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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 10
AND THE
ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION
AND THE
UNITED STATES AIR FORCE

IN THE MATTER OF:

The U.S. Department of Defense,
Eielson Air Force Base

Fairbanks, Alaska

)
) FEDERAL FACILITY AGREEMENT
) UNDER CERCLA SECTION 120
)
) Administrative Docket Number:
) 1089-07-14-120
)

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ATTACHMENT A Generic Schedules
ATTACHMENT B Source Distribution

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:

FEDERAL FACILITY AGREEMENT

1 I. JURISDICTION

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

4 1.1 The United States Environmental Protection
5 Agency ("U.S. EPA"), Region 10, enters into those portions of
6 this Agreement that relate to the Remedial Investigation/
7 Feasibility Study ("RI/FS") pursuant to Section 120(e)(1) of the
8 Comprehensive Environmental Response, Compensation, and Liability
9 Act ("CERCLA"), 42 U.S.C. § 9620(e)(1), as amended by the
10 Superfund Amendments and Reauthorization Act of 1986 ("SARA"),
11 Pub. L. 99-499 (hereinafter jointly referred to as "CERCLA");
12 Sections 3004(u) and (v), 3008(h), and 6001 of the Resource
13 Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6924(u) and
14 (v), 6928(h), and 6961, as amended by the Hazardous and Solid
15 Waste Amendments of 1984 ("HSWA") (hereinafter jointly referred
16 to as RCRA); and Executive Order 12580;

17 1.2 U.S. EPA, Region 10, enters into those
18 portions of this Agreement that relate to interim actions and
19 final remedial actions pursuant to Section 120(e)(2) of CERCLA,
20 42 U.S.C. § 9620(e)(2); Sections 3004(u) and (v), 3008(h), and
21 6001 of RCRA, 42 U.S.C. §§ 6924(u) and (v), 6928(h), and 6961;
22 and Executive Order 12580;

23 1.3 USAF enters into those portions of this
24 Agreement that relate to the RI/FS pursuant to Section 120(e)(1)
25 of CERCLA, 42 U.S.C. § 9620(e)(1); Sections 3004(u) and (v),
26 3008(h), and 6001 of RCRA, 42 U.S.C. §§ 6924(u) and (v), 6928,

1 and 6961; Executive Order 12580; the National Environmental
2 Policy Act, 42 U.S.C. § 4321, and the Defense Environmental
3 Restoration Program ("DERP"), 10 U.S.C. § 2701 et seq.;

4 1.4 USAF enters into those portions of this
5 Agreement that relate to interim actions and final remedial
6 actions pursuant to Section 120(e)(2) of CERCLA, 42 U.S.C.
7 § 9620(e)(2); Sections 3004(u) and (v), 3008(h), and 6001 of
8 RCRA, 42 U.S.C. §§ 6934(u) and (v), 6938(h), and 6961; Executive
9 Order 12580; and the DERP.

10 1.5 The State of Alaska Department of
11 Environmental Conservation ("ADEC") enters into this Agreement
12 pursuant to Sections 107; 120(e), 120(f), and 121(f) of CERCLA,
13 42 U.S.C. §§ 9607, 9620(e), 9620(f), and 9621(f); Alaska Statutes
14 46.03, 46.04, 46.08, 46.09; and 18 Alaska Administrative Code
15 ("AAC") 60, 18 AAC 62, 18 AAC 75, and 18 AAC 80.

16 17 II. DEFINITIONS

18 2.1 The terms used in this Agreement shall have
19 the same meaning as defined in Section 101 of CERCLA, 42 U.S.C.
20 § 9601; the NCP, 40 CFR 300.5; and Section 1004 of RCRA,
21 42 U.S.C. § 6903. In addition:

22 (a) "ADEC" shall mean the State of Alaska as
23 represented by the Department of Environmental Conservation, its
24 employees, and authorized representatives;

25 (b) "Agreement" shall mean this document and
26 shall include all Attachments to this document. All such

1 Attachments shall be incorporated by reference and are an
2 integral and enforceable part of this document;

3 (c) "ARAR" or "Applicable or Relevant and
4 Appropriate Requirement" shall mean any standard, requirement,
5 criterion, or limitation as provided in Section 121(d)(2) of
6 CERCLA, 42 U.S.C. § 9621(d)(2), and the NCP;

7 (d) "Authorized representative" may include a
8 Party's contractors or any other designee;

9 (e) "CERCLA" shall mean the Comprehensive
10 Environmental Response, Compensation, and Liability Act of 1980,
11 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments
12 and Reauthorization Act of 1986 ("SARA"), Pub. L. 99-499;

13 (f) "Community Relations" is defined in 40 CFR
14 300.5 and shall mean U.S. EPA's program to inform and encourage
15 public participation in the Superfund process and to respond to
16 community concerns. The term "public" includes citizens directly
17 affected by the Site, other interested citizens or parties,
18 organized groups, elected officials, and potentially responsible
19 parties;

20 (g) "Days" shall mean calendar days, unless
21 otherwise specified. Any submittal that under the terms of this
22 Agreement would be due on a Saturday, Sunday, or federal or state
23 holiday shall be due on the following business day;

24 (h) "Feasibility Study" or "FS" is defined in
25 40 CFR 300.5 and shall mean a study undertaken by the lead agency
26 to develop and evaluate options for remedial action. The FS

1 emphasizes data analysis and is generally performed concurrently
2 and in an interactive fashion with the Remedial Investigation
3 ("RI"), using data gathered during the RI. The RI data are used
4 to define the objectives of the response action, to develop
5 remedial action alternatives, and to undertake an initial
6 screening and detailed analysis of the alternatives. The term
7 also refers to a report that describes the results of the study;

8 (i) "Interim Actions" or "IAs" are discussed in
9 the Preamble to 40 CFR 300.430(a)(1), 55 Fed. Reg. 8703-8706
10 (March 8, 1990), and shall mean all discrete actions implemented
11 under remedial authority that are taken to prevent or minimize
12 the release of hazardous substances, pollutants, or contaminants
13 so that they do not endanger human health or the environment.
14 Interim actions shall neither be inconsistent with nor preclude
15 implementation of the final expected Site remedy and shall be
16 undertaken in accordance with the NCP, 40 CFR Part 300, as
17 amended, and with the requirements of CERCLA;

18 (j) "NCP" shall mean the National Oil and
19 Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300,
20 as amended;

21 (k) "Operable Unit" or "OU" is defined in 40 CFR
22 300.5 and is a subdivision of the Site. The cleanup of the Site
23 can be divided into a number of operable units, depending on the
24 complexity of the problems associated with the Site;

25 (l) "Paragraph" shall mean a numbered paragraph
26 of this Agreement, designated by an Arabic numeral;

(m) "Part" shall mean one of the thirty-seven (37) subdivisions of this Agreement, designated by a Roman numeral;

(n) "Parties" shall mean USAF, U.S. EPA, and ADEC;

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

(p) "Record of Decision" or "ROD" is discussed at 40 CFR 300.430 and shall mean the document that summarizes the selection of an interim action or a final remedial action, all facts, analyses of facts, and source-specific policy determinations considered in the course of carrying out activities at the Site;

