Milestones in its annual Amendment to the SMP, the Navy will first offer to meet with the other Parties to discuss the proposed changes. The Parties will attempt to agree on Milestones before the Navy submits its annual Amendment by June 15, but failure to agree on such proposed changes does not modify the June 15 date, unless agreed by all the Parties. Any proposed extensions or other changes to Milestones must be explained in a cover letter to the draft Amendment to the SMP. The draft Amendment to the SMP should reflect any agreements made by the Parties during the POM process outlined in this Section. Resolution of any disagreement over adjustment of Milestones pursuant to this subsection shall be resolved pursuant to Subsection 12.5.

12.5 The Parties shall meet as necessary to discuss the draft Amendment to the SMP. The Parties shall use the consultation process contained in Section X - CONSULTATION, except that none of the Parties will have the right to use the extension provisions provided therein. Accordingly, comments on the draft Amendment will be due to the Navy no later than thirty (30) days after receipt by EPA and the PADEP of the draft Amendment. If either EPA or the PADEP provide comments and are not satisfied with the draft Amendment during this comment period, the Parties shall meet to discuss the comments within fifteen (15) days of the Navy's receipt of comments on the draft Amendment. The draft final Amendment to the SMP will be due from the Navy no later than thirty (30) days after the end of the EPA and PADEP comment period. During this second thirty (30) day time period, the Navy will, as appropriate, make revisions and re-issue a revised draft herein referred to as the draft final Amendment. To the extent that Section X - CONSULTATION contains time periods differing from these thirty (30) day periods, this provision will control for consultation on the Amendment to the SMP.

12.5.1 If the Navy proposes, in the draft final Amendment to the SMP, modifications of Milestones to which either EPA or the PADEP have not agreed, those proposed modifications shall be treated as a request by the Navy for an extension. Milestones may be extended during the SMP review process by following Subsections 12.4 through 12.7. All other extensions will be governed by Section XIII - EXTENSIONS. The time period for EPA to respond to the request for extension will begin on the date EPA and the PADEP receives the draft final Amendment to the SMP, and EPA shall advise the Navy in writing of their respective positions on the request within thirty (30) days. If EPA and the PADEP approve of the Navy's draft final Amendment, the document shall then await finalization in accordance with Subsections 12.5.3 and 12.6. If EPA denies the request for extension, then the Navy may amend the SMP in conformance with EPA and PADEP comments or seek and obtain a determination through the dispute resolution process established in Section XX - DISPUTE RESOLUTION within twenty-one (21) days of receipt of notice of denial. Within twenty-one (21) days of the conclusion of the dispute resolution process, the Navy shall revise and reissue, as necessary, the draft final Amendment to the SMP. If EPA or the PADEP initiates a formal request for a modification to the SMP to which the Navy does not agree, EPA or the PADEP may initiate dispute resolution as provided in Section XX - DISPUTE RESOLUTION with respect to such proposed modification.

In resolving a dispute, the persons or person resolving the dispute shall give full consideration to the bases for changes or extensions of the Milestones referred to in Subsection 11.6 asserted to be present, and the facts and arguments of each of the Parties.

12.5.2 Notwithstanding Subsection 12.5.1, if the Navy proposes, in the draft final Amendment to the SMP, modifications of Project End Dates which are intended to reflect the time needed for implementing the remedy selected in the Record of Decision but to which either EPA or the PADEP have not agreed, those proposed modifications shall not be treated as a request by the Navy for an extension, but consistent with Section XX - DISPUTE RESOLUTION, EPA or the PADEP may initiate dispute resolution with respect to such Project End Date.

12.5.3 In any dispute under this Section, the time periods for the standard dispute resolution process contained in Subsections 20.2, 20.5, and 20.6 of Section XX - DISPUTE RESOLUTION, shall be reduced by half in regard to such dispute, unless the Parties agree to dispute directly to the Senior Executive Committee (SEC) level.

12.5.4 The Navy shall finalize the draft final Amendment as a final Amendment to the SMP consistent with the mutual consent of the Parties, or in the absence of mutual consent, in accordance with the final decision of the dispute resolution process. The draft final Amendment to the SMP shall not become final until twenty-one (21) days after the Navy receives official notification of Congress' authorization and appropriation of funds if funding is sufficient to complete Work in the draft final SMP or, in the event of a funding shortfall, following the procedures in Subsection 12.6. However, upon approval of the draft final Amendment or conclusion of the dispute resolution process, the Parties shall implement the SMP while awaiting official notification of Congress' authorization and appropriation.

Resolving Appropriations Shortfalls

12.6 After authorization and appropriation of funds by Congress and within twenty-one (21) days after the Navy has received official notification of Navy's allocation based on the current year's Environmental Restoration, Navy (ER,N) Account, the Navy shall determine if planned Work (as outlined in the draft final Amendment to the SMP) can be accomplished with the allocated funds. (1) If the allocated funds are sufficient to complete all planned Work for that fiscal year and there are no changes required to the draft final Amendment to the SMP, the Navy shall immediately forward a letter to the other Parties indicating that the draft final Amendment to the SMP has become the final Amendment to the SMP. (2) If the Navy determines within the twenty-one (21) day period specified above that the allocated funds are not sufficient to accomplish the planned Work for the Site (an appropriations shortfall), the Navy shall immediately notify the Parties. The Project Managers shall meet within thirty (30) days to determine if planned Work (as outlined in the draft final Amendment to the SMP) can be accomplished through: 1) rescoping or rescheduling activities in a manner that does not cause previously agreed upon Near Term Milestones and Out Year Milestones to be missed; or 2) developing and implementing new cost-saving measures. If, during this thirty (30) day

discussion period, the Parties determine that rescoping or implementing cost-saving measures are not sufficient to offset the appropriations shortfall such that Near Term Milestones, Out Year Milestones, and Project End Dates should be modified. the Parties shall discuss these changes and develop modified Milestones. Such modifications shall be based on the "Risk Plus Other Factors" prioritization process discussed in Subsection 11.3, and shall be specifically identified by the Navy. The Navy shall submit a new draft final Amendment to the SMP to the other Parties within thirty (30) days of the end of the thirty (30) day discussion period. In preparing the revised draft final Amendment to the SMP, the Navy shall give full consideration to EPA and PADEP input during the thirty (30) day discussion period. If the EPA and PADEP concur with the modifications made to the draft final Amendment to the SMP, EPA and the PADEP shall notify the Navy and the revised draft final Amendment shall become the final Amendment. In the case of modifications of Milestones due to appropriations shortfalls, those proposed modifications shall, for purposes of dispute resolution, be treated as a request by the Navy for an extension, which request is treated as having been made on the date that EPA receives the new draft final SMP or draft final Amendment to the SMP. EPA and the PADEP shall advise the Navy in writing of their respective positions on the request within twenty-one (21) days. The Navy may seek and obtain a determination through the dispute resolution process established in Section XX - DISPUTE RESOLUTION. The Navy may invoke dispute resolution within fourteen (14) days of receipt of a statement of nonconcurrence with the requested extension. In any dispute concerning modifications under this Section, the Parties will submit the dispute directly to the SEC level, unless the Parties agree to utilize the standard dispute resolution process, in which case the time periods for the dispute resolution process contained in Subsections 20.2, 20.5, and 20.6 of Section XX - DISPUTE RESOLUTION shall be reduced by half in regard to such dispute. Within twenty-one (21) days after the conclusion of the dispute resolution process, the Navy shall revise and reissue, as necessary, the final Amendment to the SMP. Upon agreement of the reprioritization of Work, the Navy agrees the Work subordinated shall be funded within five (5) fiscal years from the fiscal year of reprioritization.

