IAG COVER SHEET

FILE NAME: Joliet.pdf

Title: Joliet Army Ammunition Plant, JAAP, Elwood, Illinois

Subject: Region 5, V

Author: Army, DoD, Illinois, IL

Keywords: 6/9/89, 1989, FY89

TABLE OF CONTENTS

I	JURISDICTION	1
II	U.S. EPA AND IEPA DETERMINATIONS AND CONCLUSIONS OF LAW	2
III	FINDINGS OF FACT	4
IV	PARTIES	8
V	DEFINITIONS	9
VI	SITE	11
VII	PURPOSE	12
VIII	SCOPE OF AGREEMENT	14
IX	OPERABLE UNITS	15
X	REMEDIAL INVESTIGATION	16
XI	FEASIBILITY STUDY	16
XII	REMEDIAL ACTION SELECTION AND IMPLEMENTATION	16
XIII	STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION	17
XIV	CONSULTATION WITH U.S. EPA AND IEPA	19
XV	RESOLUTION OF DISPUTES	27
XVI	REPORTING	32
XVII	NOTIFICATION	32
XVIII	PROJECT MANAGERS AND COMMITTEES	33
XIX	SAMPLING AND DATA/DOCUMENT AVAILABILITY	35
XX	RETENTION OF RECORDS	36
XXI	ACCESS	36
XXII	FIVE YEAR REVIEW	38
XXIII	OTHER CLAIMS	39
XXIV	OTHER APPLICABLE LAWS	40
XXV	CONFIDENTIAL INFORMATION	40
XXVI	AMENDMENT OF AGREEMENT	40

XXVII RESERVATION OF RIGHTS. 41

XXVIII ENFORCEABILITY 42

XXIX STIPULATED PENALTIES 43

XXX CONVEYANCE OF TITLE. 45

XXXI PUBLIC PARTICIPATION 46

XXXII PUBLIC COMMENT 47

XXXIII TERMINATION. 48

XXXIV EFFECTIVE DATE 49

XXXV DEADLINES. 49

XXXVI EXTENSIONS 50

XXXVII FORCE MAJEURE. 52

XXXVIII FUNDING. 53

XXXIX PERMITS. 55

XXXX REMOVALS 56

XXXXI QUALITY ASSURANCE. 57

XXXXII RESERVATION OF RIGHTS - RECOVERY OF FEDERAL EXPENSES . . 58

XXXXIII STATE COST REIMBURSEMENT 58

ATTACHMENTS

ATTACHMENT 1 . . . . . MAPS OF JOLIET SITE

ATTACHMENT 2 . . . . . .FORMAT FOR MONTHLY REPORTS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V
AND
THE STATE OF ILLINOIS
AND
THE UNITED STATES ARMY

IN THE MATTER OF:	)	
THE U.S. DEPARTMENT OF DEFENSE THE ARMY JOLIET ARMY AMMUNITION PLANT ELWOOD, ILLINOIS	)	FEDERAL FACILITY AGREEMENT UNDER CERCLA SECTION 120
	)	Administrative Docket Number:

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

I.

Jurisdiction

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

(i) The U.S. Environmental Protection Agency (U.S. EPA), Region V, enters into those portions of this Agreement that relate to the remedial investigation/feasibility study (RI/FS) pursuant to Section 120(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. Section 9620(e)(1), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499 (hereinafter jointly referred to as CERCLA/SARA or CERCLA) and Sections 6001, 3008(h), and 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/HSWA or RCRA) and Executive Order 12580;

(ii) U.S. EPA, Region V, enters into those portions of this Agreement that relate to operable unit and final remedial actions pursuant to Section 120(e)(2) of CERCLA/SARA, Sections 6001, 3008(h) and 3004(u) and (v) of RCRA and Executive Order 12580;

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

(iv) the Army enters into those portions of this Agreement that relate to operable unit and final remedial actions pursuant to Section 120(e)(2) of CERCLA/SARA, Sections 6001, 3004(u) and (v) and 3008(h) of RCRA, DERP, and Executive Order 12580.

(v) the Illinois Environmental Protection Agency (IEPA) enters into this Agreement pursuant to Sections 120(f) and 121(f) of CERCLA/SARA 42 U.S.C. 9620(f) and 9621(f), Section 3006 of RCRA, 42 U.S.C. Section 6926 and Paragraph 1004 of Chapter 111 1/2 of the Ill. Rev. Stat.

II.

U.S. EPA AND IEPA DETERMINATIONS AND CONCLUSIONS OF LAW

A. While not contesting the authority or jurisdiction of U.S. EPA and IEPA to enter into this Agreement, the Army does not concur

with any of the determinations or conclusions of law contained in this section.

B. On the basis of the results of the testing and analyses described in the Statement of Facts, infra, and U.S. EPA and IEPA files and records, the U.S. EPA and IEPA have determined that:

(1) the Joliet Army Ammunition Plant (JAAP) constitutes a facility within the meaning of 42 U.S.C. Section 9601(9), and Sections 3004(u) and (v), 42 U.S.C. Section 6924(u) and (v), and Section 3008(h), 42 U.S.C. Section 6928(h) of RCRA.

(2) hazardous substances, pollutants or contaminants within the meaning of 42 U.S.C. Sections 9601(14) and (33) and 9604(a)(2) have been disposed of at JAAP;

(3) there have been releases and there continues to be a threat of release of hazardous substances, pollutants or contaminants into the environment within the meaning of 42 U.S.C. Sections 9601(22), 9604, 9606 and 9607 at and from JAAP;

(4) with respect to those releases and threatened releases, the U.S. Army is a responsible person within the meaning of 42 U.S.C. Section 9607;

(5) any corrective actions and any other response measures to be taken pursuant to this Agreement are reasonable and necessary to protect the public health or welfare or the environment; and

(6) JAAP includes a "hazardous waste management facility" as defined under 40 CFR 260.10, authorized to operate under Sections 3004 and 3005 of RCRA, 42 U.S.C. Sections 6924 and 6925;

(7) The U.S. Army is the owner of the JAAP, as shown on Attachment 1.

(8) It is the IEPA's position that the substantive closure and post-closure care requirements for surface impoundments (35 IAC, Title 35, Subtitle G, paragraphs 724.328(a) and (b)) are to be considered applicable to the final remedial action selected for the red water lagoon; the IEPA recognizes, however, that ARARs will be determined in accordance with the procedures set forth in Section XIV.F. of this Agreement.

III.

Findings of Fact

For the purposes of this Agreement, the following constitutes a summary of the facts upon which this Agreement is based. None of the facts related herein shall be considered admissions by any Party. This Section contains findings of facts, determined solely by the U.S. EPA, and shall not be used by any person related or unrelated to this Agreement for purposes other than determining the basis of this Agreement.

1. The Joliet Army Ammunition Plant (JAAP) is located in Will County, Illinois. It is divided by Illinois State Highway 53 into two areas, the Load/Assemble/Pack (LAP) area, and the Manufacturing area. JAAP comprises approximately thirty-six (36) square miles of land and is located south of the city of Joliet. (See Section VI for detailed site description).

2. JAAP operated from the early 1940's until 1977 producing military explosives and munitions, and performing munition

demilitarization, loading, and disposal. Since 1977, JAAP has been maintained in non-operating, stand-by condition by Uniroyal Chemical Company, Inc., under contract to the U.S. Army. Several companies, including Honeywell, Inc., A-Z Technology and Talley Defense Systems and Government entities have leased or otherwise arranged for use of areas at JAAP for their operations.

3. Production has been facilitated through commercial and DOD contracts. Some of the production, storage and/or disposal activities have caused releases and continue to threaten release of hazardous substances, pollutants or contaminants at the facility.

4. In 1978, as part of the DOD's Installation Restoration Program, the U.S. Army Toxic and Hazardous Materials Agency prepared reports entitled Installation Restoration Surveys of Joliet Army Ammunition Plant (hereafter "the reports"). These reports detailed extensive waste disposal activities at JAAP. These reports indicated past use of areas at JAAP for the disposal of wastes.

5. The Manufacturing Area and the Load-Assemble-Pack (LAP) area are on the National Priorities List (NPL) with Hazard Ranking System (HRS) scores of 32.08, and 35.23 respectively.

6. HRS analysis performed in August, 1984, utilizing data from previous Installation Restoration Program studies, detected five contaminants of concern on the manufacturing area: 2,4,6 - trinitrotoluene(2,4,6-TNT), 2,4-dinitrotoluene (2,4-DNT), 2,6-dinitrotoluene (2,6-DNT), lead and arsenic. HRS analysis performed in September, 1984, on the Load-Assemble-Pack (LAP) area detected 2,4,6-trinitrotoluene (2,4,6-TNT), 1,3,5-trinitrobenzene (1,3,5-TNB),

dinitrotoluene (DNT), lead and arsenic. Contaminants of concern were limited to five on each NPL site as stated in EPA HRS guidance.