(q) "Remedial Action" or "RA" is defined in 40 CFR 300.5 and shall mean those actions consistent with permanent remedy taken instead of, or in addition to, a removal action in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released

1 hazardous substances and associated contaminated materials,
2 recycling or reuse, diversion, destruction, segregation of
3 reactive wastes, dredging or excavations, repair or replacement
4 of leaking containers, collection of leachate and runoff,
5 on-site treatment or incineration, provision of alternative water
6 supplies, any monitoring reasonably required to assure that such
7 actions protect the public health and welfare and the environment
8 and, where appropriate, post-removal site control activities.
9 The term includes the costs of permanent relocation of residents
10 and businesses and community facilities, including the cost of
11 providing "alternative land of equivalent value" to an Indian
12 tribe pursuant to Section 126(b) of CERCLA, 42 U.S.C. § 9626(b),
13 where U.S. EPA determines that, alone or in combination with
14 other measures, such relocation is more cost-effective than, and
15 environmentally preferable to, the transportation, storage,
16 treatment, destruction, or secure disposition off-site of such
17 hazardous substances, or may otherwise be necessary to protect
18 the public health or welfare; the term includes off-site
19 transport and off-site storage, treatment, destruction, or secure
20 disposition of hazardous substances and associated contaminated
21 materials. For the purpose of the NCP, the term also includes
22 enforcement activities related thereto;

23 (r) "Remedial Design" or "RD" is defined in
24 40 CFR 300.5 and shall mean the technical analysis and procedures
25 that follow the selection of remedy for a Site and precede
26 implementation of the Remedial Action ("RA");

(s) "Remedial Investigation" or "RI" shall mean a process undertaken by the lead agency to determine the nature and extent of the problem presented by the release. The RI emphasizes data collection and site characterization, and is generally performed concurrently and in an interactive fashion with the Feasibility Study ("FS"). The RI includes sampling and monitoring, as necessary, and includes the gathering of sufficient information to determine the necessity for remedial action and to support the evaluation of remedial alternatives;

(t) "Remedial Investigation/Feasibility Study Management Plan" shall mean a comprehensive document describing all activities planned within the RI and the FS process to include the Work Plan, Field Sampling Plan ("FSP"), Quality Assurance Project Plan ("QAPP"), Health and Safety Plan ("HSP"), and the Community Relations Plan ("CRP");

(u) "Removal" is defined by Section 311(a)(8) of the Clean Water Act ("CWA"), 33 U.S.C. 1321(a)(8), and shall mean the removal of oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health, welfare, or to the environment. As defined by Section 101(23) of CERCLA, 42 U.S.C. § 9601(23), removal shall mean the cleanup or removal of released hazardous substances from the environment; such actions as may be necessary in the event of the threat of release of hazardous substances into the environment; such actions as may be necessary to monitor, assess, and evaluate the

1 release or threat of release of hazardous substances; the
2 disposal of removed material; or the taking of such other actions
3 as may be necessary to prevent, minimize, or mitigate damage to
4 the public health or welfare or to the environment that may
5 otherwise result from a release or threat of release. The term
6 includes, in addition, without being limited to, security fencing
7 or other measures to limit access, provision of alternative water
8 supplies, temporary evacuation and housing of threatened
9 individuals not otherwise provided for, action taken under
10 Section 104(b) of CERCLA, 42 U.S.C. § 9604(b), post-removal site
11 control, where appropriate, and any emergency assistance that may
12 be provided under the Disaster Relief Act of 1974. For the
13 purpose of the NCP, the term also includes enforcement activities
14 related thereto;

15 (v) "Response" is defined by Section 101(25) of
16 CERCLA, 42 U.S.C. § 101(25), and 40 CFR 300.5, and shall mean
17 removal, remedy, or remedial action, including enforcement
18 activities related thereto;

19 (w) "Scope of Work" shall mean the planning
20 document prepared by the USAF, in consultation with U.S. EPA and
21 ADEC, and in accordance with OSWER Directive 9835.8 that
22 identifies the source-specific objectives and general management
23 approach for the RI/FS process for the Site and/or operable
24 unit(s);

25 (x) "Site" shall mean the areal extent of
26 contamination and shall include sources of contamination subject

1 to this Agreement at the Eielson Air Force Base ("Eielson AFB"),
2 which occupies approximately nineteen thousand seven hundred
3 (19,700) acres and is located approximately twenty-four (24)
4 miles from Fairbanks, Alaska, and the Blair Lakes Target Range
5 Facility, which occupies approximately two (2) square acres and
6 is located approximately forty-five (45) miles south and east of
7 Fairbanks, Alaska, and thirty-five (35) miles from Eielson AFB.
8 The Site includes any off-base area contaminated by the migration
9 of hazardous substances, pollutants, contaminants, or
10 constituents from the Site;

11 (y) "Source evaluation" and "Source Evaluation
12 Report" ("SER") shall mean the process (and resulting
13 documentation) of conducting a remedial evaluation to evaluate
14 releases of hazardous substances, pollutants, or contaminants.
15 Source evaluation shall be conducted in accordance with
16 appropriate requirements of 40 CFR 300.420 and may consist of two
17 (2) phases: a remedial preliminary assessment (Phase 1 SER)
18 and/or a remedial inspection (Phase 2 SER);

19 (z) "Statement of Work" shall mean the detailed
20 elaboration of the Scope of Work that defines the requirements
21 for developing a management plan;

22 (aa) "USAF" shall mean the United States Air
23 Force and, to the extent necessary to effectuate the terms of
24 this Agreement (including appropriations and congressional
25 reporting requirements), its employees, contractors, agents,
26 successors, assigns, and authorized representatives;

(bb) "U.S. EPA" shall mean the United States Environmental Protection Agency, including Region 10, its employees, and authorized representatives; and

(cc) "Work Plan" shall mean the RI/FS or RA Work Plan that is to be prepared in accordance with Office of Solid Waste and Emergency Response ("OSWER") Directives 9355.3-01 (October 1988) and 9355.0-4A (June 1986), and the NCP.

III. PURPOSE

3.1. The general purposes of this Agreement are to:

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

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

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

3.2 Specifically, the purposes of this Agreement are to:

(a) Identify removal and interim action ("IA")

1 alternatives that are appropriate at the Site prior to the
2 implementation of final remedial action(s) for the Site. IA
3 alternatives shall be identified and proposed to the Parties as
4 early as possible prior to formal proposal of IA(s) to U.S. EPA
5 and ADEC pursuant to CERCLA and applicable state law. This
6 process is designed to promote cooperation among the Parties in
7 identifying IA alternatives prior to selection of final IA(s);

8 (b) Establish requirements for the performance of an
9 RI to determine fully the nature and extent of the threat to the
10 public health or welfare or the environment caused by the release
11 or threatened release of hazardous substances, pollutants, or
12 contaminants at the Site, and to establish requirements for the
13 performance of an FS for the Site to identify, evaluate, and
14 select alternatives for the appropriate remedial action(s) to
15 prevent, mitigate, or abate the release or threatened release of
16 hazardous substances, pollutants, or contaminants at the Site in
17 accordance with CERCLA and applicable state law;

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

23 (d) Implement the selected interim and final remedial
24 action(s) in accordance with CERCLA and applicable state law, and
25 meet the requirements of Section 120(e)(2) of CERCLA, 42 U.S.C.
26 § 9620(e)(2), for an interagency agreement among the Parties;

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

4 (f) Coordinate response actions at the Site with the
5 mission and support activities at Eielson AFB;

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

8 (h) Provide for ADEC involvement in the initiation,
9 development, selection, and enforcement of remedial actions to be
10 undertaken at Eielson AFB, including the review of all applicable
11 data as it becomes available, and the development of studies,
12 reports, and actions plans; and to identify and integrate state
13 ARARS into the remedial action process; and

14 (i) Provide for operation and maintenance of any
15 remedial action selected and implemented pursuant to this
16 Agreement.