12.7 It is understood by all Parties that the Navy will work with representatives of the other Parties to reach consensus on the reprioritization of work made necessary by any annual appropriations shortfalls or other circumstances as described in Section 12.6. This may also include discussions with other EPA Regions and States with installations affected by the reprioritization; the Parties may participate in any such discussions with other States.

Public Participation

12.8 In addition to any other provision for public participation contained in this Agreement, the development of the SMP, including its annual Amendments, shall include participation by members of the public interested in this action. The Navy must ensure that the opportunity for such public participation is timely; but this Subsection 12.8 shall not be subject to Section XXI - STIPULATED PENALTIES.

12.8.1 The Parties will meet, after seeking the views of the general public, and determine the

most effective means to provide for participation by members of the public interested in this action in the POM process and the development of the SMP and its annual Amendments. The "members of the public interested in this action" may be represented by inclusion of a restoration advisory board or technical review committee, if they exist for the NASJRB, or by other appropriate means.

12.8.2 The Navy shall provide timely notification under Section 12.6, regarding allocation of ER,N, to the members of the public interested in this action.

12.8.3 The Navy shall provide opportunity for discussion under Sections 12.2, 12.5, 12.6, and 12.7 to the members of the public interested in this action.

12.8.4 The Navy shall ensure that public participation provided for in this Subsection 12.8 complies with Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

XIII. EXTENSIONS

13.1 A timetable, Deadline or Schedule shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension as described in Subsection 13.2, below. Any request for extension by the Navy shall be submitted in writing and shall specify:

A. The timetable, Deadline or 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.

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

A. An event of Force Majeure, as defined in Section XXII;

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.

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

13.4 Within seven (7) days of receipt of a request for an extension of a timetable and Deadline or a Schedule, the other Parties shall advise the requesting Party in writing of their respective positions on the request. Any failure by the other Parties to respond within the seven (7) day period shall be deemed to constitute concurrence in the request for extension. If a Party does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

13.5 If there is consensus among the Parties that the requested extension is warranted, the requesting Party 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.

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

13.7 A written, timely and good faith request by the Navy 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.

XIV. PROJECT MANAGERS

14.1 On or before the Effective Date of this Agreement, EPA, the Navy, and the PADEP shall each designate a Project Manager and notify the other Parties of the name and address of their Project Manager. The Project Managers shall be responsible for assuring proper implementation of all Work performed under the terms of the Agreement. To the maximum extent practicable, communications among the Navy, EPA, and the PADEP on all documents, including reports,

comments and other correspondence concerning the activities performed pursuant to this Agreement, shall be directed through the Project Managers. The Parties may designate an Alternate Project Manager to exercise the authority of the Project Manager in his or her absence.

14.2 The Parties may change their respective Project Managers. Such change shall be accomplished by notifying the other Parties, in writing, within five (5) days of the change and prior to the new Project Manager exercising his or her delegated authority.

14.3 The Parties' Project Managers shall meet or confer informally as necessary as provided in Section X - CONSULTATION, of this Agreement. Although the Navy has ultimate responsibility for meeting its respective Deadlines, the EPA and the PADEP Project Managers shall endeavor to assist in this effort by scheduling meetings to review documents and reports, overseeing the performance of environmental monitoring at the Site, reviewing SSP, RI/FS or RD/RA progress, and attempting to resolve disputes informally. At least one week prior to each scheduled Project Manager meeting, the Navy will provide to the EPA and the PADEP Project Managers a draft agenda and summary of the status of the Work subject to this Agreement.

These status reports shall include, when applicable:

(1) Identification of all data received and not previously provided by the Navy during the reporting period consistent with the limitations of Subsection 32.1;

(2) All activities completed pursuant to this Agreement since the last Project Manager meeting as well as such actions and plans which are scheduled for the upcoming ninety (90) days; and

(3) A description of any delays, the reasons for such delays, anticipated delays, concerns over possible timetable implementation or problems that arise in the execution of a Work Plan during the quarter and any steps that were or will be taken to alleviate the delays or problems.

The minutes of each Project Manager meeting, with the meeting agenda, will be sent to all Project Managers within fourteen (14) days after the meeting. Any documents requested during the meeting will be provided in a timely manner, except for those documents for which express notification is required.

14.4 Necessary and appropriate adjustments to Deadlines or Schedules may be proposed by any Party. The Party which requested the modification shall prepare a written memorandum detailing the modification and the reasons therefore and shall provide a copy of the memorandum at least seven (7) days prior to the Deadline to the other Parties for signature and return prior to the Deadline.

14.5 A Project Manager may also recommend and request minor field modifications to the

Work performed pursuant to this Agreement, or in techniques, procedures or designs utilized in carrying out this Agreement. The minor field modifications proposed under this Subsection must be approved orally by all the Parties' Project Managers to be effective. No such Work modifications can be so implemented if an increase in contract cost will result without the authorization of the Navy Contracting Officer. If agreement cannot be reached on the proposed additional Work or modification to Work, dispute resolution as set forth in Section XX - DISPUTE RESOLUTION, shall be invoked by the Navy, by submitting a written statement to the other Parties in accordance with Section XX - DISPUTE RESOLUTION. If all Parties agree to the modification, within five (5) business days following a modification made pursuant to this Section, the Project Manager who requested the modification shall prepare a written memorandum detailing the modification and the reasons therefore and shall provide or mail a copy of the memorandum to the Project Managers of the other Parties for signature and return.

14.6 Modifications of Work not provided for in Subsections 14.4 and 14.5 of this Section also must be approved by all the Parties' Project Managers to be effective. If agreement cannot be reached on the proposed modification to Work, dispute resolution as set forth in Section XX - DISPUTE RESOLUTION, shall be used. Within five (5) business days following a modification made pursuant to this Section, the Project Manager who requested the modification shall prepare a memorandum detailing the modification and the reasons therefore and shall provide or mail a copy of the memorandum to the Project Managers of the other Parties for signature and return.

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

14.8 The Parties shall transmit Primary and Secondary Documents and all notices required herein by next day mail, hand delivery or certified letter to the persons specified in Subsection 14.9 below by the Deadline established under Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN. Time limitations shall commence upon receipt. The Navy shall provide to the EPA and the PADEP seven (7) and five (5) copies respectively, of each Primary and Secondary Document.

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

A. For the Navy:

Naval Air Station Joint Reserve Base
Attn: Installation Project Manager
Environmental Coordinator, NASJRB Willow Grove
Bldg. #78, Environmental Division
Willow Grove, Pennsylvania 19090

Engineering Field Activity Northeast
10 Industrial Highway

Attn: NASJRB Willow Grove Project Manager
Mail Stop #82
Lester, Pennsylvania 19113-2090

B. For EPA:
EPA Region III
Attn.: NASJRB Willow Grove Project Manager
Federal Facilities Section (3HS13)
1650 Arch Street
Philadelphia, PA 19103-2029

C. For PADEP:
Pennsylvania Department of Environmental Protection
Attn: NASJRB Willow Grove Project Manager
2 E. Main Street
Norristown, Pennsylvania 19401

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

14.11 The Project Manager for the Navy shall represent the Navy with regard to the day-to-day field activities at the Site. The Navy Project Manager or other designated employee of the Navy shall be physically present at the Site or available to supervise Work during implementation of all the Work performed at the Site pursuant to this Agreement. The absence of the EPA or PADEP Project Managers from the Site shall not be cause for Work stoppage or delay, unless the Project Managers agree otherwise in writing.