7. Based on Installation Assessment Report No. 128, an estimate of 4 billion pounds of TNT was produced, as well as more than 1.6 million pounds of lead azide. Waste products and waste waters from the Manufacturing Area were routinely discharged to man-made open drainage ditches which flowed directly into Jackson and Grant Creeks.

8. Joliet Army Ammunition Plant is participating in the Department of Defense Installation Restoration Program (IRP), a program established in 1978 to identify and evaluate hazardous waste sites and develop remedial action alternatives to mitigate environmental impacts from these sites. Several studies, including a records search (1978), exploratory and confirmatory surveys (1981-1985), two rounds of sampling and analysis (1985-1986), and a final contamination assessment report (1986) have been performed at JAAP. However, these reports have not undergone technical review by U.S. EPA or IEPA at this time. The studies to date have primarily focused on the Manufacturing Area but when completed, will encompass the entire facility. Funding for the IRP comes from the Department of Defense Environmental Restoration Account.

9. On and subsequent to November 19, 1980, the Army owned or operated the facility (as defined in 40 U.S.C. Section 260.10), defined in paragraph 12 below.

10. On August 18, 1980, the Army submitted a timely notification of its hazardous waste activity at the JAAP facility as required by Section 3010(a) of RCRA, 42 U.S.C. Section 6930(a).

11. RCRA permit applications, as required by Section 3005(a) of RCRA, 42 U.S.C. Section 6925(a) and 40 CFR 270.1(b), to treat, store, or dispose of hazardous waste, have been filed for the JAAP.

a. The Army, for operations of JAAP, has filed:

SUBMISSION	DATE
Part A Submission	Nov. 18, 1980
Interim Status Acknowledgement	June 9, 1982
Part A Modified (Add Honeywell)	Nov. 5, 1982
Part A Modified (Remove Red Water Lagoon)	Jan. 16, 1984
Part A Modified (Delete Honeywell and Many Processes)	Feb. 20, 1985
Part B Application	May 13, 1985

b. Honeywell, for their operations located at the JAAP, has filed:

Part A Submission	Feb. 20, 1985
Part A Resubmission	Nov. 8, 1988
Part B Application	Nov. 8, 1988

12. The JAAP Site includes an "interim status hazardous waste management facility" pursuant to Section 3005(e) of RCRA, 42 U.S.C. Section 6925(e) and 40 CFR 270.0.

13. The migration and threat of migration of 2,4,6-TNT, 2,4-DNT, 2,6-DNT, lead, arsenic, and other compounds into the soils, groundwater and surface waters from the facility constitute a release of hazardous waste and hazardous constituents to the environment within the meaning of Section 3008(h) of RCRA, 42 U.S.C. Section 6928(h).

14. Section 3010 of RCRA, 42 U.S.C. Section 6930, requires any person who generates or transports hazardous waste, or owns or operates a facility for the treatment, storage, or disposal of hazardous waste to notify U.S. EPA of such activity within 90 days of the promulgation of regulations under Section 3001 of RCRA. Section 3010 also provides that no hazardous waste subject to EPA regulation may be transported,

treated, stored, or disposed unless the required notification has been given.

15. Section 3005(e) of RCRA provides that an owner or operator of a facility shall be treated as having been issued a permit pending final administrative disposition of the permit application, provided that; (1) the facility was in existence on November 19, 1980; (2) the requirements of Section 3010(a) of RCRA, 42 U.S.C. Section 6930(a), concerning notification of hazardous waste activity have been complied with; and (3) application for a permit has been made. This statutory authorization to operate, pending final action on the permit, is known as interim status. U.S. EPA regulations implementing these provisions are found at 40 CFR 270.70.

IV.

Parties

The Parties to this Agreement are the U.S. EPA, the IEPA, and the U.S. Army, JAAP. The terms of this Agreement shall apply to and be binding upon the U.S. EPA, their agents, employees and contractors for the Site; the IEPA, its agents, employees, and contractors for the Site; and the Army, its agents and employees, for the Site and all subsequent owners, operators and lessees of JAAP. It shall not be a defense of the Army that their contractors violated any of the terms of this Agreement. The Army will notify U.S. EPA and IEPA of the identity and assigned tasks of each of its contractors performing work under this Agreement upon their selection. This Agreement shall be enforceable against all of the foregoing via the Parties to this Agreement. This Part shall not be construed as an agreement to

indemnify any person. The Army shall notify its agents, employees, and contractors for the Site, and all subsequent owners, operators and lessees of JAAP of the existence of this Agreement. Each undersigned representative of a Party certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement.

V.

Definitions

Except as noted below or otherwise explicitly stated, the definitions provided in CERCLA and CERCLA/SARA shall control the meaning of the terms used in this Agreement.

In addition:

A. "Authorized representative" may include a Party's contractors acting in any capacity, including an advisory capacity. For the U.S. Army, no contractor shall be considered an authorized representative.

B. "CERCLA" or "CERCLA/SARA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499.

C. "Days" shall mean calendar days, unless business days are specified. Any Submittal, Written Notice of Position or written statement of dispute that under the terms of this Agreement would be due on a Saturday, Sunday or holiday shall be due on the following business day.

D. "Feasibility Study" or "FS" means that study which fully evaluates and develops remedial action alternatives to prevent or

mitigate the migration or the release of hazardous substances, pollutants or contaminants at and from the Site.

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

F. "Operable Units" or "OU" shall mean all discrete response actions implemented prior to a final remedial action which are consistent with the final remedial action and which are taken to prevent or minimize the release of hazardous substances, pollutants or contaminants so that they do not migrate or endanger public health, welfare or the environment.

G. "JAAP" shall mean the Joliet Army Ammunition Plant as defined in Section VI of this Agreement.

H. "Remedial Investigation" or "RI" means that investigation conducted to fully determine the nature and extent of the release or threat of release of hazardous substances, pollutants or contaminants and to gather necessary data to support the feasibility study and endangerment assessment.

I. "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, Pub. L. 98-616.

J. "Site" shall include JAAP and any other areas contaminated by the migration of a hazardous substance, pollutant or contaminant from JAAP as discussed in Part VI of this Agreement. The term shall have the same meaning as "facility" as defined by Section 101(9) of CERCLA/SARA, 42 U.S.C. Section 9601(9).

K. "Submittal" shall mean every document, report, schedule, deliverable, work plan or other item to be submitted to U.S. EPA and IEPA pursuant to this Agreement.

L. "Deadlines" shall mean schedules as well as that work and those actions which are to be completed and performed in conjunction with such schedules established pursuant to this Agreement. All submittals subject to deadlines shall be postmarked on or before the scheduled deadline.

M. " U.S. Army" or "Army" shall mean the U.S. Army, its employees, agents, successors, assigns and authorized representatives as well as the Department of Defense (DOD), to the extent necessary to effectuate the terms of this Agreement, including, but not limited to, appropriations and Congressional reporting requirements.

N. "U.S. EPA" shall mean the United States Environmental Protection Agency, its employees and authorized representatives.

O. "Written Notice of Position" shall mean a written statement by a Party of its position with respect to any matter which any other Party may dispute pursuant to Part XV of this Agreement.

P. "IEPA" shall mean the Illinois Environmental Protection Agency, its employees and authorized representatives.

Q. "Agencies" shall mean both the U.S. EPA and the IEPA.

VI.

Site

For the purposes of this Agreement, the site is defined as the approximately thirty-six (36) square mile area of the Joliet Army

Ammunition Plant (hereafter referred to as the Site). The Site is divided by Illinois State Highway 53 into two areas, the Load/ Assemble/Pack (LAP) area and the Manufacturing area, and is located approximately 10 miles south of the city of Joliet. The legal description of the site is: T33N, R9E, Sections 1, 2, 3, 10, 11, 12, 13, 14, 15; T33N, R10E, Sections 1 through 18; T33N, R11E, Section 6; T34N, R9E, Sections 23, 24, 25, 26, 34, 35, 36; T34N, R10E, Sections 19 and 30 through 36; T34N, R11E, Section 31, Will County, Illinois.

VII.

Purpose

A. The general purposes of this Agreement are to:

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

(2) establish a procedural framework and schedule for developing, implementing and monitoring appropriate response actions at the JAAP in accordance with CERCLA/SARA, the NCP, Superfund guidance and policy, RCRA, RCRA guidance and policy; and

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

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

(1) Identify Operable Unit (OU) alternatives which are appropriate at the Site prior to the implementation of final remedial action(s) for the Site. OU alternatives shall be identified and proposed to the Parties as early as possible prior to formal proposal

of OUs to U.S. EPA and IEPA pursuant to CERCLA/SARA. This process is designed to promote cooperation among the Parties in identifying OU alternatives prior to selection of final OUs.