17 18 IV. PARTIES BOUND

19 4.1 This Agreement shall apply to and be binding
20 upon USAF, U.S. EPA, and ADEC. This Agreement shall also apply
21 to subsequent owners and operators of any portion of the Site.
22 USAF agrees to include notice of this Agreement in any document
23 transferring ownership of property owned by the United States to
24 any subsequent owners and operators of any portion of the Site in
25 accordance with Section 120(h) of CERCLA, 42 U.S.C. § 120(h), 40
26 CFR §§ 264.119 and 264.120, and Part XXXII of this Agreement.

4.2 USAF will notify U.S. EPA and ADEC of the identity of its contractors performing work under this Agreement. USAF shall provide copies of this Agreement to all contractors performing work under this Agreement. USAF shall ensure that whenever a contractor is selected by negotiated procurement specifically to perform work under this Agreement, demonstrated experience with arctic conditions shall, if relevant, be identified in the solicitation as a significant evaluation factor or subfactor (Federal Acquisition Regulation ("FAR") 15.406-5). USAF shall also ensure that whenever an Architect-Engineer firm is selected by negotiated procurement specifically to perform work under this Agreement, U.S. EPA and ADEC shall be invited to review the Standard Forms 254 (Architect-Engineer and Related Services Questionnaire) and 255 (Architect-Engineer and Related Services Questionnaire for Specific Contract) concerning prospective Architect-Engineer firms before the Preselection Board prepares its preselection list.

4.3 Under no condition shall a Party under this Agreement utilize the services of any consultant, prime contractor, or subcontractor who has been suspended, debarred, or voluntarily excluded within the scope of 40 CFR Part 32 or under the Federal Acquisition Regulation ("FAR") at 48 CFR Subpart 9.4 et seq.

4.4 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

1 Party to this Agreement.

3 V. RCRA-CERCLA INTEGRATION

4 5.1 The Parties intend to integrate USAF's
5 CERCLA response obligations and RCRA corrective action
6 obligations that relate to the release(s) of hazardous
7 substances, hazardous wastes, pollutants, or contaminants covered
8 by this Agreement into this comprehensive Agreement. Therefore,
9 the Parties intend that activities covered by this Agreement will
10 achieve compliance with CERCLA, 42 U.S.C. 9601 et seq.; satisfy
11 the corrective action requirements of Sections 3004(u) and (v) of
12 RCRA, 42 U.S.C. § 6924(u) and (v), for a RCRA permit, and Section
13 3008(h), 42 U.S.C. § 6928(h), for interim status facilities; and
14 meet or exceed all applicable or relevant and appropriate federal
15 and state laws and regulations, to the extent required by Section
16 121 of CERCLA, 42 U.S.C. § 9621, and applicable state law.

17 5.2 Based upon the foregoing, the Parties intend
18 that any remedial action selected, implemented, and completed
19 under this Agreement will be protective of human health and the
20 environment such that remediation of releases covered by this
21 Agreement shall obviate the need for further corrective action
22 under RCRA (i.e., no further corrective action shall be
23 required). The Parties agree that with respect to releases of
24 hazardous waste covered by this Agreement, RCRA shall be
25 considered an ARAR pursuant to Section 121 of CERCLA, 42 U.S.C.
26 § 9621. Releases or other hazardous waste activities not covered

1 by this Agreement remain subject to all applicable state and
2 federal environmental requirements.

3 5.3 The Parties recognize that the requirement
4 to obtain permits for response actions undertaken pursuant to
5 this Agreement shall be as provided for in CERCLA and the NCP.
6 The Parties further recognize that ongoing hazardous waste
7 management activities at Eielson AFB may require the issuance of
8 permits under federal and state laws. This Agreement does not
9 affect the requirements, if any, to obtain such permits.

10 However, if a permit is issued to USAF for ongoing hazardous
11 waste management activities at the Site, U.S. EPA or ADEC shall
12 reference and incorporate any appropriate provisions, including
13 appropriate schedules (and the provision for extension of such
14 schedules), of this Agreement into such permit. With respect to
15 those portions of this Agreement incorporated by reference into
16 permits, the Parties intend that judicial review of the
17 incorporated portions shall, to the extent authorized by law, be
18 reviewed only under the provisions of CERCLA.

19 5.4. Nothing in this Agreement shall alter either
20 USAF's authority or ADEC's rights with respect to removal actions
21 conducted pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

22 23 VI. FINDINGS OF FACT

24 6.1 For purposes of this Agreement, the
25 following constitutes a summary of the facts upon which this
26 Agreement is based. None of the facts related herein are

1 admissions nor are they legally binding upon any Party with
2 respect to any unrelated claims of persons not a Party to this
3 Agreement.

4 6.2 Eielson AFB is approximately nineteen
5 thousand and seven hundred (19,700) acres in size, and is located
6 approximately twenty-four (24) miles southeast of Fairbanks,
7 Alaska. Within the boundaries of Eielson AFB, fifty-six (56)
8 areas of potential and known contamination have been identified
9 through USAF contractor studies. Eielson AFB contains unlined
10 inactive landfills, some of which may extend into groundwater;
11 shallow trenches used for the disposal of fuel tank sludge; drum
12 storage sites; and numerous other disposal or spill areas. USAF
13 test data confirms the presence of known metal and organic
14 chemical contamination within the groundwater found beneath the
15 Site. To date, no contamination from within Eielson AFB has been
16 detected outside the Base boundaries.

17 6.3 Blair Lakes Target Range Facility ("Blair
18 Lakes") is approximately two (2) square acres in size and is
19 located approximately forty-five (45) miles south and east of
20 Fairbanks, Alaska, and thirty-five (35) miles from Eielson AFB.
21 Several fuel-spill-related areas of contamination have been
22 identified. Because of its geographical proximity to Eielson
23 AFB, the Parties agreed to define the Site that is the subject of
24 this Agreement to include the Blair Lakes Target Range Facility.

25 6.4 The Parties are concerned that without
26 further study and possible remediation, contamination may

1 threaten groundwater and surface water in the vicinity of the
2 Site.

3 6.5 Eielson AFB was proposed for inclusion on
4 the CERCLA National Priorities List ("NPL") at 54 Fed. Reg.
5 29,820 (July 14, 1989). It was listed at 54 Fed. Reg. 48,184
6 (November 21, 1989).

7
8 VII. REGULATORY DETERMINATIONS

9 7.1 For purposes of this Agreement, the
10 following constitutes a summary of the Regulatory Determinations
11 upon which this Agreement is based. None of the Regulatory
12 Determinations related herein, are admissions nor are they legally
13 binding upon any Party with respect to any unrelated claims of
14 person(s) not a Party to this Agreement.