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

A. Taking samples and ensuring that sampling and other field work is performed in accordance with the terms of any final Work Plans, Sampling Plan, and Quality Assurance/Quality Control (QA/QC) Plan;

B. Observing, taking photographs, and making such other reports on the progress of the Work as the Project Managers deem appropriate, subject to the limitations set forth in Section XVI - ACCESS hereof;

C. Reviewing sampling data, records, files, and documents relevant to the Agreement, subject to the limitations set forth in Section XXXI - RECORD PRESERVATION; and

D. Determining the form and specific content of the Project Manager meetings.

14.13 If any event occurs or has occurred that may delay or prevent the performance of any obligation under this Agreement, whether or not caused by a Force Majeure event, any Party shall notify by telephone the other Parties' Project Managers within two (2) business days of

when the Party first became aware that the event might cause a delay. If the Party intends to seek an extension of a Deadline or Schedule because of the event, the procedures of Section XIII - EXTENSIONS, shall apply.

XV. EXEMPTIONS

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

15.2 The PADEP reserves any statutory right it may have to challenge any order or exemption specified in Subsection 15.1 relieving the Navy of its obligations to comply with this Agreement.

XVI. ACCESS

16.1 The EPA and the PADEP and/or their representatives shall have the authority to enter the Site at all reasonable times for the purposes consistent with provisions of this Agreement. Such authority shall include, but not be limited to: inspecting records, logs, contracts, and other documents relevant to implementation of this Agreement; reviewing and monitoring the progress of the Navy, its contractors, and lessees in carrying out the activities under this Agreement: conducting, with prior notice to the Navy, tests which EPA or the PADEP deem necessary; assessing the need for planning additional remedial response actions at the Site; and verifying data or information submitted to EPA and the PADEP.

The Navy shall honor all reasonable requests for access to the Site made by EPA or the PADEP, upon presentation of credentials showing the bearer's identification and that he/she is an employee or agent of the EPA or the PADEP. The Navy Project Manager or his/her designee will provide briefing information, coordinate access and escort to restricted or controlled-access areas, arrange for base passes, and coordinate any other access requests which arise. The Navy shall use its best efforts to ensure that conformance with the requirements of this Subsection do not delay access.

16.2 The rights granted in Paragraph 16.1 and 16.4 to EPA and the PADEP regarding access shall be subject to regulations and statutes, including NASJRB security regulations, as may be necessary to protect national security information ("classified information") as defined in Executive Order 12356, and comply with NASJRB 's health and safety requirements. Such

requirements shall not be applied so as to unreasonably hinder EPA or the PADEP from carrying out their responsibilities and authority pursuant to this Agreement.

16.3 The Navy shall provide an escort whenever EPA or the PADEP requires access to restricted areas of NASJRB for purposes consistent with the provisions of this Agreement. EPA and the PADEP shall provide reasonable notice to the Navy Project Manager, or his or her designee, to request any necessary escorts for such restricted areas. The Navy shall not require an escort to any area of this Site unless it is a restricted or controlled-access area. Upon request of the EPA or the PADEP, the Navy shall promptly provide a written list of current restricted or controlled-access areas.

16.4 The EPA and the PADEP shall have the right to enter all areas of the Site that are entered by contractors performing Work under this Agreement.

16.5 Upon a denial of any aspect of access, the Navy shall provide an immediate explanation of the reason for the denial, including reference to the applicable regulations, and upon request, a copy of such regulations. Within forty-eight (48) hours, the Navy shall provide a written explanation for the denial. To the extent possible, the Navy shall expeditiously provide a recommendation for accommodating the requested access in an alternate manner.

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

16.7 Nothing herein shall be construed as limiting EPA's or the PADEP's statutory authority for access or information gathering.

XVII. PERMITS

17.1 The Navy shall be responsible for obtaining all Federal, Commonwealth and local permits which are necessary for the performance of all Work under this Agreement.

17.2 The Parties recognize that under Sections 121(d) and 121(e)(1) of CERCLA, 42 U.S.C. Sections 9621(d) and 9621(e)(1), and the NCP, portions of the response actions called for by this Agreement and conducted entirely on the Site, where such response actions are selected and carried out in accordance with CERCLA, are exempt from the requirement to obtain Federal, Commonwealth, or local permits. All activities must, however, comply with all the applicable or relevant and appropriate Federal and Commonwealth standards, requirements, criteria, or

limitations which would have been included in any such permit.

17.3 When the Navy proposes a response action, other than an emergency removal action, to be conducted entirely onsite, which in the absence of Section 121(e)(1) of CERCLA, 42 U.S.C. Section 9621(e)(1), and the NCP would require a Federal, Commonwealth or local permit, the Navy shall include in its Draft ROD or removal memorandum:

A. Identification of each permit that 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. An explanation of how the response action proposed will meet the standards, requirements, criteria or limitations identified immediately above.

17.4 Subsection 17.2 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, pollutant, or contaminant or hazardous waste off the Site or in any other circumstances where the exemption provided for at Section 121(e)(1) of CERCLA, 42 U.S.C. Section 9621(e), does not apply.

17.5 The Navy shall notify EPA and the PADEP in writing of any permits required for any off-Site activities it plans to undertake as soon as it becomes aware of the requirement. The Navy shall apply for all such permits and provide EPA and the PADEP with copies of all such permits, applications, and other documents related to the permit process and final permits.

17.6 The Navy agrees to notify EPA and the PADEP of its intention to propose modifications to this Agreement to obtain conformance with the permit, or lack thereof if a permit or other authorization which is necessary for implementation of this Agreement is not issued, or is issued, or renewed in a manner which is materially inconsistent with the requirements of this Agreement.

Notification by the Navy of its intention to propose modifications shall be submitted within sixty (60) calendar days of receipt by the Navy of notification that: (1) a permit will not be issued; (2) a permit has been issued or reissued; or (3) a final determination with respect to any appeal related to the issuance of a permit has been entered. Within sixty (60) days from the date it submits its notice of intention to propose modifications to this Agreement, the Navy shall submit to EPA and the PADEP its proposed modifications to this Agreement with an explanation of its reasons in support thereof.

17.7 EPA and PADEP shall review the Navy's proposed modifications to this Agreement in accordance with Section XXXVIII - AMENDMENT OF AGREEMENT, of this Agreement. If the Navy submits proposed modifications prior to a final determination of any appeal taken on a

permit needed to implement this Agreement, EPA and the PADEP may elect to delay review of the proposed modifications until after such final determination is entered.

17.8 During any appeal by any Party of any permit required to implement this Agreement or during review of any proposed modification(s) to the permit, the Navy shall continue to implement those portions of this Agreement which can be reasonably implemented independent of final resolution of the permit issue(s) under appeal. However, as to Work that cannot be so implemented, any corresponding Deadline, timetable, or Schedule shall be subject to Section XIII - EXTENSIONS, of this Agreement.

17.9 Nothing in this Agreement shall be construed to affect the Navy's obligation to comply with any RCRA permit(s) that the Facility may already have been or will be issued in the future.