(2) Establish requirements for the performance of an RI at the JAAP, to determine the acceptability of previously performed investigative work, ongoing RI activities (manufacturing area) and any additional work necessary to fully characterize 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 JAAP, and to establish requirements for the performance of a FS at the JAAP to identify, evaluate, and select alternatives for the appropriate remedial action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants or contaminants at the Site in accordance with CERCLA/SARA.

(3) 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 clean-up of hazardous substances, pollutants or contaminants mandated by CERCLA/SARA.

(4) Implement the selected operable unit and final remedial action(s) in accordance with CERCLA, and meet the requirements of Section 120(e)(2) of CERCLA for an Interagency Agreement between the U.S. EPA, IEPA, and the Army.

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

(6) Coordinate response actions at the site with the mission and support activities at the JAAP.

(7) Expedite the cleanup process (i.e. shortening the time frames specified in this Agreement, whenever possible) to the extent consistent with protection of human health and the environment.

(8) Provide IEPA involvement in the initiation, development, selection and implementation of remedial actions to be undertaken at JAAP, including the review of all applicable data as it becomes available and development of studies, reports, and action plans; and to identify and integrate State ARARs into the remedial action process.

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

VIII.

Scope of Agreement

Under this Agreement, the U.S. Army agrees it shall:

1. Conduct Operable Units (OUs) as described in Part IX of this Agreement.
2. Conduct a Remedial Investigation (RI) at the Site as described in Part X of this Agreement.
3. Conduct a Feasibility Study (FS) at the Site including all acceptable RI work currently available and any additional work which is contemplated in this Agreement.
4. Develop remedial action alternative(s) for the Site and implement those remedial actions required by this Agreement for the site as described in Part XII to this Agreement.

5. Provide a schedule for the completion of each such remedial action.

6. Provide arrangements for long term operation and maintenance of the facility.

IX.

Operable Units

The Army agrees that it shall develop the operable units (OU) necessary to protect the public health or welfare or the environment and develop OU monitoring plans, and after consultation with U.S. EPA and IEPA, publish its proposed operable unit alternative(s) for public review and comment. Following public comment, the Army shall select and submit its proposed operable unit alternative(s) to U.S. EPA and IEPA. The U.S. EPA Administrator, in consultation with the Army and IEPA, shall have final approval authority over the selected operable unit alternative(s) for the Site. The approval of the operable unit(s) alternative(s) shall be subject to the terms of Sections XIV and XV of this Agreement. Following final approval by U.S. EPA, the Army shall design, propose and submit a workplan for implementation of the selected operable unit, including appropriate timetables and schedules, to U.S. EPA and IEPA. Following EPA and IEPA approval of the workplan, the Army shall implement the operable unit(s) in accordance with the requirements and time schedules set forth in this Agreement. All operable unit actions shall be undertaken in accordance with 40 CFR Part 300.68 and with the requirements of CERCLA/SARA.

All Submittals and elements of work undertaken pursuant to this Part shall be performed in accordance with the requirements and time

schedules set forth in this Agreement. The OUs shall meet the purposes set forth in Part VII of this Agreement.

X.

Remedial Investigation

The Army agrees it shall develop, implement and report upon a RI of the JAAP which may include information collected prior to the effective date of this Agreement and which is in accordance with the requirements and time schedules set forth in this Agreement. The RI shall meet the purposes set forth in Part VII of this Agreement. The Parties specifically agree that all criteria contained in Attachment 3 of this Agreement (as is defined by the list of deliverables in Part XIV of this Agreement) relate solely to the scope of the RI and do not reflect a predetermination of the Site clean-up level criteria. The parties further agree that final Site clean-up level criteria will only be determined following completion of the Site-wide Endangerment Assessment.

XI.

Feasibility Study

The Army agrees it shall design, propose, undertake and report upon a FS for the Site which is in accordance with the requirements and time schedules set forth in this Agreement. The FS shall meet the purposes set forth in Part VII of this Agreement.

XII.

Remedial Action Selection and Implementation

Following completion of the RI and the FS, the U.S. Army shall, after consultation with U.S. EPA and IEPA, publish its proposed

remedial action alternative(s) for public review and comment. Following public comment, the Army shall submit its proposed remedial action alternative(s) to U.S. EPA and IEPA. The U.S. EPA Administrator, in consultation with the Army and IEPA, shall make final selection of the remedial action(s) for the Site. The selection of the remedial action(s) shall be subject to the terms of Sections XIV and XV of this Agreement. Following final selection by U.S. EPA, the Army shall design, propose and submit a plan for implementation of the selected remedial action, including appropriate timetables and schedules, to U.S. EPA and IEPA for concurrence. Following U.S. EPA and IEPA concurrence, the Army shall implement the remedial action(s) in accordance with the requirements and time schedules set forth in Attachment 3 to this Agreement. The purpose of the plan for remedial action is to establish procedures for implementation of selected response actions.

XIII.

Statutory Compliance/RCRA-CERCLA Integration

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

Section 6928(h), for interim status facilities; and to meet or exceed all applicable or relevant and appropriate Federal and State laws and regulations, to the extent required by Section 121 of CERCLA, 42 U.S.C. Section 9621.

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

C. The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties further recognize that on-going hazardous waste management activities at the JAAP may require the issuance of permits (e.g. RCRA Facility Operating Permits) under Federal and State laws. This Agreement does not affect the requirements, if any, to obtain such permits. However, if a permit is issued to the Army for on-going hazardous waste management activities at the Site, U.S. EPA and/or IEPA, subject to the public notice, comment and hearing requirements provided for under State and Federal law, shall reference and incorporate any appropriate provisions, including appropriate schedules (and the provision for extension of

such schedules), of this Agreement into such permit. The Parties intend that the judicial review of any permit conditions which reference this Agreement shall, to the extent authorized by law, only be reviewed under the provisions of CERCLA.

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

XIV.

Consultation with U.S. EPA and IEPA

A. Applicability:

The provisions of this Part establish the procedures that shall be used by the Army, U.S. EPA, and IEPA, to provide the Parties with appropriate notice, review, comment, and response to comments regarding RI/FS and RD/RA documents, specified herein as either primary or secondary documents. In accordance with Section 120 of CERCLA and 10 U.S.C. Section 2705, the Army will normally be responsible for issuing primary and secondary documents to U.S. EPA and IEPA. As of the effective date of this Agreement, all draft and final reports for any deliverable document identified herein shall be prepared, distributed and subject to dispute in accordance with paragraphs B through J below. U.S. EPA and IEPA will review all documents in their possession (as listed in this Section) in order to determine the adequacy of the work performed and whether any additional work is necessary. Review by U.S. EPA and IEPA shall be completed and notification provided to the Army within 30 days following the effective date of this Agreement.

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

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

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

2. Secondary documents include those reports that are discrete portions of the primary documents and are typically input or feeder documents. Secondary documents are issued by the Army in draft form, subject to review and comment by U.S. EPA and IEPA. Although the Army will respond to comments received, the draft secondary documents may be finalized in the context of the corresponding primary documents. A secondary document may be disputed at the time the corresponding draft final primary document is issued.

C. Primary Reports:

1. The Army shall complete and transmit draft reports for the following primary documents to U.S. EPA and IEPA for review and comment in accordance with the provisions of this Part:

MANUFACTURING AREA	LAP AREA
1. Public Involvement and Response Plan*	1. Public Involvement and Response Plan*
2. Technical Plan/RI Sampling Plan*	2. Statement of Work/ Technical Plan
3. Quality Assurance Project Plan/ Health and Safety Plan*	3. Quality Assurance Project Plan/Health and Safety Plan/Field Sampling Plan
4. Scope of Work/FS Sampling Plan/ QAPP/HSP	4. Endangerment Assessment
5. Endangerment Assessment	5. RI Report
6. RI Report	6. FS Report
7. FS Report	7. Proposed Plan
8. Proposed Plan	8. Final Plan
9. Final Plan	9. Remedial Design/Remedial Action Workplan
10. Remedial Design/Remedial Action Workplan	10. Compliance with Substantive Permit Requirements (CERCLA Section 121)
11. Compliance with Substantive Permit Requirements (CERCLA Section 121)	

(*) Documents already submitted to the U.S. EPA and IEPA which have not undergone technical review at this time.

2. Only the draft final reports for the primary documents identified above shall be subject to dispute resolution. The Army shall complete and transmit draft primary documents in accordance with

the timetable and deadlines established in Part XXXV of this Agreement.

D. Secondary Documents:

1. The Army shall complete and transmit draft reports for the following secondary documents to U.S. EPA and IEPA for review and comment in accordance with the provisions of this Part:

MANUFACTURING AREA	IAP AREA
1. Site Characterization Summary	1. Initial Data Quality Objectives
2. Initial Screening of Alternatives/ Petition for ARARs	2. Site Characterization Summary
3. Initial Remedial Action Objectives	3. Initial Screening of Alternatives/Petition for ARARs
4. Detailed Analysis of Alternatives	4. Initial Remedial Action Objectives
5. Sampling and Data Results	5. Detailed Analysis of Alternatives
	6. Sampling and Data Results

2. Although U.S. EPA and IEPA may comment on the draft reports for the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by paragraph B hereof. Target dates shall be established for the completion and transmission of draft secondary reports pursuant to Part XXXV of this Agreement.