15 7.2 Eielson AFB is a Site within the meaning of
16 Section 101(9) of CERCLA, 42 U.S.C. § 9601(9);

17 7.3 Hazardous substances, pollutants, or
18 contaminants within the meaning of Sections 101(14) and 104(a)(2)
19 of CERCLA, 42 U.S.C. §§ 9601(14) and 9604(a)(2), have been
20 disposed of at the Site;

21 7.4 There have been releases of hazardous
22 substances, pollutants, or contaminants into the environment
23 within the meaning of Sections 101(22), 104, 106, and 107 of
24 CERCLA, 42 U.S.C. §§ 9601(22), 9604, 9606, and 9607, at and from
25 the Site;

26 7.5 With respect to those releases, USAF is an

owner and/or operator within the meaning of Section 107 of CERCLA, 42 U.S.C. § 9607;

7.6 The actions to be taken pursuant to this Agreement are reasonable and necessary to protect human health and the environment; and

7.7 A reasonable time for beginning and/or completing the actions has been, or will be, provided.

VIII. SCOPE OF AGREEMENT

A. Work to be Performed

8.1 The Parties intend that work done and data generated prior to the effective date of this Agreement be retained and utilized to the maximum extent technically feasible in accordance with applicable law.

8.2 USAF will conduct and finance the cost of the RI/FS consultant studies in accordance with the RI/FS Management Plan and implement the RD/RA at the Site in accordance with the final RD and the RA Work Plan, and all relevant statutes and regulations.

8.3 All work performed pursuant to this Agreement shall be under the direction and supervision, or in consultation with a qualified engineer, geologist, or equivalent expert with expertise in hazardous substances site investigation and remediation.

8.4 USAF shall perform the tasks and submit plans, reports, and other documents as required by the Plans.

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October 25, 1990

1 8.5 These matters are set forth in more detail
2 below and in the subsequent RI/FS Management Plans and RA Work
3 Plans. This Agreement fully incorporates the provisions of these
4 Plans that relate to the implementation of this Agreement,
5 including, but not limited to, definitions and procedures for
6 submission, review, and approval of documents. In the event of
7 any inconsistency between this Agreement and the Plans, this
8 Agreement shall govern unless and until duly amended pursuant to
9 Part XXXIII of this Agreement.

10 B. Source Evaluation

11 8.6 USAF shall implement potential source
12 identification and evaluation under the SER process pursuant to
13 Part XXIV. These evaluations shall comply with appropriate
14 remedial site evaluation requirements of 40 CFR 300.420.

15 C. Interim Actions

16 8.7 USAF shall develop and implement Interim
17 Actions ("IAs") that shall be set forth in an RI/FS Management
18 Plan, where appropriate, and/or modified pursuant to Part XX.
19 The IA(s) shall be consistent with the purposes set forth in Part
20 III of this Agreement.

21 D. Remedial Investigations

22 8.8 USAF shall develop, implement, and report
23 upon remedial investigations of the Site. These investigations
24 shall comply with applicable requirements of CERCLA; the NCP;
25 and, to the extent set forth in this Agreement, pertinent written
26 guidance and U.S. EPA policy.

1 E. Feasibility Studies

2 8.9 USAF shall design, propose, undertake, and
3 report upon feasibility studies for the Site. These studies
4 shall comply with applicable requirements of CERCLA; the NCP;
5 and, to the extent set forth in this Agreement, pertinent written
6 guidance and U.S. EPA policy.

7 F. Remedial Actions

8 8.10 USAF shall develop and submit its proposed
9 RA alternative. ADEC may recommend to U.S. EPA the RA
10 alternative it deems appropriate. U.S. EPA and USAF, in
11 consultation with ADEC, shall make final selection of the RA(s)
12 for each OU. In the event of disagreement, U.S. EPA shall make
13 final selection of the RA(s). The selection of RA(s) by the
14 U.S. EPA Administrator shall be final, subject to Part XXXVI.

15 G. Technical Review Committee

16 8.11 Pursuant to 10 U.S.C. § 2705(c), USAF shall
17 establish a Technical Review Committee ("TRC") and, in
18 consultation with the Parties, shall provide for representatives
19 from the following organizations to serve as members of the TRC:

- 20 a. A representative of Eielson AFB;
21 b. A representative of ADEC;
22 c. A representative each from Fairbanks North Star
23 Borough and the City of North Pole; and
24 d. Designated representative(s) from the local
25 communities.

26 8.12 The purpose of the TRC is to afford a forum

1 for cooperation between USAF and concerned local officials and
2 citizens and to provide a meaningful opportunity for the members
3 of the TRC to become informed and to express their opinion about
4 significant aspects of the RI/FS or the RD/RA process.

5 8.13 The Eielson AFB Installation Commander or
6 delegate shall serve as the Chair of the TRC meetings. The Chair
7 shall schedule regular meetings of the TRC approximately every
8 six (6) months. Regular meetings of the TRC shall be for the
9 purpose of reviewing progress under the RI/FS or the RD/RA and
10 discussing other matters of interest to the TRC. Special
11 meetings of the TRC may be held at the request of members.

12
13 IX. PROJECT MANAGERS

14 9.1 U.S. EPA, ADEC, and USAF shall each
15 designate a Project Manager and Alternate (hereinafter jointly
16 referred to as Project Manager) for the purpose of overseeing the
17 implementation of this Agreement. Within five (5) days of the
18 effective date of this Agreement, each Party shall notify the
19 other Parties of the name and address of its Project Manager.
20 Any Party may change its designated Project Manager by notifying
21 the other Parties, in writing, within five (5) days of the
22 change. Communications between the Parties concerning the terms
23 and conditions of this Agreement shall be directed through the
24 Project Managers as set forth in Part XIV of this Agreement. Each
25 Project Manager shall be responsible for assuring that all
26 communications from the other Project Managers are appropriately

1 disseminated and processed by their respective Agencies.

2 9.2 Project Managers shall have the authority
3 to: (1) take samples, request split samples, and ensure that
4 work is performed properly and in accordance with the terms of
5 any final Management Plan; (2) observe all activities performed
6 pursuant to this Agreement, take photographs, and make such other
7 reports on the progress of the work as the Project Managers deem
8 appropriate; (3) review records, files, and documents relevant to
9 this Agreement; (4) recommend and request minor field
10 modifications to the work to be performed pursuant to the
11 Agreement, or in techniques, procedures, or designs utilized in
12 carrying out this Agreement; and (5) exercise the authorities
13 granted to them in this Part, and the NCP, and exercise those
14 responsibilities granted in Paragraph 33.1.

15 9.3 Each Project Manager shall be, or rely on, a
16 qualified and competent person with experience in hazardous
17 substances site investigations and remedial actions and having
18 the skills necessary to implement this Agreement.

19 9.4 The Project Managers may, in accordance with
20 Part XX(J) of this Agreement, make modifications to the work to
21 be performed pursuant to this Agreement, or in techniques,
22 procedures, or designs utilized in carrying out this Agreement..
23 Any minor field modification proposed by any Party pursuant to
24 this Part must be approved orally by all Parties' Project
25 Managers to be effective. The USAF Project Manager will make a
26 contemporaneous record of such modification and approval in a

1 written log, and a summary of the log entry will be included in
2 the next progress report. Even after approval of the proposed
3 modification, no Project Manager will require implementation by a
4 government contractor without approval of the appropriate
5 Government Contracting Officer.