XVIII. REMOVAL AND EMERGENCY ACTIONS

18.1 The Navy shall provide EPA and the PADEP with timely notice of any proposed removal action.

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

18.3 If during the course of performing the activities required under this Agreement, any Party identifies an actual or a substantial threat of a release of any hazardous substance, pollutant, or contaminant at or from the Site, that Party may propose that the Navy undertake removal actions to abate the danger and threat which may be posed by such actual or threatened release. All removal actions conducted on NASJRB shall be conducted in a manner consistent with this Agreement, CERCLA, Executive Order 12580, DERP, including provisions for timely notification and consultation with EPA and appropriate PADEP and local officials, and the NCP and shall, to the extent practicable, contribute to the efficient performance of any long term remedial action with respect to the release(s) or threatened release(s) concerned. Such a proposal to undertake such actions by the Navy shall be submitted to the EPA and the PADEP and shall include:

A. Documentation of the actual or threatened release at or from the Site;

B. Documentation that the actions posed will abate the danger and threat which may be posed by release of hazardous substances, pollutants, or contaminants at or from the Site;

C. Documentation that the action is consistent with the NCP, applicable Commonwealth regulations, and, to the extent practicable, contributes to the efficient

performance of any long-term remedial action with respect to the release or threatened release concerned;

D. Prepare an Engineering Evaluation/Cost Analysis ("EE/CA"), or its equivalent. The EE/CA shall contain an analysis of removal alternatives for a site. The screening of alternatives shall be based on criteria as provided in CERCLA and the NCP, such as cost, feasibility, and effectiveness; and

E. A Non-Time Critical Removal Action Plan and Target Date for the proposed action.

The EPA and the PADEP shall expedite all reviews of these proposals to the maximum extent practicable.

18.4 The opportunity for review and comment for proposed removal actions, as stated in Subsection 18.3 above, may not apply if the action is in the nature of an emergency removal taken because a release or threatened release may present an imminent and substantial endangerment to human health or the environment. The Navy may determine that review and comment, as stated in Subsection 18.3 above, is impractical. However, in the case of an emergency removal action, the Navy shall provide EPA and PADEP with oral notice as soon as possible and written notice within forty-eight (48) hours after the Navy determines that an emergency removal is necessary. Within seven (7) days after initiating an emergency removal action, the Navy shall provide EPA and the PADEP with the written basis (factual, technical and scientific) for such action and any available documents supporting such action. Upon completion of an emergency removal action, the Navy shall state whether, and to what extent, the emergency removal action varied from the description of the action in the written notice provided pursuant to this Section. Within thirty (30) days of completion of an emergency response action, the Navy will furnish EPA and the PADEP with an Action Memorandum addressing the information provided in the oral notification, whether and to what extent the action varied from the description previously provided, and any other information required by CERCLA or the NCP, and in accordance with EPA Guidance for such actions. Such actions may be conducted at anytime, either before or after the issuance of a ROD.

18.5 If an imminent health hazard (e.g., a drinking water well containing any contaminant at concentrations greater than any Federal or PADEP drinking water action level or maximum contaminant level (MCL)) or an activity conducted pursuant to this Agreement which is creating a danger to the public health or welfare or the environment is discovered by any Party during the efforts covered by this Agreement, the discovering Party will notify the other Parties and the Navy will take immediate action to promptly notify all appropriate PADEP and local agencies, potentially affected persons and officials in accordance with 10 U.S.C. Section 2705(a). The Navy will expeditiously take appropriate measures to protect all persons affected.

18.6 All activities pursuant to this Agreement will be performed in accordance with the Health

and Safety Plan and will be conducted so as to minimize the threat to the surrounding public.

XIX. PERIODIC REVIEW

19.1 Consistent with Section 121(c) of CERCLA, 42 U.S.C. Section 9621(c), and in accordance with this Agreement, if the selected remedial action results in any hazardous substance, pollutants or contaminants remaining at the Site, the Parties shall review the remedial action for each Operable Unit at least every five (5) years after the initiation of the 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 the review to EPA and the PADEP upon its completion. This report is the Periodic Review Assessment Report.

19.2 If upon such review it is the conclusion of any of the Parties that additional action or modification of remedial action is appropriate at the Site in accordance with Sections 104 or 106 of CERCLA, 42 U.S.C. Sections 9604 or 9606, the Navy shall implement such additional or modified action in accordance with Section IX - WORK TO BE PERFORMED, of this Agreement.

19.3 Any dispute by the Parties regarding the need for or the scope of additional action or modification to a remedial action shall be resolved under Section XX - DISPUTE RESOLUTION, of this Agreement and enforceable hereunder.

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

19.5 The EPA reserves the right to exercise any available authority to seek the performance of additional Work that arises from a Periodic Review, pursuant to applicable law.

19.6 The PADEP reserves the right to exercise any authority under Commonwealth law to seek the performance of additional Work when it is determined that such additional Work is necessary.

19.7 The assessment and selection of any additional response actions determined necessary as a result of a Periodic Review shall be in accordance with Paragraphs 9.7 to 9.9. Except for emergency response actions, which shall be governed by Section XVIII - REMOVAL AND EMERGENCY ACTIONS, such response actions shall be implemented as a supplemental response action in accordance with Paragraphs 9.12 and 9.15.

19.8 When the final ROD for an Operable Unit contains the requirement for the development and implementation of a Long-Term Monitoring Plan because the selected remedial action results in any hazardous substance, pollutants or contaminants remaining at the Site, the Long-

Term Monitoring Plan shall be submitted in accordance with Section X - CONSULTATION.

XX. DISPUTE RESOLUTION

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

20.2 Within thirty (30) days after: (1) issuance of a draft final Primary Document pursuant to Section X - CONSULTATION of this Agreement, or (2) any action which leads to or generates a dispute, the disputing Party shall submit to the other Parties a written statement of dispute setting forth the nature of the dispute, the Work affected by the dispute, the disputing Party's position with respect to the dispute and the information the disputing Party is relying upon to support its position.

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

20.4 The Dispute Resolution Committee (DRC) will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (Senior Executive Service (SES) or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The EPA's representative on the DRC is the Hazardous Site Cleanup Division Director of EPA Region III. The PADEP's representative on the DRC is its Southeast Regional Director. The Navy's designated member is the Commanding Officer, Engineering Field Activity Northeast. Written notice of any delegation of authority from the Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Section XIV - PROJECT MANAGERS.

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

20.6 The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The EPA's representative on the SEC is the Regional Administrator of EPA Region III, or his or her delegatee. The Navy's representative on the SEC is the

Assistant Secretary of the Navy (Installations and Environment) or his or her delegatee. PADEP's representative on the SEC is its Deputy Secretary for Field Operations, or his or her delegatee. In the event of a delegation, the positions presented by the delegatees shall represent the positions of the Regional Administrator of EPA Region III, the Assistant Secretary of the Navy (Installations and Environment), and the Deputy Secretary for PADEP Field Operations. Any documents issued by the SEC or its members pertaining to a dispute shall be issued by the Regional Administrator of EPA Region III, the Assistant Secretary of the Navy (Installations and Environment), and/or the Deputy Secretary for PADEP Field Operations. Notice of any delegation of authority from a Party's designated representative on the SEC shall be provided to the other Parties in writing before the delegation takes effect. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a unanimous written decision signed by all Parties. If unanimous resolution of the dispute is not reached within twenty-one (21) days, the EPA Regional Administrator shall issue a written position on the dispute. The Secretary of the Navy or the Secretary of PADEP may, within twenty-one (21) days of the Regional Administrator's issuance of EPA's position, issue a written notice elevating the dispute to the Administrator of U.S. EPA for resolution in accordance with all applicable laws and procedures. In the event that the Navy and/or PADEP elect not to elevate the dispute to the Administrator within the designated twenty-one (21) day escalation period, the decision will become final and the Work will proceed in accordance with the Regional Administrator's written position with respect to the dispute.