E. Meetings of Project Managers on Development of Reports:

The Project Managers shall meet approximately every ninety (90) days, except as otherwise agreed to by the Parties, to review and discuss the progress of work being performed at the site on the primary and secondary documents. Prior to preparing any draft report specified

in Paragraphs C and D above, the Project Managers shall meet to discuss the reports results in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft report.

F. Identification and Determination of Potential ARARs:

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

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

G. Review and Comment on Draft Reports:

1. The Army shall complete and transmit each draft primary

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

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

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

Oral comments made during such discussions need not be the subject of a written response by the Army on the close of the comment period.

4. In commenting on a draft report which contains a proposed ARAR determination, U.S. EPA and IEPA shall include a reasoned statement of whether they object to any portion of the proposed ARAR determination. To the extent that either Agency does object, each shall explain the basis for their objection in detail and shall identify any ARARs they believe were not properly addressed in the proposed ARAR determination.

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

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

H. Availability of Dispute Resolution for Draft Final Primary Documents

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

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

I. Finalization of Reports:

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

J. Subsequent Modification of Final Reports:

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

1. U.S. EPA, IEPA or the Army may seek to modify a report after finalization if it determines, based on new information (i.e., information that became available, or conditions that became known,

after the report was finalized) that the requested modification is necessary. U.S. EPA, IEPA or the Army may seek such a modification by submitting a concise written request to the Project Manager of the other Parties. The request shall specify the nature of the requested modification and how the request is based on new information.

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

3. Nothing in this Subpart shall alter U.S. EPA's or IEPA's ability to request the performance of additional work which was not contemplated by this Agreement. The Army's obligation to perform such work must be established by either a modification of a report or document or by amendment to this Agreement.

XV.

Resolution of Disputes

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

All Parties to this Agreement shall make reasonable efforts

to informally resolve all disputes at the Project Manager or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this Part shall be implemented to resolve a dispute.

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

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

C. The DRC will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (Senior Executive Service (SES) or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The U.S. EPA representative on the DRC is the Waste Management Division Director of U.S. EPA's Region V. The Army's designated member is the

Commander, JAAP. The IEPA representative on the DRC is the Deputy Division Manager of the Division of Land Pollution Control. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Part XVII.

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

E. The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The U.S. EPA representative on the SEC is the Regional Administrator of the U.S. EPA's Region V. The Army's representative on the SEC is the Deputy Assistant Secretary of the Army for Environment, Safety and Occupational Health. The IEPA representative on the SEC is the Director of the IEPA. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision signed by all committee members. If unanimous resolution of the dispute is not reached within twenty-one (21) days, U.S. EPA's Regional Administrator shall issue a written position on the dispute. The Army or IEPA may, within twenty-one (21) days of the Regional Administrator's issuance of U.S. 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. Any party electing not to elevate the dispute to the Administrator within the designated twenty-one (21) day escalation period, shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.

F. Upon escalation of a dispute to the Administrator of U.S. EPA pursuant to Subpart E, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the U.S. EPA Administrator shall meet and confer with the Army's Secretariat Representative and/or IEPA to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the Army and IEPA with a written final decision setting forth resolution of the dispute. The duties of the Administrator set forth in this Part shall not be delegated.

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

H. When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Hazardous Waste Division Director for U.S. EPA Region V requests, in writing, that work

related to the dispute be stopped because, in U.S. EPA's and IEPA's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. To the extent possible, U.S. EPA and IEPA shall consult with the Army prior to initiating a work stoppage request. After stoppage of work, if the Army believes that the work stoppage is inappropriate or may have potential significant adverse impacts, the Army may meet with the U.S. EPA Division Director and the IEPA Deputy Division Manager to discuss the work stoppage. Following this meeting, and further consideration of the issues, the U.S. 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 Division Director may immediately be subject to formal dispute resolution. Such dispute may be brought directly to the SEC, at the discretion of the Army.

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

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

XVI.

Reporting

The Army agrees it shall submit to the U.S. EPA and IEPA monthly written progress reports which describe the actions which the Army has taken during the previous month to implement the requirements of this Agreement. Progress reports shall also describe the activities scheduled to be taken during the upcoming month. Progress reports shall be submitted by the thirtieth (30) day of each month following the effective date of this Agreement. The progress reports shall include a statement of the manner and extent to which the requirements and time schedules set out in the attachments to this Agreement are being met as well as identify any anticipated delays in meeting time schedules, the reason(s) for the delay and actions taken to prevent or mitigate the delay. (See Attachment 2 for monthly reporting format).

XVII.

Notification

A. Unless otherwise specified, any report or Submittal provided pursuant to a schedule or deadline identified in or developed under this Agreement shall be sent by next day mail and addressed or hand delivered to:

U.S. Environmental Protection Agency, Region V
Attn: JAAP Project Manager (IL/IN Unit), 5HS-11
230 South Dearborn Street
Chicago, Illinois 60604

Illinois Environmental Protection Agency
Attn: JAAP Project Manager
Division of Land Pollution Control
Federal Sites Management Unit
2200 Churchill Road
P.O. Box 19276
Springfield, Il 62794-9276

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

Commander
Joliet Army Ammunition Plant
Joliet, Illinois 60436-5000

All routine correspondences may be sent via regular mail to the above-named person.

XVIII.

Project Managers and Committees

The U.S. EPA, IEPA, and the Army shall each designate a Project Manager and Alternate (hereinafter jointly referred to as Project Manager) for the purpose of overseeing the implementation of this Agreement. Within ten (10) days of the effective date of this Agreement, the Parties shall notify each other of the name and address of its respective Project Manager. Any Party may change its designated Project Manager by notifying the other Parties, in writing, within five days of the change. To the maximum extent possible, communications between the Parties concerning the terms and conditions of this Agreement shall be directed through the Project Managers as set forth in Part XVII of this Agreement. Each Project Manager shall be responsible for assuring that all communications from the other Project Managers are appropriately disseminated and processed by the entities which the Project Managers represent.

Subject to the limitations set forth in Part XXI, Subpart A, the U.S. EPA and IEPA Project Managers shall have the authority to:

(1) take samples, request split samples of Army samples and ensure that work is performed properly pursuant to the Attachments incorporated into this Agreement; (2) observe all activities performed pursuant to this Agreement, take photographs and make such other reports on the progress of the work as the Project Manager deems appropriate; and (3) review records, files and documents relevant to this Agreement; and (4) direct the Army Project Manager to stop work whenever the U.S. EPA or IEPA Project Manager determines, after discussion with the Army Project Manager, that activity(s) under this Agreement at the site may create a present danger to public health or welfare or the environment. U.S. EPA or IEPA shall, within 24 hours of directing a work stoppage, present the reasons therefor, in writing, to the Army. Within 72 hours of a written request by the Army for review of any directed work stoppage, the U.S. EPA Division Director or the IEPA Deputy Division Manager shall determine, in writing, whether continued work stoppage is necessary to protect public health, welfare, and the environment and possible measures to abate or mitigate the danger. In addition, any Project Manager may recommend and request field modifications to the work to be performed pursuant to this Agreement, or in techniques, procedures or design utilized in carrying out this Agreement, which are necessary to the completion of the project. Any field modifications proposed under this Part by any Party must be approved orally by all Project Managers to be effective. If agreement cannot be reached on the proposed additional work or modification to work, dispute resolution as set forth in Part XV may be used in addition to this Part. Within five (5) business days after

oral agreement regarding a modification made pursuant to this Part, the Project Manager who requested the modification shall prepare a memorandum detailing the modification and the reasons therefore and shall provide or mail a copy of the memorandum to the other Project Managers. The Army Project Manager or authorized representative shall be reasonably available to supervise work performed at JAAP during implementation of the work performed pursuant to this Agreement. Each Project Manager shall make him or herself available to the other Project Managers for the pendency of this Agreement. The absence of the U.S. EPA and/or IEPA Project Manager from the Site shall not be cause for work stoppage.

XIX.

Sampling and Data/Document Availability

The Parties shall make available to each other quality assured results of sampling, tests or other data generated by any Party, or on their behalf, with respect to the implementation of this Agreement within forty-five (45) days of their collection or performance. If quality assurance is not completed within forty-five (45) days, raw data or results shall be submitted within the forty-five (45) day period and quality assured data or results shall be submitted as soon as they become available. If 45 days is inadequate, this deadline can be extended for a period of time necessary for the data to become available, by agreement of all of the Parties.

At the request of the U.S. EPA or IEPA Project Manager, the Army shall allow split or duplicate samples to be taken by the requesting

Agency during sample collection conducted during the implementation of this Agreement. The Army's Project Manager shall endeavor to notify the U.S. EPA and IEPA Project Managers not less than ten (10) business days in advance of any sample collection.