6 9.5 The Project Manager for USAF shall be
7 responsible for day-to-day field activities at the Site, and
8 shall have all the authority vested in the On-Scene Coordinator
9 and Remedial Project Manager by the NCP, 40 CFR Part 300. The
10 Project Manager for USAF shall be physically present at the Site,
11 or reasonably available to supervise work, during all hours of
12 work performed at the Site pursuant to this Agreement.

13 9.6 The Project Managers shall be reasonably
14 available to consult on work performed pursuant to this Agreement
15 and shall make themselves available to each other for the
16 pendency of this Agreement. The absence of USAF, U.S. EPA, or
17 ADEC Project managers from the Site shall not be cause for work
18 stoppage or delay.

19
20 X. ACCESS

21 10.1 Without limitation on any authority
22 conferred on them by law, U.S. EPA, ADEC, and/or their authorized
23 representatives, shall have authority to enter the Site at all
24 reasonable times for the purposes of, among other things: (1)
25 inspecting records, operating logs, contracts, and other
26 documents relevant to implementation of this Agreement;

(2) reviewing the progress of USAF, its response action contractors, or agents in implementing this Agreement;

(3) conducting such tests as ADEC and U.S. EPA Project Managers deem necessary; and (4) verifying the data submitted to U.S. EPA and ADEC by USAF. USAF shall honor all requests for such access by U.S. EPA and ADEC, subject only to any statutory or regulatory requirement as may be necessary to protect national security or mission-essential activities. In the event that access requested by either U.S. EPA or ADEC is denied by USAF, USAF shall, within forty-eight (48) hours, provide a written explanation of the reason for the denial, including reference to the applicable regulations, and, upon request, a copy of such regulations. USAF shall expeditiously make alternative arrangements for accommodating the requested access. USAF shall not restrict the access rights of U.S. EPA or ADEC to any greater extent than USAF restricts the access rights of its contractors performing work pursuant to this Agreement.

10.2 To the extent that this Agreement requires access to property not owned and controlled by USAF, USAF shall exercise its authorities to obtain access pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and will make every reasonable effort to obtain signed access agreements for itself, its contractors, agents, U.S. EPA, and ADEC, and provide U.S. EPA and ADEC with copies of such agreements. With respect to non-USAF property upon which monitoring wells, pumping wells, treatment facilities, or other response actions are to be

1 located, the access agreements should provide that no conveyance
2 of title, easement, or other interest in the property shall be
3 consummated without provisions for the continued operation of
4 such wells, treatment facilities, or other response actions on
5 the property. The access agreements should also provide to the
6 extent practicable that the owners of any property where
7 monitoring wells, pumping wells, treatment facilities, or other
8 response actions are located shall notify the USAF, ADEC, and the
9 U.S. EPA by certified mail, at least thirty (30) days prior to
10 any conveyance, of the property owner's intent to convey any
11 interest in the property and of the provisions made for the
12 continued operation of the monitoring wells, treatment
13 facilities, or other response actions installed pursuant to this
14 Agreement.

15 10.3 Nothing in this Part shall be construed to
16 limit the discretion of USAF to exercise the authority of the
17 President under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), as
18 delegated by Executive Order 12580.

20 XI. SAMPLING AND DATA/DOCUMENT AVAILABILITY

21 11.1 The Parties shall make available to each
22 other quality-assured results of sampling, tests, or other data
23 generated by or on behalf of any Party under this Agreement
24 within sixty (60) days of collection or field testing. If
25 quality assurance is not completed within sixty (60) days,
26 preliminary data or results shall be made available within the

1 sixty (60) day period and quality assured data or results shall
2 be submitted as they become available but in no event later than
3 one hundred (100) days after the sampling or testing. These
4 periods can be extended upon mutual agreement among the Project
5 Managers.

6 11.2 At the request of either the ADEC or
7 U.S. EPA Project Manager, USAF shall allow split or duplicate
8 samples to be taken by ADEC or U.S. EPA during sample collection
9 conducted during the implementation of this Agreement. USAF's
10 Project Manager shall notify the U.S. EPA and ADEC Project
11 Managers not less than fourteen (14) business days in advance of
12 any well drilling, sample collection, or other monitoring
13 activity, conducted pursuant to this Agreement. The fourteen
14 (14) day notification can be waived upon mutual agreement among
15 the Project Managers.

16 11.3 If preliminary analysis indicates a
17 potential imminent and substantial endangerment to the public
18 health, all Project Managers shall be immediately notified.

19 11.4 Laboratory reports shall be made available
20 at the Site for the review of the Parties immediately upon
21 completion of laboratory analysis.

22 23 XII. QUALITY ASSURANCE

24 12.1 Throughout all sample collection,
25 transportation, and analyses activities conducted in connection
26 with this Agreement, USAF shall use procedures for quality

1 assurance, and for quality control, and for chain-of-custody in
2 accordance with approved U.S. EPA methods, including "Interim
3 Guidelines and Specifications for Preparing Quality Assurance
4 Project Plans," QAMS-005/80, "Data Quality Objective Guidance,"
5 U.S. EPA 1540/687/003 and 004, and subsequent amendments to such
6 guidelines. USAF shall require each laboratory it uses to
7 perform any analysis according to approved U.S. EPA methods and
8 to demonstrate a quality assurance/quality control program
9 equivalent to that followed by U.S. EPA and consistent with
10 U.S. EPA document QAMS-005/80.

11 12 XIII. REPORTING

13 13.1 USAF shall submit to the other Parties
14 quarterly written progress reports. The reports will include,
15 but not be limited to, the following information:

16 (a) A detailed summary of all of the remedial,
17 removal, and investigation activities during the previous
18 quarter, including any analytical results, any community
19 relations activities, and any community contacts or inquiries
20 related to the hazardous substance contamination at the Site;

21 (b) An outline of the planned activities for the
22 upcoming quarter;

23 (c) A detailed statement of the manner and the
24 extent to which the timetables and deadlines are being met;

25 (d) The status of efforts to obtain rights-of-
26 entry necessary for monitoring and well installation off-Base;

1 and

2 (e) The status of any other activities proposed
3 or underway that may affect any phase of the activities described
4 in the Attachments.

5 13.2 The quarterly written progress reports shall
6 be submitted on the tenth (10th) day of each calendar quarter
7 following the effective date of this Agreement.

8
9 XIV. NOTICE TO THE PARTIES

10 14.1 All Parties shall expeditiously transmit
11 primary and secondary documents, and all notices required herein.
12 Time limitations shall commence upon receipt.