20.7 Upon escalation of a dispute to the Administrator of EPA pursuant to Subsection 20.6 above, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the EPA Administrator shall meet and confer with the Secretary of the Navy and PADEP's Secretary of the Environment to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the other Parties with a written final decision setting forth resolution of the dispute. The duties of the Administrator pursuant to this Paragraph may be delegated only to the EPA Assistant Administrator for Enforcement and Compliance Assurance. The duties of the Secretary of the Navy pursuant to Paragraph 20.7 may be delegated only to the Assistant Secretary of the Navy (Installations and Environment). The duties of PADEP's Secretary of the Environment pursuant to Paragraph 20.7 may be delegated only to PADEP's Deputy Secretary for Air, Recycling and Radiation Protection.

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

20.9 When dispute resolution is in progress, Work affected by the dispute will immediately be discontinued if the Hazardous Site Cleanup Division Director for EPA Region III requests, in writing, that Work related to the dispute be stopped because, in EPA's opinion, such Work is

inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. The PADEP may request the EPA Division Director to order Work stopped for the reasons set out above. To the extent possible, the Party seeking a Work stoppage shall consult with the other Parties prior to initiating a Work stoppage request. After stoppage of Work, if a Party believes that the Work stoppage is inappropriate or may have potential significant adverse impacts, the Party may meet with the Party ordering a Work stoppage to discuss the Work stoppage. Following this meeting, and further consideration of the issues, the EPA Division Director will issue, in writing, a final decision with respect to the Work stoppage. The final written decision of the U.S. EPA Hazardous Site Cleanup Division Director may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the Party requesting dispute resolution.

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

20.11 Resolution of a dispute pursuant to this Section of the Agreement constitutes a final resolution to any dispute arising under this Agreement. All Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Section of this Agreement except as provided for in Section XXXIX - PADEP RESERVATION OF RIGHTS.

20.12 In the event that PADEP continues to dispute the position of the Administrator of EPA, PADEP reserves its rights, to the extent provided by law including Sections 113(h), 121 and 310 of CERCLA, Section 7002 of RCRA, and Section XXIII - ENFORCEABILITY of this Agreement, to bring an action in Federal court to seek relief regarding such dispute and to seek injunctive relief. This Subsection, however, does not create any rights that PADEP does not already have under applicable laws.

20.13 PADEP reserves the right to maintain an action under CERCLA Section 121(f)(3)(B), 42 U.S.C. Section 9621(f)(3)(B), to challenge the selection of a Remedial Action that does not attain a Commonwealth legally Applicable or Relevant and Appropriate Requirement, standard, criterion or limitation.

XXI. STIPULATED PENALTIES

21.1 In the event that the Navy fails to submit a Primary Document, as listed in Section X - CONSULTATION, to EPA and the PADEP pursuant to the appropriate timetable or Deadlines in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement which relates to an interim or final remedial action, EPA may assess a stipulated penalty against the Navy. The PADEP may propose to EPA that such stipulated

penalties be assessed. 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 Subsection occurs. The PADEP and EPA agree that all stipulated penalties shall be shared equally.

21.2 Upon determining that the Navy has failed in a manner set forth in Subsection 21.1, EPA or the PADEP 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 EPA if the failure is determined, through the dispute resolution process, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.

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

A. The facility responsible for the failure;

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

C. A statement of any administrative or other corrective action taken, or a statement of why such measures were determined to be inappropriate;

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

E. The total dollar amount of the stipulated penalty assessed for the particular failure.

21.4 In the event that stipulated penalties become payable by the Navy under this Agreement, the Navy will seek Congressional approval and authorization to pay such penalties in equal amounts to the federal Hazardous Substances Superfund and to the PADEP's Hazardous Sites Cleanup Fund. Any requirement for the payment of stipulated penalties under this Agreement shall be subject to the availability of funds, and no provision herein shall be interpreted to require the obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341.

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

21.6 This Section shall not affect the Navy's ability to obtain an extension of a timetable,

Deadline or Schedule pursuant to Section XII - EXTENSIONS.

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

XXII. FORCE MAJEURE

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

A. Acts of God;

B. Fire;

C. War;

D. Insurrection;

E. Civil disturbance;

F. Explosion;

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

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

I. Unusual delay in transportation due to circumstances beyond the control of the Navy;

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

K. 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;

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

M. Insufficient availability of appropriated funds, if the Navy shall have made a timely request for such funds as a part of the budgetary process as set forth in Section XXVII - FUNDING, of this Agreement.

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

22.2 When circumstances, which may delay or prevent the completion of the Navy's obligation under this Agreement, are caused by a Force Majeure event, the Navy shall notify EPA and the PADEP Project Managers orally of the circumstances within forty-eight (48) hours after the Navy first became aware of these circumstances. Within fifteen (15) days of the oral notification, the Navy shall supply to EPA and the PADEP in writing an explanation of the cause(s) of any actual or expected delay and the anticipated duration of any delay. The Navy shall exercise its best efforts to avoid or minimize any such delay and any effects of such delay.

22.3 The Party seeking an extension based on Force Majeure shall describe the Force Majeure event being alleged.

XXIII. ENFORCEABILITY

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

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

C. All terms and conditions of this Agreement which relate to interim or final remedial actions, including corresponding timetables, Deadlines or Schedules, and all Work associated with the interim or final remedial actions, shall be enforceable by any person pursuant

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

D. Any final resolution of a dispute pursuant to Section XX - DISPUTE RESOLUTION, of this Agreement which establishes a term, condition, timetable, Deadline or Schedule shall be enforceable by any person pursuant to CERCLA Section 310(c), and any violation of such term, condition, timetable, Deadline or Schedule will be subject to civil penalties under CERCLA Sections 310(c) and 109, 42 U.S.C. Sections 9659(c) and 9609.

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

23.3 Nothing in this Agreement shall be construed as a restriction or waiver of any rights EPA may have under CERCLA, including but not limited to any rights under Sections 113, 120, 121 and 310, 42 U.S.C. Sections 9613, 9620, 9621 and 9659, or any rights, or defenses, including sovereign immunity, the PADEP may have under Federal or Commonwealth law.

The Navy does not waive any rights it may have under CERCLA Section 120, SARA Section 211, 10 U.S.C. 2701 et seq., and Executive Order 12580.

23.4 The Parties agree to exhaust their rights under Section XX - DISPUTE RESOLUTION, prior to exercising any rights to judicial review that they may have.

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

XXIV. OTHER CLAIMS

24.1 Subject to Section VIII - STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION, nothing in this Agreement shall restrict the Parties from taking any action under CERCLA, RCRA, Commonwealth law, or other environmental statutes for any matter not specifically part of the Work performed under CERCLA, which is the subject matter of this Agreement.