XX.

Retention of Records

The federal Parties to this Agreement shall preserve for a minimum of ten (10) years after termination of this Agreement all of its records and documents in its possession or in the possession of its divisions, employees, agents, accountants, contractors or attorneys which relate in any way to the presence of hazardous substances, pollutants and contaminants at the Site or to the implementation of this Agreement, despite any document retention policy to the contrary. After this ten (10) year period, each federal Party shall notify the other parties at least forty-five (45) days prior to destruction or disposal of any such documents or records. Upon request, the requested Party shall make available such records or documents or copies of any such records or documents or the requesting Party. The IEPA will follow Illinois regulations with respect to retention of records.

XXI.

Access

A. Without limitation on any authority conferred on U.S. EPA or IEPA by statute or regulation, the U.S. EPA, IEPA, and/or their authorized representatives, shall have the authority to enter JAAP at all reasonable times for purposes consistent with this Agreement, subject to statutory and regulatory requirements as may be necessary to

protect national security. Such authority shall include, but not be limited to: (1) inspecting records, operating logs, contracts and other documents relevant to implementation of this Agreement; (2) reviewing the progress of the Army, its contractors or lessees in implementing this Agreement; (3) conducting such tests as the U.S. EPA or IEPA Project Manager deem necessary; and (4) verifying the data submitted to the Agencies by the Army. The Army shall honor all reasonable requests for such access by the U.S. EPA and IEPA conditioned only upon presentation of proper credentials. The Army shall provide an escort whenever U.S. EPA and IEPA require access to restricted areas for purposes consistent with the provisions of this Agreement. U.S. EPA and IEPA shall provide reasonable notice to the Army project manager to request any escorts. U.S. EPA, IEPA and/or their authorized representatives shall not use any camera, sound recording, or other electronic recording devices without permission of the JAAP project manager. However, JAAP shall not unreasonably withhold such permission. When permission must be withheld the Army shall be responsible for alternate arrangements for any work utilizing a camera, sound recording, or other electronic device, if feasible. The Army shall provide, within 48 hours of withholding permission, written explanation of the reasons why alternative arrangements are not feasible.

B. To the extent that access is required to areas of the Site presently owned by or leased to parties other than the Army, the Army agrees to exercise its authorities to obtain access pursuant to Section 104(e) of CERCLA/SARA from the present owners or lessees within thirty

(30) calendar days after the need for such access is identified by any of the Parties. Any access agreement obtained by the Army shall provide for reasonable access by U.S. EPA, IEPA and/or their authorized representatives. To the extent that activities pursuant to this Agreement must be carried out on other than Army property, the Army shall notify U.S. EPA and IEPA of such necessity within the 30 day period set forth above. The Army shall use its best efforts to obtain access agreements from the property owners and/or lessors or lessees which shall provide reasonable access to U.S. EPA, IEPA and/or their authorized representatives. The access agreements shall also provide that the owners of any property where monitoring wells, pumping wells, treatment facilities or other response actions may be located shall notify the Army, IEPA, and the U.S. EPA by certified mail, return receipt requested, at least thirty (30) days prior to any conveyance, of the property owners intent to convey any interest in the property and of the provisions made for the continued operation of the monitoring wells, treatment facilities, or other response actions installed pursuant to this Agreement. In the event that the Army is unable to obtain such access agreements, the Army shall notify U.S. EPA and IEPA, within the 30 day period set forth above, regarding both the lack of agreements and the efforts to obtain such access agreements.

XXII.

Five Year Review

Consistent with Section 121(c) of CERCLA/SARA, and in accordance with this Agreement, the Army agrees that U.S. EPA and IEPA will review the remedial action no less often than each five years after the

initiation of the final remedial action to assure that human health and the environment are being protected by the remedial action being implemented. If, upon such review, it is the judgment of U.S. EPA, with concurrence of IEPA, that additional action or modification of the remedial action is appropriate in accordance with Section 104 or 106 of CERCLA/SARA, the U.S. EPA shall require the Army to implement such additional or modified action in accordance with Section XIV.J. of this Agreement.

Any dispute by the Army of the determination by U.S. EPA under this Part shall be resolved under Part XV of this Agreement.

XXIII

Other Claims

Nothing in this Agreement shall constitute or be construed as a bar or 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 wastes, pollutants, or contaminants found at, taken to, or taken from the JAAP.

Neither the U.S. EPA or IEPA shall be held as a party to any contract entered into by the Army to implement the requirements of this Agreement.

Subject to part XIII (Statutory Compliance), this Agreement shall not restrict U.S. EPA or IEPA from taking any legal or response action

for any matter not specifically part of the work covered by this Agreement.

XXIV.

Other Applicable Laws

All actions required to be taken pursuant to this Agreement shall be undertaken in accordance with the requirements of all applicable state and federal laws and regulations to the extent required by CERCLA/SARA.

XXV.

Confidential Information

The Army may assert a confidentiality claim covering all or part of the information requested by this Agreement. Analytical data shall not be claimed as confidential by the Army. Information determined to be confidential by U.S. EPA pursuant to 40 CFR Part 2 shall be afforded the protection specified therein. If no claim of confidentiality accompanies the information when it is submitted to the Agencies, the information may be made available to the public without further notice to the Army.

XXVI

Amendment of Agreement

This Agreement can be amended or modified solely upon written consent of all Parties. Such amendments or modifications shall have as the effective date that date on which they are signed by all Parties and notice thereof is provided to each signatory pursuant to Section XVII of this Agreement.

XXVII.

Reservation of Rights

In consideration for the Army's compliance with this Agreement, and based on the information known to the Parties on the effective date of this Agreement, the U.S. EPA and IEPA agree that compliance with this Agreement shall stand in lieu of any administrative, legal and equitable remedies against the Army available to them regarding the currently known release or threatened release of hazardous substances including hazardous wastes, pollutants or contaminants at the Site which are the subject of the RI/FS and which will be addressed by the remedial action provided for under this Agreement; except that nothing in this Agreement shall preclude the U.S. EPA or IEPA from exercising any administrative, legal and equitable remedies available to them to require additional response actions by the Army in the event that: (1) conditions previously unknown or undetected by U.S. EPA or IEPA arise or are discovered at the Site; or (2) U.S. EPA or IEPA receives additional information not previously available concerning the premises which they employed in reaching this Agreement, and the implementation of the requirements of this Agreement are no longer protective of public health and the environment.

Notwithstanding this Part, or any Part of this Agreement, the State of Illinois may obtain judicial review of any final decision of the U.S. EPA on selection of an operable unit or final remedial action, and may invoke its authority under CERCLA/SARA Sections 121(e)(2) and 121(f).

XXVIII.

Enforceability

A. The Parties agree:

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

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

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

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

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

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

XXIX.

Stipulated Penalties

A. In the event that the Army fails to submit a primary document (as defined in Section XIV of this Agreement) to U.S. EPA and IEPA, pursuant to the appropriate timetable or deadline in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement which relates to an operable unit or final remedial action, U.S. EPA may assess or U.S. EPA and IEPA may jointly assess a stipulated penalty against the Army. A stipulated penalty may be assessed in an amount not to exceed $5,000 for the first week (or part thereof), and $10,000 for each additional week (or part thereof) for which a failure set forth in this paragraph occurs.

B. Upon determining that the Army has failed in a manner set forth in Paragraph A, U.S. EPA shall so notify the Army in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the Army shall have fifteen (15) days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. The Army shall not be liable for the stipulated penalty assessed by U.S. EPA or jointly assessed by U.S. EPA and IEPA if the failure is determined, through the

dispute resolution process, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.

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

1. The facility responsible for the failure;
2. A statement of the facts and circumstances giving rise to the failure;
3. A statement of an administrative or other corrective action taken at the relevant facility, or a statement of why such measures were determined to be inappropriate;
4. A statement of any additional action taken by or at the facility to prevent recurrence of the same type of failure; and
5. The total dollar amount of the stipulated penalty assessed for the particular failure.

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

E. Payments made pursuant to Subpart D shall be made to the order of the Hazardous Substance Response Trust Fund and forwarded to the U.S. EPA, Superfund Accounting, P.O. Box 371003M, Pittsburgh, Pennsylvania 15251, Attn: Superfund Collection Office. Copies of all

payments to the U.S. EPA shall be provided to the U.S. EPA Project Manager.

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

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

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

XXX.

Conveyance of Title

No conveyance of title, easement, or other interest in the Army property on which any containment system, treatment system, monitoring system or other response action(s) is installed or implemented pursuant to this Agreement shall be consummated by the Army without provision for continued maintenance of any such system or other response action(s). No conveyance of title, easement, or other interest in the Army property shall occur without meeting the requirements of Section 120(h) of CERCLA/SARA and/or regulations issued thereunder. At least thirty (30) days prior to any conveyance, the Army shall notify U.S. EPA and IEPA of the provisions made for the continued operation and maintenance of any response action(s) or system installed or implemented pursuant to this Agreement. U.S. EPA and IEPA will review any such proposed conveyance with regard to any effect it may have on the Remedial

Investigation and its potential impact on any operable unit or final remedial action. EPA or IEPA review does not imply any authority to restrict property conveyance.