13 14.2 Unless otherwise provided, notice to the
14 individual Parties shall be provided under this Agreement to the
15 following addresses:

16 (A) For the USAF:

17 343 CSG/DEEV
18 2258 Central Avenue, Suite 1
19 Eielson AFB, Alaska 99702-2225
(907) 377-1689

20 (B) For U.S. EPA:

21 Kenton L. Lauzen
22 U.S. Environmental Protection Agency
23 Alaska Operations Office
24 222 W. 7th Avenue, Box 19
25 Anchorage, Alaska 99513
26 (907) 271-5083

27 and

28 Mary Jane Nearman
U.S. Environmental Protection Agency
1200 Sixth Avenue, HW-074
Seattle, Washington 98101
(206) 553-6642

1 (C) For the State of Alaska:
2 Rielle Markey
3 Northern Regional Office
4 Alaska State Department of
5 Environmental Conservation
6 1001 Noble Street, Suite 350
7 Fairbanks, Alaska 99701
8 (907) 452-1714

9
10 XV. PERMITS

11 15.1 Nothing in this Agreement relieves USAF from
12 the requirement of obtaining an otherwise applicable permit or
13 other authorization whenever it proposes a response action
14 involving the shipment or movement off-site of a hazardous
15 substance, or undertakes any activities not directly related to
16 response actions at the site.

17
18 XVI. RETENTION OF RECORDS

19 16.1 The Parties shall preserve for a minimum of
20 ten (10) years after termination of this Agreement all records
21 and documents in their possession or in the possession of their
22 divisions, employees, agents, accountants, contractors, or
23 attorneys that relate to the presence of hazardous wastes and
24 constituents, hazardous substances, pollutants, and contaminants
25 at the Site or to the implementation of this Agreement, despite
26 any document retention policy to the contrary. After this ten
27 (10) year period, the Parties shall notify one another at least
28 forty-five (45) days prior to destruction or disposal of any such
documents or records. Upon request by any Party, all Parties
shall make available such records or documents, or true copies to

one another. Documents may be converted to permanent electronic or optical media and paper originals disposed of after forty-five (45) days notification to the other Parties.

XVII. PUBLIC PARTICIPATION AND ADMINISTRATIVE RECORD

17.1 The Parties agree that this Agreement and any 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, including Section 117 of SARA, the NCP, and U.S. EPA guidance on public participation and administrative records.

17.2 USAF shall develop and implement a Community Relations Plan ("CRP") that responds to the need for an interactive relationship with all interested community elements, both on- and off-Site, regarding activities and elements of work undertaken by USAF. USAF agrees to develop and implement the CRP in a manner consistent with Section 117 of SARA, 42 U.S.C. § 9613(k), the NCP, and U.S. EPA guidance.

17.3 USAF shall establish and maintain an administrative record at or near Eielson AFB in accordance with Section 113(k) of CERCLA, 42 U.S.C. § 9613(k). The administrative record shall be established and maintained in accordance with U.S. EPA policy and guidelines. A copy of each document included in the administrative record developed by USAF shall be supplied to ADEC, and shall expeditiously be provided to U.S. EPA upon written request. USAF shall provide to U.S. EPA

1 and ADEC an Index of documents in the administrative record on a
2 quarterly basis, if changes have occurred.

4 XVIII. CREATION OF DANGER/EMERGENCY ACTION

5 18.1 In the event U.S. EPA or ADEC determine that
6 activities conducted pursuant to this Agreement, or any other
7 circumstances or activities, are creating an imminent and
8 substantial endangerment to the health or welfare of the people
9 on the Site or in the surrounding area or to the environment,
10 U.S. EPA or ADEC may require or order USAF to stop further
11 implementation of this Agreement for such period of time as
12 needed to abate the danger. Any unilateral work stoppage for
13 longer than twenty-four (24) hours requires the concurrence of
14 the U.S. EPA Division Director, in accordance with Paragraph
15 21.9.

16 18.2 In the event USAF determines that activities
17 undertaken in furtherance of this Agreement or any other
18 circumstances or activities at the Site are creating an imminent
19 and substantial endangerment to the health or welfare of the
20 people on the Site or in the surrounding area or to the
21 environment, USAF may stop implementation of this Agreement for
22 such periods of time necessary for U.S. EPA and ADEC to evaluate
23 the situation and determine whether USAF should proceed with
24 implementation of the Agreement or whether the work stoppage
25 should be continued until the danger is abated. USAF shall
26 notify the other Parties as soon as is possible, but not later

1 than twenty-four (24) hours after such stoppage of work, and
2 provide U.S. EPA and ADEC with documentation of its analysis in
3 reaching this determination. If, after consultation with ADEC,
4 U.S. EPA disagrees with the USAF determination, it may require
5 USAF to resume implementation of this Agreement.

6 18.3 If U.S. EPA concurs in the work stoppage by
7 USAF, or if U.S. EPA or ADEC require or order a work stoppage,
8 USAF's obligations shall be suspended and the time periods for
9 performance of that work, as well as the time period for any
10 other work dependent upon the work that was stopped, shall be
11 extended, pursuant to Part XXV of this Agreement. Any
12 disagreements pursuant to this Part shall be resolved through the
13 dispute resolution procedures in Part XXI of the Agreement by
14 referral directly to the DRC.

15
16 XIX. FIVE YEAR REVIEW

17 19.1 If a remedial action is selected that
18 results in any hazardous substances, pollutants, or contaminants
19 remaining at the Site, the Parties shall review such remedial
20 action no less often than each five (5) years after the
21 initiation of such remedial action to assure that human health
22 and the environment are being protected by the remedial action
23 being implemented. The U.S. EPA Project Manager and the ADEC
24 Project Manager shall advise the USAF Project Manager of their
25 findings in this regard. If any Party determines that additional
26 action is required, the Agreement may be amended pursuant to Part

1 XXXIII. If the Parties are unable to agree on the need to amend
2 this Agreement, dispute resolution under Part XXI shall be
3 available to any Party.
4

5 XX. CONSULTATION WITH U.S. EPA AND ADEC

6 A. Applicability

7 20.1 The provisions of this Part establish the
8 procedures that shall be used by the Parties to provide each
9 other with appropriate notice, review, comment, and response to
10 comments regarding RI/FS and RD/RA documents, specified herein as
11 either primary or secondary documents. In accordance with
12 Section 120 of CERCLA, 42 U.S.C. § 9620, and 10 U.S.C. § 2705,
13 USAF will normally be responsible for issuing primary and
14 secondary documents to U.S. EPA and ADEC. As of the effective
15 date of this Agreement, all draft and draft final documents for
16 any deliverable document identified herein shall be prepared,
17 distributed, and subject to dispute in accordance with Paragraphs
18 20.3 through 20.24.

19 20.2 The designation of a document as "draft" or
20 "final" is solely for purposes of consultation with U.S. EPA and
21 ADEC in accordance with this Part. Such designation does not
22 affect the obligation of the Parties to issue documents, which
23 may be referred to herein as "final," to the public for review
24 and comment as appropriate and as required by law.

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

26 20.3 Primary documents include those documents

1 that are major, discrete portions of RI/FS or RD/RA activities.
2 Primary documents are initially issued by USAF in draft subject
3 to review and comment by U.S. EPA and ADEC. Following receipt of
4 comments on a particular draft primary document, USAF will
5 respond to the comments received and issue a draft final primary
6 document subject to dispute resolution. The draft final primary
7 document will become the final primary document either thirty
8 (30) days after the issuance of a draft final document if dispute
9 resolution is not invoked, or as modified by decision of the
10 dispute resolution process.