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

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

24.4 The EPA and the PADEP shall not be held as a party to any contract entered into by the Navy to implement the requirements of this Agreement.

24.5 The Navy shall notify the appropriate Federal and Commonwealth natural resource trustees of potential damages to natural resources resulting from releases or threatened releases under investigation, as required by Section 104(b)(2) of CERCLA, 42 U.S.C. Section 9604(b)(2), and Section 2(e)(2) of Executive Order 12580. Except as provided herein, the Navy is not released from any liability which it may have pursuant to any provisions of Commonwealth and Federal law, including any claim for damages for destruction of, or loss of, natural resources.

24.6 This Agreement does not bar any claim for:

A. Natural resources damage assessments, or for damage to natural resources; or

B. Liability for disposal of any hazardous substances or waste material taken from NASJRB.

XXV. RESERVATION OF RIGHTS

25.1 Notwithstanding anything in this Agreement, EPA and the PADEP may initiate any administrative, legal or equitable remedies available to them, including requiring additional response actions by the Navy in the event that: (a) conditions previously unknown or undetected by EPA or PADEP arise or are discovered at the Site; or (b) EPA or PADEP receives additional information not previously available concerning the premises which it 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) EPA or PADEP 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 Commonwealth laws or related regulations; or (g) the Navy, its officers, employees, contractors, or agents falsify information, reports, or data, or make a false representation or statement in a record, report or document relating to the release of hazardous materials at the Site, and this information affects the determination of whether a remedial action is protective of human health and the environment. For purposes of this Paragraph, conditions at the Site and information known to EPA and PADEP shall include only those conditions and

information known as of the date of the relevant response action decision document.

25.2 The Parties agree to exhaust their rights under Section XX - DISPUTE RESOLUTION, prior to exercising any rights to judicial review that they may have.

25.3 The Parties, after exhausting their remedies under this Agreement, reserve any and all rights, including the right to raise or assert any defense they may have under CERCLA, or any other law, where those rights are not inconsistent with the provisions of this Agreement, CERCLA, or the NCP. This Section does not create any right that EPA and PADEP do not already have under applicable law.

XXVI. PROPERTY TRANSFER

26.1 No change or transfer of any interest in the Facility or any part thereof shall in any way alter the status or responsibility of the Parties under this Agreement. The Navy agrees to give EPA and the PADEP sixty (60) days notice prior to the sale or transfer by the United States of America of any title, easement, or other interest in the real property affected by this Agreement. The Navy agrees to comply with Section 120(h) of CERCLA, 42 U.S.C. Section 9620(h), including the Community Environmental Response Facilitation Act (CERFA), and any additional amendments thereof, and with 40 C.F.R. Part 373, if applicable.

26.2 In accordance with Section 120(h) of CERCLA, 42 U.S.C. Section 9620(h), and 40 C.F.R. Part 373, the Navy shall include notice of this Agreement in any Host/Tenant Agreement or Memorandum of Understanding that permits any non-NASJRB activity to function as an operator on any portion of the Site.

XXVII. FUNDING

27.1 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 its budgetary process to fulfill its obligations under this Agreement.

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

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

established requiring the payment or obligation of such funds shall be appropriately adjusted.

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

27.5 Funds authorized and appropriated annually by Congress under the Environmental Restoration, Navy (ER,N) appropriation in the Department of Defense Appropriations Act will be the source of funds for activities required by this Agreement consistent with 10 U.S.C. Chapter 160. However, should the ER,N appropriation be inadequate in any year to meet the total Navy's implementation requirements under this Agreement, the Navy will, after consulting with the other Parties and discussing the inadequacy with the members of the public interested in the action in accordance with Section XII - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN, prioritize and allocate that year's appropriation.

XXVIII. REIMBURSEMENT OF COMMONWEALTH SERVICES

28.1 The Navy and the PADEP agree to use the Defense Commonwealth Memorandum of Agreement, DCMOA, signed on April 14, 1994, as amended by Cooperative Agreements, for the reimbursement of services provided in direct support of Navy environmental restoration activities at the Site pursuant to this Agreement.

XXIX. RECOVERY OF EPA EXPENSES

29.1 The Parties agree to amend this Agreement at a later date in accordance with any subsequent national resolution of the issue of EPA cost reimbursement for CERCLA response costs incurred by EPA. Pending such resolution, EPA reserves the rights it may have with respect to cost reimbursement.

XXX. QUALITY ASSURANCE

30.1 The Navy shall use quality assurance, quality control, and chain of custody procedures throughout all field investigation, sample collection and laboratory analysis activities. The Navy has developed, in accordance with EPA Guidance, and EPA and PADEP have approved, a Basewide Quality Assurance Project Plan (BWQAPP) that shall be used as a component of each SSP, RI, FS, RD, and RA Work Plan(s). If additional detail is required, the Navy shall develop a site specific QAPP. These Work Plans will be reviewed as Primary Documents pursuant to Section X - CONSULTATION, of this Agreement. QA/QC Plans shall be prepared in accordance with applicable EPA Guidance.

30.2 In order to provide for quality assurance and maintain quality control regarding all field work and samples collected pursuant to this Agreement, the Navy shall include in each QA/QC Plan submitted to EPA and the PADEP all protocols to be used for sampling and analysis. The Navy shall also ensure that any laboratory used for analysis is a participant in a quality assurance/quality control program that is consistent with EPA Guidance.

30.3 The Navy shall ensure that lab audits are conducted as appropriate and are made available to EPA and the PADEP upon request. The Navy shall ensure that EPA and/or the PADEP and/or their authorized representatives shall have access to all laboratories performing analyses on behalf of NASJRB pursuant to this Agreement.

XXXI. RECORD PRESERVATION

31.1 Despite any document retention policy to the contrary, EPA and the Navy shall preserve, during the pendency of this Agreement and for a minimum of ten (10) years after its termination or for a minimum of ten (10) years after implementation of any additional action taken pursuant to Section XIX - PERIODIC REVIEW, all records and documents in their possession which relate to actions taken pursuant to this Agreement. The PADEP shall preserve all records and documents in its possession that relate to actions taken pursuant to this Agreement in accordance with Commonwealth law and Commonwealth policy. After the ten (10) year period, or for the PADEP at the expiration of its document retention period, each Party shall notify the other Parties at least forty-five (45) days prior to the proposed destruction or disposal of any such documents or records. Upon the request by any Party, the requested Party shall make available such records or copies of any such records unless withholding is authorized and determined appropriate by law. The Party withholding such records shall identify any documents withheld and the legal basis for withholding such records. No records withheld shall be destroyed until forty-five (45) days after the final decision by the highest court or administrative body requested to review the matter.

31.2 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.

XXXII. SAMPLING AND DATA/DOCUMENT AVAILABILITY

32.1 Each Party shall make available to the other Parties all the results of sampling, tests, or other data generated through the implementation of this Agreement in a timely manner.

32.2 At the request of any Party, a Party shall allow the other Parties or their authorized

representatives to observe field work and to take split or duplicate samples of any samples collected pursuant to this Agreement. Each Party shall notify the other Parties by telephone not less than fourteen (14) days in advance of any scheduled sample collection activity unless otherwise agreed upon by the Parties. The Party shall provide written confirmation within three (3) days of the telephonic notification.

32.3 If preliminary analysis indicates that an imminent or substantial endangerment to human health or the environment may exist, all other Project Managers shall be immediately notified.