XXXI.

Public Participation

A. The Parties agree that this Agreement and any subsequent proposed remedial action alternative(s) and subsequent plan(s) for remedial action at the Site arising out of this Agreement shall comply with the administrative record and public participation requirements of CERCLA/SARA, including Section 117 of CERCLA/SARA, the NCP, and U.S. EPA guidance on public participation and administrative records.

B. The Army shall develop and implement a Public Involvement and Response Plan (PIRP) which responds to the need for an interactive relationship with all interested community elements, both on JAAP and off, regarding activities and elements of work undertaken by the Army. The Army agrees to develop and implement the PIRP in a manner consistent with Section 117 of CERCLA/SARA, the NCP, U.S. EPA guidelines set forth in U.S. EPA's Community Relations Handbook, and any modifications thereto.

C. The public participation requirements of this Agreement shall be implemented so as to meet the public participation requirements applicable to RCRA permits under 40 CFR Part 124 and Section 7004 of RCRA.

D. Any Party issuing a formal press release to the media regarding any of the work required by this Agreement shall

advise the other Parties of such press release and the contents thereof, at least 2 business days before the issuance of such press release and of any subsequent changes prior to release.

E. The Army agrees it shall establish and maintain an administrative record at or near JAAP in accordance with Section 113(k) of CERCLA/SARA. The administrative record shall be established and maintained in accordance with current and future U.S. EPA policy and guidelines. A copy of each document placed in the administrative record will be provided to the U.S. EPA and the IEPA. The administrative record index developed by the U.S. Army shall be updated and supplied to U.S. EPA and IEPA on at least a quarterly basis.

F. The Army agrees it shall follow the public participation requirements of CERCLA/SARA Section 113(k) and comply with any guidance and/or regulations issued by U.S. EPA with respect to such Section.

XXXII.

Public Comment

A. Within fifteen (15) days of the date of the signature of the last Party to sign this Agreement, U.S. EPA shall announce the availability of this Agreement to the public for review and comment. U.S. EPA shall accept comments from the public for a period of forty-five (45) days after such announcement. At the end of the comment period, U.S. EPA shall transmit to the other Parties all comments received during the comment period. All Parties shall review these comments and:

(1) Determine that the Agreement should be made effective in

its present form, in which case the Army and IEPA shall be so notified in writing by U.S. EPA, and the Agreement shall become effective on the date said notice is received; or

(2) Determine that modification of the Agreement is necessary, in which case the Army and IEPA will be forwarded a revised Agreement by the U.S. EPA, which includes all required changes to the Agreement.

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

C. In the event that modification of the Agreement is determined by U.S. EPA or IEPA to be necessary pursuant to Subpart A(2) above, within twenty (20) days of receipt of the revised Agreement, the Army reserves the right to withdraw from the Agreement. If the Army does not provide U.S. EPA or IEPA with written notice of withdrawal from the Agreement within such twenty (20) day period, the Agreement, as modified, shall automatically become effective on the twenty-first (21) day, and U.S. EPA shall issue a notice to the Parties which specifies what the effective date for the IAG will be.

XXXIII.

Termination

The provisions of this Agreement shall be deemed satisfied upon the receipt of written notice from the U.S. EPA, with concurrence of IEPA, that the Army has demonstrated, to the satisfaction of U.S. EPA and IEPA, that all of the terms of this Agreement have been completed.

Upon such demonstration by the Army, said written notice shall not be unreasonably withheld or delayed.

XXXIV.

Effective Date

This Agreement is effective upon issuance of a notice to the Parties by U.S. EPA following implementation of Part XXXII of this Agreement. The effective date shall be the date upon which the notice is received by the Parties.

XXXV.

Deadlines

A. The following deadlines have been established, pursuant to the statutory requirements of Section 120(e)(1) of CERCLA/SARA and in conjunction with the State, for the submittal of draft primary documents pursuant to this Agreement:

B. Within twenty-one (21) days of the effective date of this Agreement, the Army shall propose deadlines for completion of the draft primary documents, listed in Section XIV.C.

Within fifteen (15) days of receipt, U.S. EPA and IEPA, shall review and provide joint comments to the Army regarding the proposed deadlines. Within fifteen (15) days following receipt of the comments, the Army shall, as appropriate, make revisions and reissue the proposal. The Parties shall meet as necessary to discuss and finalize the proposed deadlines. If the Parties agree on proposed deadlines, the finalized deadlines shall be incorporated into the appropriate Work Plans. If the Parties fail to agree within thirty (30) days of receipt of Army revisions on the proposed deadlines, the

matter shall immediately be submitted for dispute resolution pursuant to Part XV of this Agreement.

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

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

10. Remedial Design/Remedial Action Work Plan

11. Compliance with Substantive Permit Requirements (CERCLA Section 121)

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

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

XXXVI.

Extensions

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

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

2. The length of the extension sought;

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

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

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

1. An event of force majeure;

2. A delay caused by another party's failure to meet any requirement of this Agreement;

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

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

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

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

D. Within seven days of receipt of a request for an extension of a timetable and deadline or a schedule, U.S. EPA, with the concurrence of IEPA, shall advise the Army in writing of the Agencies' position on the request. Any failure by U.S. EPA to respond within the 7-day period shall be deemed to constitute concurrence in the request for extension. If either Agency does not concur in the requested extension, the U.S. EPA shall include in its statement of nonconcurrence an explanation of the basis for the position.

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

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

G. A timely and good faith request for an extension shall suspend any assessment of stipulated penalties or application for judicial enforcement of the affected timetable and deadline 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.

XXXVII.

Force Majeure

A Force Majeure shall mean any event arising from causes beyond the control of a Party that causes a delay in or prevents the performance of any obligation under this Agreement, including, but not limited to, acts of God; fire; war; insurrection; civil disturbance;

explosion; unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance; adverse weather conditions that could not be reasonably anticipated; unusual delay in transportation; restraint by court order or order of public authority; inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority other than the Army; delays caused by compliance with applicable statues or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; and insufficient availability of appropriated funds, if the Army shall have made timely request for such funds as part of the budgetary process as set forth in Part XXXVIII of this Agreement. A Force Majeure shall also include any strike or other labor dispute, whether or not within the control of the Parties affected thereby. Force Majeure shall not include increased costs or expenses of Response Actions, whether or not anticipated at the time such Response Actions were initiated.

XXXVIII.

Funding

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

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

Section 9620(e)(5)(B), the Army shall include in its annual report to Congress the specific cost estimates and budgetary proposals associated with the implementation of this Agreement.

C. Any requirement for the payment or obligation of funds, including stipulated penalties and cost reimbursement, by the Army established by the terms of this Agreement shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. 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 appropriately adjusted.

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

E. Funds authorized and appropriated annually by Congress under the "Environmental Restoration, Defense" appropriation in the Department of Defense Appropriation Act and allocated by the Deputy Assistant Secretary of Defense, Environment ((DASD)(E)) to the Army will be the source of funds for obligations established by this Agreement consistent with Section 211 of CERCLA/SARA, 10 U.S.C. Chapter 160. However, should the Environmental Restoration, Defense appropriation be inadequate in any year to meet the total Army CERCLA implementation requirements, the DOD shall employ and the Army shall follow a standardized DOD prioritization process which allocates that

year's appropriations in a manner which maximizes the protection of human health and the environment. A standardized DOD prioritization model shall be developed and utilized with the assistance of U.S. EPA and the states.

XXXIX.

Permits

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

When the Army proposes a response action to be conducted entirely on the JAAP, which in the absence of Section 121(e)(1) of CERCLA/SARA and the NCP would require a federal or state permit, the Army shall include in its submittal to U.S. EPA and IEPA:

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

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

(3) Explanation of how the response action proposed will meet the standards, requirements, criteria or limitations identified in (2) immediately above.

U.S. EPA and IEPA will provide review and comment of this submittal in accordance with Part XIV provisions for primary documents.

B. Subpart A above is not intended to relieve the Army from the requirement(s) of obtaining a permit whenever it proposes a response action involving the shipment or movement off the JAAP of a hazardous substance.

C. The Army shall notify the U.S. EPA and IEPA in writing of any permits required for off JAAP activities as soon as it becomes aware of the requirements. Upon request, the Army shall provide the U.S. EPA and IEPA copies of all such permit applications and other documents related to the permit process.

XXXX.

Removals

Notwithstanding any other provision of this Agreement, the Army retains the right, consistent with Executive Order 12580 and 10 U.S.C. Section 2705, to conduct a removal action to abate an imminent and substantial endangerment to human health or the environment from the release or threat of release of hazardous constituents, hazardous substances, pollutants or contaminants at or from JAAP. Such actions may be conducted at any time, either before or after the issuance of a ROD.