11 20.4 Secondary documents include those documents
12 that are discrete portions of the primary documents and are
13 typically input or feeder documents. Secondary documents are
14 issued by USAF in draft subject to review and comment by U.S. EPA
15 and ADEC. Although USAF will respond to comments received, the
16 draft secondary documents may be finalized in the context of the
17 corresponding primary documents. A secondary document may be
18 disputed only at the time the corresponding draft final primary
19 document is issued.

20 C. Primary Documents

21 20.5 USAF shall complete and transmit draft
22 documents for the following primary documents to U.S. EPA and
23 ADEC for review and comment in accordance with the provisions of
24 this Part:

- 25 (a) Sampling and Analysis Plan(s) (includes FSP and
26 QAPP) for Phase 2 Source Evaluation

- (b) Phase 1 or Phase 2 SER(s)
- (c) RI/FS Management Plan, including Work Plan, Field Sampling Plan ("FSP"), Quality Assurance Project Plan ("QAPP"), Health and Safety Plan ("HSP"), and Community Relations Plan ("CRP")
- (d) RI/FS, including RI, Baseline Risk Assessment, FS
- (e) ROD
- (f) Remedial Design
- (g) Remedial Action Work Plan

20.6 Only the draft final documents for the primary documents identified above shall be subject to dispute resolution. USAF shall complete and transmit draft primary documents in accordance with the schedules and deadlines established pursuant to Part XXIV of this Agreement. Primary documents may include target dates for subtasks as provided for in Paragraph 20.8. The purpose of target dates is to assist USAF in meeting deadlines, but target dates do not become enforceable by their inclusion in the primary documents and are not subject to Parts XXII, XXIV, and/or XXV.

D. Secondary Documents

20.7 USAF shall complete and transmit draft documents for the following secondary documents to U.S. EPA and ADEC for review and comment in accordance with the provisions of this Part:

- (a) Statement of Work
- (b) Source Characterization Summary, if appropriate

(c) Conceptual Source Model (typically, part of a Work Plan)

(d) Initial Identification of ARARs and TBCs

(e) Remedial Investigation ("RI")

(f) Baseline Risk Assessment

(g) Feasibility Study ("FS")

(h) Treatability Study Work Plan, as needed

(i) Treatability Study Report, as needed

(j) Proposed Plan

(k) 35% Remedial Design

(l) 60% Remedial Design

20.8 Although U.S. EPA and ADEC may comment on the draft documents for the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by Paragraph 20.4. Target dates shall be established pursuant to Part XXIV of this Agreement for the completion and transmission of draft secondary documents.

E. Meetings of the Project Managers on Development of Reports

20.9 The Project Managers shall meet approximately every thirty (30) days, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the Site on the primary and secondary documents. Prior to preparing any draft report specified in Paragraphs 20.5 and 20.7 above, the Project Managers shall meet to discuss the report results in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be

1 presented in the draft report. Prior to the development of
2 either a Statement of Work, Management Plan, or Sampling and
3 Analysis Plan, the Project Managers shall meet to develop a Scope
4 of Work that will be used when preparing a Sampling and Analysis
5 Plan or Management Plan for a remedial site inspection or
6 investigation.

7 F. Identification and Determination of Potential ARARs

8 20.10 For those primary or secondary documents
9 that consist of or include ARAR determinations, prior to the
10 issuance of a draft document the Project Managers shall meet to
11 identify and propose, to the best of their ability, all potential
12 ARARs pertinent to the report being addressed. Draft ARAR
13 determinations shall be prepared in accordance with Section
14 121(d)(2) of CERCLA, 42 U.S.C. § 9621(d)(2), the NCP, and
15 pertinent written guidance issued by U.S. EPA and ADEC, that is
16 not inconsistent with CERCLA and the NCP.

17 20.11 In identifying potential ARARs, the Parties
18 recognize that actual ARARs can be identified only on a
19 source-specific basis and that ARARs depend on the specific
20 hazardous substances, pollutants, and contaminants at a source,
21 the particular actions proposed as a remedy, and the
22 characteristics of a source. The Parties recognize that ARAR
23 identification is necessarily an iterative process and that
24 potential ARARs must be re-examined throughout the RI/FS process
25 until a ROD is issued.

1 G. Review and Comment on Draft Documents

2 20.12 USAF shall complete and transmit each draft
3 primary document to U.S. EPA and ADEC on or before the
4 corresponding deadline established for the issuance of the
5 document. USAF shall complete and transmit the draft secondary
6 document in accordance with the target dates established for the
7 issuance of such documents.

8 20.13 Unless the Parties mutually agree to another
9 time period, all draft documents shall be subject to a thirty
10 (30) day period for review and comment. Review of any document
11 by U.S. EPA or ADEC may concern all aspects of the report
12 (including completeness) and should include, but is not limited
13 to, technical evaluation of any aspect of the document, and
14 consistency with CERCLA, the NCP, applicable state laws, and any
15 pertinent guidance or policy issued by U.S. EPA or ADEC.
16 Comments by U.S. EPA and ADEC shall be provided with adequate
17 specificity so that USAF may respond to the comments and, if
18 appropriate, make changes to the draft document. Comments shall
19 refer to any pertinent sources of authority or references upon
20 which the comments are based, and, upon request of USAF, U.S. EPA
21 or ADEC shall provide a copy of the cited authority or reference.
22 In unusual circumstances, U.S. EPA and ADEC may extend the thirty
23 (30) day comment period for an additional twenty (20) days by
24 written notice to USAF prior to the end of the thirty (30) day
25 period. On or before the close of the comment period, U.S. EPA
26 and ADEC shall transmit by next day mail their written comments

1 to USAF.

2 20.14 Representatives of USAF shall make
3 themselves readily available to U.S. EPA and ADEC during the
4 comment period for purposes of informally responding to questions
5 and comments on draft documents. Oral comments made during such
6 discussions need not be the subject of a written response by USAF
7 on the close of the comment period.

8 20.15 In commenting on a draft document that
9 contains a proposed ARAR determination, U.S. EPA and ADEC shall
10 include a reasoned statement of whether they object to any
11 portion of the proposed ARAR determination. To the extent that
12 U.S. EPA or ADEC do object, they shall explain the basis for
13 their objection in detail and shall identify any ARARs that they
14 believe were not properly addressed in the proposed ARAR
15 determination.

16 20.16 Following the close of the comment period
17 for a draft document, USAF shall give full consideration to all
18 written comments on the draft document submitted during the
19 comment period. Within thirty (30) days of the close of the
20 comment period on a draft secondary document, USAF shall transmit
21 to U.S. EPA and ADEC its written response to comments received
22 within the comment period. Within thirty (30) days of the close
23 of the comment period on a draft primary document, USAF shall
24 transmit to U.S. EPA and ADEC a draft final primary document that
25 shall include USAF's response to all written comments received
26 within the comment period. While the resulting draft final

1 document shall be the responsibility of USAF, it shall be the
2 product of consensus to the maximum extent possible.

3 20.17 USAF may extend the thirty (30) day period
4 for either responding to comments on a draft document or for
5 issuing the draft final primary document for an additional twenty
6 (20) days by providing notice to U.S. EPA and ADEC. In
7 appropriate circumstances, this time period may be further
8 extended in accordance with Part XXV.

9 H. Availability of Dispute Resolution for
10 Draft Final Primary Documents

11 20.18 Dispute resolution shall be available to the
12 Parties for draft final primary documents as set forth in Part
13 XXI.