XXXIII. PROTECTED INFORMATION

33.1 The Navy shall not withhold any physical, sampling, monitoring or analytical data.

33.2 National Security Information:

A. Any dispute concerning EPA and/or PADEP access to national security information ("classified information"), as defined in Executive Order 12356, shall be resolved in accordance with Executive Order 12356 and 32 C.F.R. Part 159, including the opportunity to demonstrate that EPA and/or PADEP representatives have proper clearances and a need to know, appeal to the Information Security Oversight Office, and final appeal to the National Security Council.

B. Upon receipt from EPA and/or PADEP of a request to meet with the classifying officer regarding access to classified information, the Navy shall, within ten (10) calendar days of such request, notify the requesting Party of the identity of the classifying officer and the level of classification of the information sought. If the document was classified by the Navy, the classifying officer and the representative of the requesting Party shall meet within twenty-one (21) calendar days following receipt of the request. The purpose of the meeting shall be to seek a means to accommodate the requesting Party's request for access to information without compromising national security or violating security regulations. If no resolution is reached at the meeting, the Navy shall notify the requesting Party of the classifying officer's decision within fourteen (14) calendar days following the meeting. Failure to render a timely decision shall be construed as a denial. Failure to respond is subject to dispute resolution under this Agreement.

C. Nothing in this Subsection is intended to, or should be construed as, superseding any law, regulation, or promulgated Navy directive regarding access to, release of, or protection of national security information.

XXXIV. COMMUNITY RELATIONS

34.1 The Navy has developed and is implementing a Community Relations Plan. This plan responds to the need for an interactive relationship with all interested community elements, both

on and off the NASJRB, regarding environmental activities conducted pursuant to this Agreement by the Navy. Any revision or amendment to the Community Relations Plan shall be submitted to EPA and the PADEP for review and comment.

34.2 Except in case of an emergency requiring the release of necessary information, and except in the case of an enforcement action, any Party issuing a press release with reference to any of the Work required by this Agreement shall use its best efforts to advise the other Parties of such press release and the contents thereof upon issuance of such release.

34.3 The Parties agree to comply with all relevant EPA policy and Guidance on community relations programs and the public participation requirements of CERCLA, the NCP and other applicable, relevant and appropriate requirements, laws and regulations.

34.4 The Parties agree that Work conducted under this Agreement and any subsequent proposed remedial action alternatives and subsequent plans for remedial action at the Site arising out of this Agreement shall comply with all the Administrative Record and public participation requirements of CERCLA, including Sections 113(k) and 117, 42 U.S.C. Sections 9613(k) and 9617, the NCP, and all applicable Guidance developed and provided by EPA. This shall be achieved through implementation of the Community Relations Plan.

34.5 The Navy has established and is maintaining an Administrative Record at or near NASJRB available to the public, and another copy at a central location, in accordance with CERCLA Section 113(k), 42 U.S.C. Section 9613(k), Subpart I of the NCP, and applicable Guidance issued by EPA. The Administrative Record developed by the Navy shall be periodically updated and a copy of the Index will be provided to EPA and the PADEP. The Navy will provide to the EPA and the PADEP on request any document in the Administrative Record.

34.6 Pursuant to 10 U.S.C. Section 2705(d) and Section XXXVI - RESTORATION ADVISORY BOARD of this Agreement, the Navy has established a Restoration Advisory Board (RAB) for NASJRB. The purpose of the RAB is to afford a forum for cooperation between the Parties, local community representatives, and natural resource trustees on action and proposed actions at the Site.

XXXV. PUBLIC COMMENT ON THIS AGREEMENT

35.1 Within fifteen (15) days after the execution of this Agreement (the date by which all Parties have signed the Agreement) or as soon thereafter to conform with RCRA integration requirements, EPA shall announce the availability of this Agreement to the public for their review and comment, including publication in at least two (2) major local newspapers of general circulation. Such public notices shall include information advising the public as to the

availability and location of the Administrative Record discussed in Subsection 35.7. EPA shall accept comments from the public for forty-five (45) days after such announcement. Within twenty-one (21) days of completion of the public comment period, EPA shall transmit copies of all comments received within the comment period to the other Parties. Within thirty (30) days after the transmittal, the Parties shall review the comments and 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.

35.2 If the Parties agree that the Agreement shall be made effective without any modifications, and if the Parties agree on the Responsiveness Summary, EPA shall transmit a copy of the signed Agreement to the other Parties and shall notify the other Parties in writing that the Agreement is effective. The Effective Date of the Agreement shall be the date of receipt by the Navy of the signed Agreement from EPA.

35.3 If the Parties agree that modifications are needed and agree upon the modifications and amend the Agreement by mutual consent within sixty (60) days after the expiration of the public comment period, EPA and the PADEP, in consultation with the Navy, will determine whether the modified Agreement requires additional public notice and comment pursuant to any provision of CERCLA. If EPA and the PADEP determine that no additional notice and comment are required, and the Parties agree on the Responsiveness Summary, EPA shall transmit a copy of the modified Agreement to the Navy and the PADEP and shall notify them in writing that the modified Agreement is effective as of the date of the notification. If the Parties amend the Agreement within the sixty (60) days and EPA and the PADEP determine that additional notice and comment are required, such additional notice and comment shall be provided consistent with the provisions stated in Subsection 35.1 above. If the Parties agree, after such additional notice and comment has been provided, that the modified Agreement does not require any further modification and if the Parties agree on the Responsiveness Summary, EPA shall send a copy of the mutually agreed upon modified Agreement to the Navy and the PADEP and shall notify them that the modified Agreement is effective. In either case, the Effective Date of the modified Agreement shall be receipt by the Navy from EPA of notification that the modified Agreement is effective.

35.4 In the event that the Parties cannot agree on the modifications or on the Responsiveness Summary within thirty (30) days after EPA's transmittal of the public comments, the Parties agree to negotiate in good faith for an additional fifteen (15) days before invoking dispute resolution. The Parties agree to have at least one meeting during that fifteen (15) day period to attempt to reach agreement.

35.5 If, after expiration of the times provided in Subsection 35.4, the Parties have not reached agreement on:

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, any content of the Agreement or any Appendices to the Agreement; or

D. Whether additional public notice and comments are required; or

E. The contents of the responsiveness summary,

then the matters which are in dispute shall be resolved by the dispute resolution procedures of Section XX - DISPUTE RESOLUTION, above. For the purposes of this Section, the Agreement shall not be effective while the dispute resolution proceedings are underway. After these proceedings are completed, the Final Written Decision shall be provided to the Parties indicating the results of the dispute resolution proceedings. Each Party reserves the right to withdraw from the Agreement by providing written notice to the other Parties within twenty (20) days after receiving from EPA the Final Written Decision of the resolution of the matters in dispute. If the PADEP withdraws, and EPA and the Navy agree to proceed, the Agreement shall be effective as to EPA and the Navy. Failure by a Party to provide such a written notice of withdrawal to EPA within this twenty (20) day period shall act as a waiver of the right of that Party to withdraw from the Agreement, and EPA shall thereafter send a copy of the final Agreement to each Party and shall notify each Party that the Agreement is effective. The Effective Date of the Agreement shall be the date of receipt of that letter from EPA to the Navy.

35.6 At the start of the public comment period, the Navy will transmit copies of this Agreement to the appropriate Federal, Commonwealth, and local Natural Resource Trustees for review and comment within the time limits set forth in this Section.