The Army shall provide the U.S. EPA and the IEPA with adequate opportunity for timely review and comment after the Army makes any proposal to carry out such removal actions and before the Army initiates any such removal action. This opportunity for review and comment shall not apply if the removal action is in the nature of an emergency action taken because of imminent and substantial endangerment to human health or the environment and it is the determination of the

Army that consultation would be impractical. In such case, the Army shall notify the U.S. EPA and the IEPA in writing within 48 hours of taking such action.

XXXXI.

Quality Assurance

The Army shall use quality assurance, quality control, and chain of custody procedures throughout all field investigation, sample collection and laboratory analysis activities. The Army shall develop an operable unit or element specific Quality Assurance Project Plan (QAPP), as necessary, for review, comment and approval by U.S. EPA. The QAPP shall be prepared in accordance with EPA document QAMS-005/80 and applicable guidance as developed and provided by U.S. EPA.

In order to prove quality assurance and maintain quality control regarding all samples collected pursuant to this Agreement, the Army shall submit all protocols to be used for sampling and analysis to U.S. EPA and IEPA for review, comment and approval. The Army shall also ensure that any laboratory used for analysis is a participant in a quality assurance/quality control program consistent with EPA guidance and that selection of such laboratory shall be subject to U.S. EPA approval.

The Army shall also ensure that appropriate EPA and IEPA personnel or their authorized representatives will be allowed access to any laboratory used by the Army in implementing this Agreement. Such access shall be for the purpose of validating sample analyses, protocols and procedures required by the Remedial Investigation and Quality Assurance Project Plan.

XXXXII.

Reservation of Rights-Recovery of Federal Expenses

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

XXXXIII.

State Cost Reimbursement

A. JAAP, pursuant to its authority under 10 U.S.C. 2701(d), agrees to request funding from Congress and to reimburse IEPA for the costs related to the implementation of the Agreement as provided for in this Section.

B. The amount of reimbursable costs payable under this Agreement shall not exceed $65,000 per year for the first two years of the Agreement.

C. Prior to the end of the second year, the amount of reimbursable costs for the subsequent years shall be renegotiated in accordance with any then existing agreement on the subject between DOD and the State of Illinois.

D. If no such agreement has been reached between DOD and the State, JAAP and IEPA agree to negotiate in good faith a cap for future reimbursable costs. If JAAP and IEPA are unable to reach agreement after such negotiations, they shall refer any unresolved issues to dispute resolution as set forth in this Section.

E. Nothing in this Agreement constitutes a waiver of any claims by IEPA for costs expended prior to the effective date of this Agreement.

F. Reimbursable costs shall consist only of expenditures required to be made and actually made by IEPA to fulfill its participation under this IAG. Such services shall include:

1. Timely technical review and substantive comment on reports or studies which JAAP prepares in support of its response actions and submits to the State.

2. Identification and explanation of unique State requirements applicable to military installations in performing response actions, especially State applicable or relevant and appropriate requirements (ARARs).

3. Field inspections to ensure cleanup activities are implemented in accordance with agreed upon conditions between the State and the Army.

4. Support and assistance to JAAP in the conduct of public participation activities in accordance with Federal and State requirements for public involvement.

5. Participation in the review and comment functions of JAAP's Technical Review Committee (TRC).

6. Other services specified in this Agreement, or as agreed to by JAAP and IEPA.

G. All reimbursable costs are subject to Section XXXVIII, Funding. Reimbursable costs must be reasonable; they shall not include payment for any activity for which IEPA receives payment or reimbursement from another agency of the United States Government; they shall not include interest; they shall not include payment for anything violative of Federal or State statutes or regulations; and they must be allocable to the services provided in accordance with paragraph F of this Section. Duplicative laboratory work by one State agency of that of another already reimbursed shall not be reimbursable. Travel expenses shall not exceed those expenses customarily allowed by the IEPA for reimbursement of travel expenses.

H. The Army agrees to submit the costs provided under the

proceeding paragraph as part of its request for authorizations and appropriations in accordance with Section XXXVIII. JAAP agrees to advise IEPA of the status of available funds as soon as the appropriations are enacted and final program allocations are made by DOD to the Army. IEPA shall submit either annual or semi-annual invoices at its discretion. The invoices shall be submitted no later than 180 days following the end of the period for which the expenses are claimed. Any costs incurred during a billing period not reflected in the invoice for that billing period will not be reimbursed. The invoice shall contain an itemized description of all expenses claimed. Within 90 days of receipt of an invoice, JAAP shall pay the invoice or notify the IEPA that JAAP questions or disputes the invoice. The project managers shall confer to resolve the question or dispute. Any unresolved dispute shall be subject to dispute resolution as provided for in this Section.

I. IEPA shall maintain adequate accounting records sufficient to identify all expenses related to this Agreement. IEPA agrees to maintain these financial records for a minimum of five (5) years or as otherwise required by Illinois state statutes or regulations. IEPA agrees to provide JAAP or its designated representative reasonable access to all financial records for the purpose of audit during the period of record retention.

J. The Parties recognize that a necessity for effectuating sufficient funding for this Agreement is the provision by IEPA to JAAP of timely and accurate estimates of reimbursable costs. Within thirty (30) days of the signing of this Agreement, IEPA shall provide JAAP

with cost estimates for all anticipated reimbursable expenses to be incurred for the remainder of the current Federal Government fiscal year and the following fiscal year. At least ninety (90) days before the expiration of the second fiscal year, IEPA shall provide JAAP with cost estimates for all anticipated reimbursable expenses to be incurred during the following two fiscal years. IEPA shall expeditiously notify JAAP if it becomes aware that the cost estimates provided under this Section are no longer substantially accurate and provide in their place new cost estimates.

K. Section XV notwithstanding, any dispute between IEPA and JAAP regarding the application of this Section or any matter this Section controls, including but not limited to allowability of expenses and caps of expenses under paragraphs D and F of this Section, shall be resolved in accordance with this Section.

1. The JAAP and IEPA Project Managers shall be the primary points of contact to coordinate resolution of disputes under this Section.

2. If the JAAP and IEPA Project Managers are unable to resolve a dispute, the matter shall be referred to the Commander, JAAP, and the Deputy Division Manager of Land Pollution Control, as soon as practicable but in any event within five (5) working days.

3. Should the Commander and the Deputy Division Manager be unable to resolve the dispute within ten (10) days, the matter shall be elevated to the Deputy Assistant Secretary of the Army for the Environment, Safety and Occupational Health and the Director of the IEPA.

4. If JAAP and IEPA are unable to resolve the issues in dispute through the dispute resolution process described in this Section, IEPA may withdraw as a Party to this Agreement by providing written notice of its withdrawal to each of the Parties. Such withdrawal by IEPA shall terminate IEPA's rights and obligations under this Agreement; provided, however, that any approvals or concurrences by IEPA under or pursuant to this Agreement by IEPA prior to its withdrawal

shall continue to have full force and effect as if IEPA were still a Party to this Agreement.

5. It is the intention of JAAP and IEPA that all cost reimbursement disputes shall be resolved strictly in accordance with this Section; however, the use of informal dispute resolution is encouraged. In the event the Director of the IEPA and the Deputy for the Environment, Safety and Occupational Health, are unable to resolve a dispute, IEPA retains all of its legal and equitable remedies to recover its costs.

IN THE MATTER OF:

THE U.S. DEPARTMENT OF DEFENSE
THE ARMY
JOLIET ARMY AMMUNITION PLANT
ELWOOD, ILLINOIS

FEDERAL FACILITY AGREEMENT UNDER CERCLA SECTION 120

IT IS SO AGREED:

By: Lewis D. Walker
Deputy Assistant Secretary of
the Army for the Environment,
Safety and Occupational Health

6/1/89
Date

IN THE MATTER OF:

THE U.S. DEPARTMENT OF DEFENSE
THE ARMY
JOLIET ARMY AMMUNITION PLANT
ELWOOD, ILLINOIS

FEDERAL FACILITY AGREEMENT UNDER CERCLA SECTION 120

IT IS SO AGREED:

By: _____
Commander, JAAP

9 Jun 89
Date

IN THE MATTER OF:

THE U.S. DEPARTMENT OF DEFENSE
THE ARMY
JOLIET ARMY AMMUNITION PLANT
ELWOOD, ILLINOIS

FEDERAL FACILITY AGREEMENT UNDER CERCLA SECTION 120

IT IS SO AGREED:

By: Bernard P. Killian

Bernard P. Killian
Director
Illinois Environmental
Protection Agency

5/24/89
Date

IN THE MATTER OF:

THE U.S. DEPARTMENT OF DEFENSE
THE ARMY
JOLIET ARMY AMMUNITION PLANT
ELWOOD, ILLINOIS

FEDERAL FACILITY AGREEMENT UNDER CERCLA SECTION 120

IT IS SO AGREED:

By: Robert L. Duprey
Assistant Administrator
for U.S. Environmental Protection
Agency

5/19/89
Date

IN THE MATTER OF:

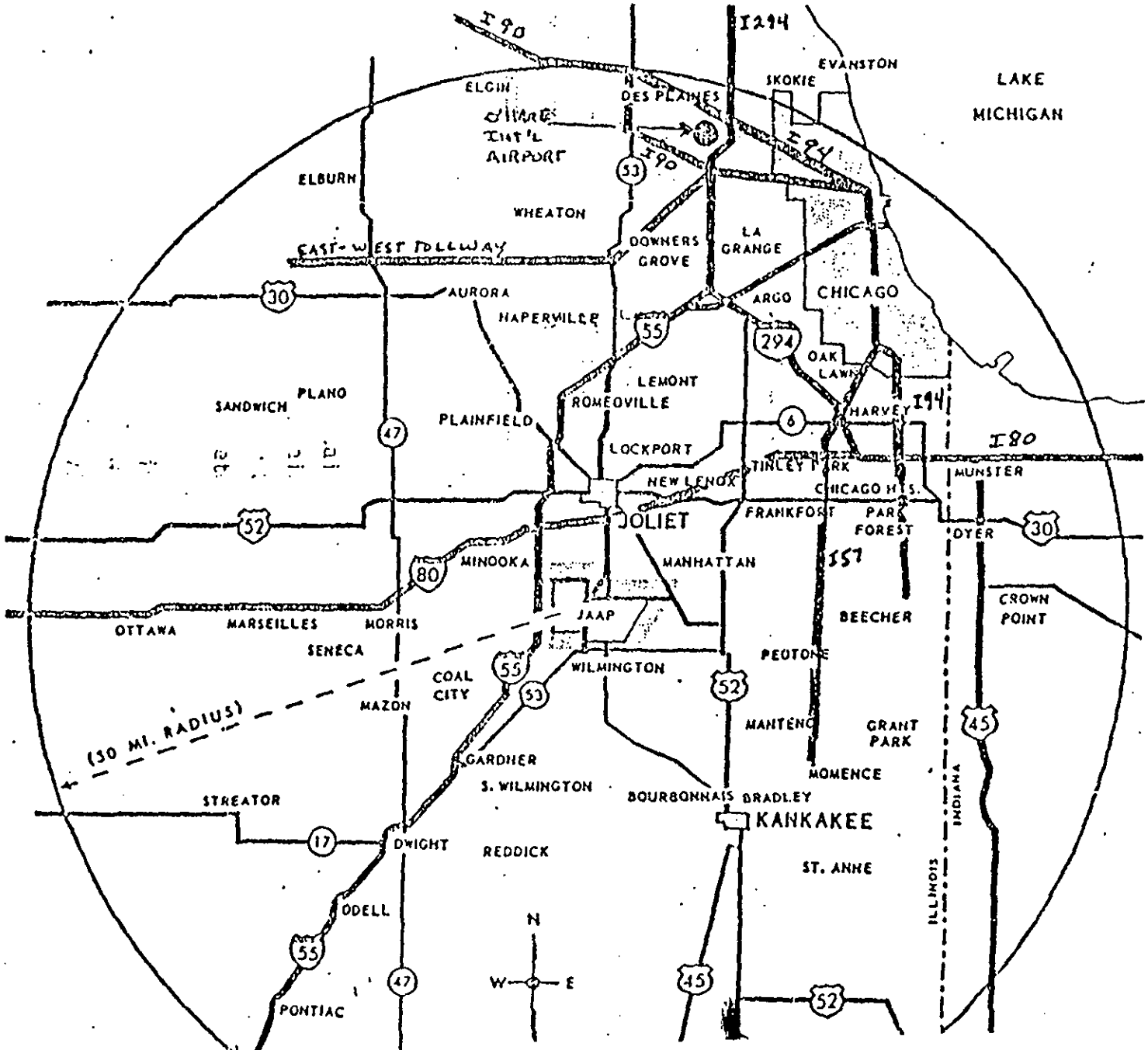
THE U.S. DEPARTMENT OF DEFENSE
THE ARMY
JOLIET ARMY AMMUNITION PLANT
ELWOOD, ILLINOIS

FEDERAL FACILITY AGREEMENT UNDER CERCLA SECTION 120

IT IS SO AGREED:

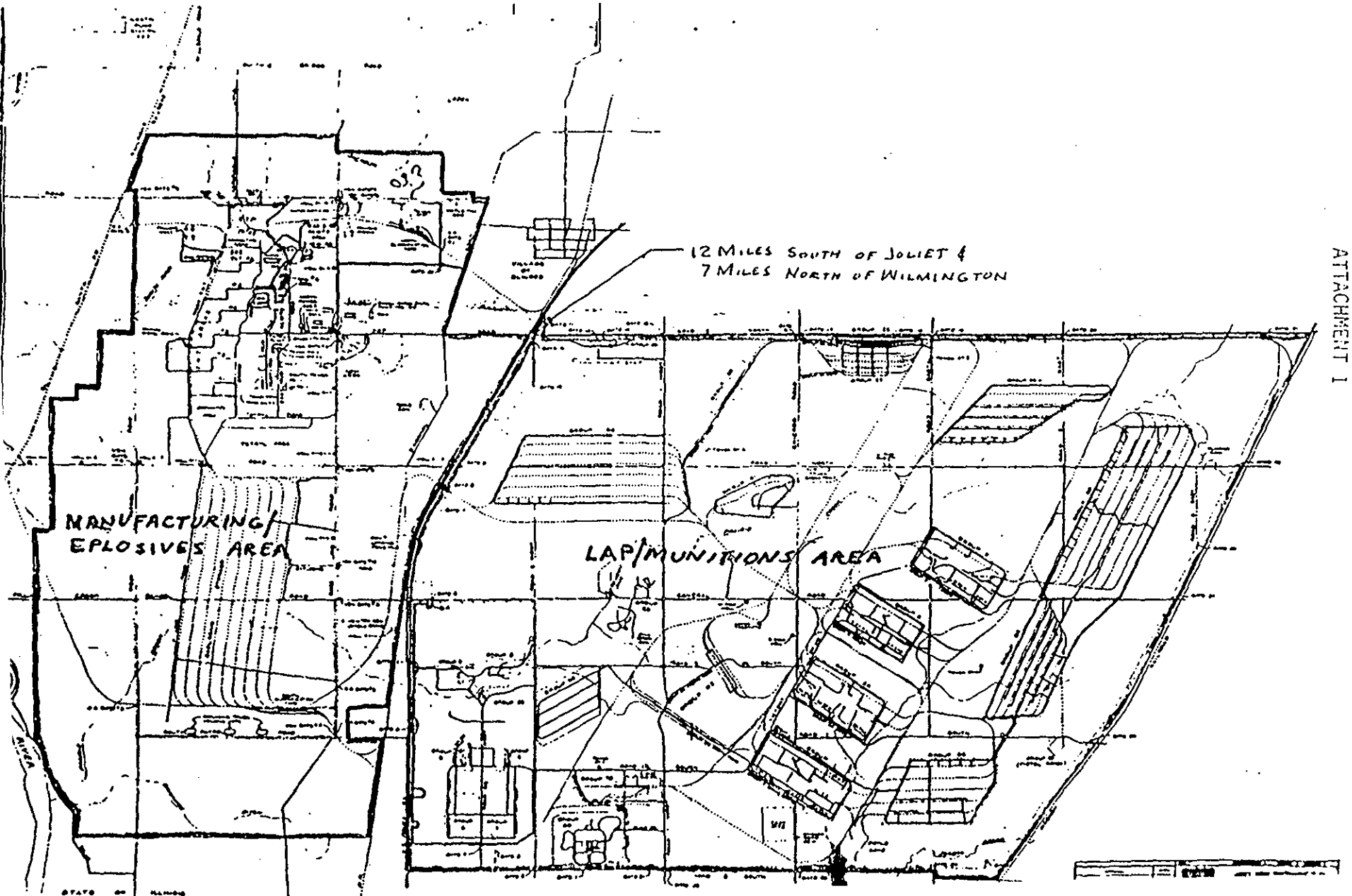
By: Valdas V. Adamkus
Valdas V. Adamkus
Regional Administrator
U.S. Environmental Protection
Agency

5/09/89.
Date



ATTACHMENT 1

ATTACHMENT 1



ATTACHMENT 2

FORMAT FOR MONTHLY REPORTS

- Description of the work performed during the past month towards accomplishing the RI objectives.
- Results of all sampling, tests, and all other raw data produced during the past month.
- Scheduled work for the next month.
- A discussion comparing scheduled activity completion including project completion dates versus anticipated activity completion dates and reasons for deviations between these.
- Discussion of problem areas and solutions.
- Name and title of person submitting monthly report and any changes in project personnel.