35.7 Existing records maintained by NASJRB which will be included in the Administrative Record such as reports, plans, and Schedules, shall be made available by the Navy for public review during the public comment period.

XXXVI. RESTORATION ADVISORY BOARD

36.1 The Navy has established a Restoration Advisory Board (RAB), which meets the requirements of 10 U.S.C. Section 2705(d) at Department of Defense installations. The Parties shall participate in the RAB as follows:

A. A NASJRB representative who shall co-chair the RAB;

B. An EPA representative,

C. A PADEP representative, and

D. The Navy Project Manager.

The Parties shall encourage representatives from the following organizations to serve as members of the RAB:

E. A representative from Horsham township, and

F. A representative from the Horsham Water & Sewer Authority

36.2 The co-chairs shall Schedule quarterly meetings of the RAB unless the Parties agree to meet less frequently. If possible, meetings shall be held in conjunction with the meetings of the Project Managers. Meetings of the RAB shall be for the purpose of reviewing progress under the Agreement and for the following purposes:

A. To facilitate early and continued flow of information between the community, NASJRB and the environmental regulatory agencies in relation to restoration actions taken by NASJRB under the Installation Restoration Program,

B. To provide an opportunity for RAB members and the public to review and comment on actions and proposed actions taken by NASJRB under the Installation Restoration Program and,

C. To facilitate regulatory and public participation consistent with applicable laws.

Special meetings of the RAB may be held at the request of the members.

XXXVII. EFFECTIVE DATE

37.1 This Agreement shall be effective in its entirety among the Parties in accordance with Section XXXV - PUBLIC COMMENT ON THIS AGREEMENT.

XXXVIII. AMENDMENT OF AGREEMENT

38.1 Except as provided in Section XIV - PROJECT MANAGERS, this Agreement can be amended or modified solely upon written consent of all the Parties. Such amendments or modifications shall be in writing, and shall become effective on the third business day following the date on which the EPA signs the amendments or modifications. The Parties may agree on a

different Effective Date. As the last signing Party, the EPA will provide notice to each signatory pursuant to Section XIV - PROJECT MANAGERS, of the Effective Date.

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

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

A. Applicable statutes and regulations shall be applied in accordance with the statutory or regulatory language on applicability, and if applied to ongoing activities, shall be applied on the Effective Date provided. However, the Parties shall, to the extent practicable, apply them in such a way as to avoid as much as possible the need for repeating Work already accomplished.

B. Applicable policy or Guidance shall be applied as it exists at the time of initiation of the Work in issue.

C. Applicable policy or Guidance which is changed after the initiation of the Work in issue or after its completion shall be applied subject to Section XX - DISPUTE RESOLUTION. The Party proposing application of such changed policy or Guidance shall have the burden of proving the appropriateness of its application. In any case, the Parties shall, to the extent practicable, apply any changed policy or Guidance in such a way as to avoid, as much as possible, the need for repeating Work already accomplished.

XXXIX. PADEP RESERVATION OF RIGHTS

39.1 Notwithstanding any other Section of this Agreement, PADEP shall retain any statutory right it may have to obtain judicial review of any final decision of EPA including, without limitation, any authority PADEP may have under CERCLA Sections 113, 121(e)(2), 121(f)(3), and 310, 42 U.S.C. Sections 9613, 9621(e)(2), 9621(f)(3), and 9659, Section 7002 of RCRA, Section XXIII - ENFORCEABILITY of this Agreement, and Commonwealth law, except that PADEP expressly agrees to exhaust any applicable remedies provided in Section X - CONSULTATION and Section XX - DISPUTE RESOLUTION of this Agreement, prior to exercising any such rights.

39.2 Notwithstanding anything in this Agreement, PADEP reserves the right to initiate any administrative, legal, or equitable remedies available to it based upon: (a) the Navy's failure or refusal to comply with any requirement of Commonwealth laws or regulations required under this Agreement; or (b) except as provided in a ROD, past, present or future disposal of hazardous

substances or contaminants outside the boundaries of the Site; or (c) past, present, or future violations of Federal or Commonwealth criminal law; or (d) violations of Federal or Commonwealth law other than those addressed in this Agreement which occur during or after implementation of a remedial action; or (e) damages for injury to, destruction of, or loss of natural resources, and the cost of any natural resource damage assessments. PADEP expressly agrees to exhaust any applicable remedies provided in Section X - CONSULTATION and Section XX - DISPUTE RESOLUTION of this Agreement, prior to exercising any such rights.

39.3 With regard to all matters not expressly addressed by this Agreement, PADEP specifically reserves all rights to institute equitable, administrative, civil and criminal actions for any past, present, or future violation of any statute, regulation, permit, or order, or for any pollution or potential pollution to the air, land, or waters of the Commonwealth.

39.4 In the event that the Navy's obligations under this Agreement are not fulfilled for six (6) consecutive months, the PADEP shall have the option of terminating all provisions of the Agreement affecting the PADEP's rights and responsibilities, and the PADEP may thereafter seek any appropriate relief. The PADEP, however, expressly agrees to exhaust any applicable remedies provided in Section X - CONSULTATION and Section XX - DISPUTE RESOLUTION of this Agreement, prior to exercising any such rights. Thereafter, the PADEP will provide the other Parties with ten (10) days notice of its intent to terminate. This Section does not create any right that PADEP does not already have under applicable law.

XL. SEVERABILITY

40.1 If any provision of this Agreement is ruled invalid, illegal, or unconstitutional, the remainder of the Agreement shall not be affected by such a ruling.

XLI. TERMINATION AND SATISFACTION

41.1 The provisions of this Agreement shall be deemed satisfied upon a consensus of the Parties that the Navy has completed its obligations under the terms of this Agreement. Following EPA Certification of all the response actions at the Site pursuant to Subsections 9.18c of Section IX - WORK TO BE PERFORMED, any Party may propose in writing the termination of this Agreement upon a showing that the requirements of this Agreement have been satisfied. The obligations and objectives of this Agreement shall be deemed satisfied and terminated upon receipt by the Navy of written notice from EPA, with concurrence of the PADEP, that the Navy has demonstrated that all the requirements of this Agreement have been satisfied. A Party opposing termination of this Agreement shall provide a written statement of the basis for its denial and describe the actions necessary to grant a termination notice to the proposing Party

within ninety (90) days of receipt of the proposal.

41.2 Any disputes arising from this Termination and Satisfaction process shall be resolved pursuant to the provisions of Section XX - DISPUTE RESOLUTION, of this Agreement.

41.3 Upon termination of this Agreement, the Navy shall place a public notice announcing termination in two (2) major local newspapers of general circulation.

41.4 This Section shall not affect the Parties' obligations pursuant to Section XIX - PERIODIC REVIEW of this Agreement. In no event will this Agreement terminate prior to the Navy's completion of the Work required by this Agreement.

5/24/2005

AUTHORIZED SIGNATURES

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

IT IS SO AGREED:

By _____ Date 5/24/05

Donald R. Schregardus
Deputy Assistant Secretary of the Navy
(Environment)

By _____ Date 5/26/05

Joseph A. Feola
Regional Director
Southeast Region
Pennsylvania Department of Environmental Protection

By _____ Date JUN 27 2005

Donald S. Welsh
Regional Administrator
Environmental Protection Agency, Region III