14 20.19 When dispute resolution is invoked on a
15 draft final primary document, work may be stopped in accordance
16 with the procedures set forth in Part XXI.

17 I. Finalization of Documents

18 20.20 The draft final primary document shall serve
19 as the final primary document if no Party invokes dispute
20 resolution regarding the document or, if invoked, at completion
21 of the dispute resolution process should USAF's position be
22 sustained. If USAF's determination is not sustained in the
23 dispute resolution process, USAF shall prepare, within not more
24 than thirty-five (35) days, a revision of the draft final
25 document that conforms to the results of dispute resolution. In
26 appropriate circumstances, the time period for this revision
27 process may be extended in accordance with Part XXV hereof.

1 J. Subsequent Modifications

2 20.21 Following finalization of any primary
3 document pursuant to Paragraph 20.20 above, any Party may seek to
4 modify the document, including seeking additional field work,
5 pilot studies, computer modeling, or other supporting technical
6 work, only as provided in Paragraphs 20.22 and 20.23.

7 20.22 A Party may seek to modify a document,
8 including Attachment B, after finalization if it determines,
9 based on new information (i.e., information that became
10 available, or conditions that became known, after the document
11 was finalized) that the requested modification is necessary. A
12 Party may seek such a modification by submitting a concise
13 written request to the Project Managers of the other Parties.
14 The request shall specify the nature of the requested
15 modification and how the request is based on new information.

16 20.23 In the event that a consensus among the
17 Parties is reached, the modification shall be incorporated by
18 reference and become fully enforceable under the Agreement. In
19 the event that a consensus is not reached by the Project Managers
20 on the need for a modification, any Party may invoke dispute
21 resolution as provided in Part XXI to determine if such
22 modification shall be conducted. Modification of a document
23 shall be required only upon a showing that: (1) the requested
24 modification is based on significant new information, and (2) the
25 requested modification could be of significant assistance in
26 evaluating effects on human health or the environment, in

1 evaluating the selection of remedial alternatives, or in
2 protecting human health and the environment.

3 20.24 Nothing in this Part shall alter U.S. EPA's
4 or ADEC's ability to request the performance of additional work
5 that was not contemplated by this Agreement. USAF's obligation
6 to perform such work must be established by either a modification
7 of a report or document or by amendment to this Agreement.

8
9 XXI. RESOLUTION OF DISPUTES

10 21.1 Except as specifically set forth elsewhere
11 in this Agreement, if a dispute arises under this Agreement, the
12 procedures of this Part shall apply. All Parties to this
13 Agreement shall make reasonable efforts to informally resolve
14 disputes at the Project Manager or immediate supervisor level.
15 If resolution cannot be achieved informally, the procedures of
16 this Part shall be implemented to resolve a dispute.

17 21.2 Within thirty (30) days after: (1) the
18 issuance of a draft final primary document pursuant to this
19 Agreement, or (2) any action that leads to or generates a
20 dispute, the disputing Party shall submit to the Dispute
21 Resolution Committee ("DRC") a written statement of dispute
22 setting forth the nature of the dispute, the work affected by the
23 dispute, the disputing Party's position with respect to the
24 dispute, and the technical, legal, or factual information the
25 disputing Party is relying upon to support its position.

26 21.3 Prior to any Party's issuance of a written

1 statement of dispute, the disputing Party shall engage the other
2 Parties in informal dispute resolution among the Project Managers
3 and/or their immediate supervisors. During this informal dispute
4 resolution period the Parties shall meet as many times as are
5 necessary to discuss and attempt resolution of the dispute.

6 21.4 The DRC will serve as a forum for resolution
7 of disputes for which agreement has not been reached through
8 informal dispute resolution. The Parties shall each designate
9 one individual and an alternate to serve on the DRC. The
10 individuals designated to serve on the DRC shall be employed at
11 the policy level (SES or equivalent) or be delegated the
12 authority to participate on the DRC for the purposes of dispute
13 resolution under this Agreement. The U.S. EPA representative on
14 the DRC is the Hazardous Waste Division Director ("Division
15 Director") of U.S. EPA's Region 10. USAF's designated member is
16 the Vice Commander, 11th Air Force (PACAF). ADEC's designated
17 member is the Section Chief of the Contaminated Site Section
18 ("Section Chief"), Alaska Department of Environmental
19 Conservation. Written notice of any delegation of authority from
20 a Party's designated representative on the DRC shall be provided
21 to all other Parties.

22 21.5 Following elevation of a dispute to the DRC,
23 the DRC shall have twenty-one (21) days to unanimously resolve
24 the dispute and issue a written decision. If the DRC is unable to
25 unanimously resolve the dispute within this twenty-one (21) day
26 period, the written statement of dispute shall be forwarded to

1 the Senior Executive Committee (SEC) for resolution within seven
2 (7) days after the close of the twenty-one (21) day resolution
3 period.

4 21.6 The SEC will serve as the forum for
5 resolution of disputes for which agreement has not been reached
6 by the DRC. The U.S. EPA representative on the SEC is the
7 Regional Administrator of U.S. EPA's Region 10. USAF's
8 representative on the SEC is the Deputy Assistant Secretary of
9 the Air Force for Environment, Safety and Occupational Health.
10 ADEC's representative on the SEC is the Director, Division of
11 Environmental Quality, Alaska Department of Environmental
12 Conservation. The SEC members shall, as appropriate, confer,
13 meet, and exert their best efforts to resolve the dispute and
14 issue a written decision. If unanimous resolution of the dispute
15 is not reached within twenty-one (21) days, U.S. EPA's Regional
16 Administrator shall issue a written position on the dispute.
17 USAF or ADEC may, within fourteen (14) days of the Regional
18 Administrator's issuance of U.S. EPA's position, issue a written
19 notice elevating the dispute to the Administrator of U.S. EPA for
20 resolution in accordance with all applicable laws and procedures.
21 In the event that USAF or ADEC elect not to elevate the dispute
22 to the Administrator within the designated fourteen (14) day
23 escalation period, USAF and/or ADEC shall be deemed to have
24 agreed with the Regional Administrator's written position with
25 respect to the dispute.

26 21.7 Upon escalation of a dispute to the

1 Administrator of U.S. EPA pursuant to Paragraph 21.6, the
2 Administrator will review and resolve the dispute within
3 twenty-one (21) days. Upon request, and prior to resolving the
4 dispute, the U.S. EPA Administrator shall meet and confer with
5 USAF's Secretariat Representative and the Commissioner of ADEC or
6 the Commissioner's representative to discuss the issue(s) under
7 dispute. The Administrator will provide notice to all Parties of
8 any Party's request to meet or confer with respect to any such
9 dispute and will provide an adequate opportunity for all Parties
10 to participate in any meeting or conference convened to resolve
11 such dispute. Upon resolution, the Administrator shall provide
12 USAF and ADEC with a written final decision setting forth
13 resolution of the dispute. The duties of the Administrator set
14 forth in this Part shall not be delegated.

15 21.8 The pendency of any dispute under this Part
16 shall not affect USAF's responsibility for timely performance of
17 the work required by this Agreement, except that the time period
18 for completion of work affected by such dispute shall be extended
19 for a period of time usually not to exceed the actual time taken
20 to resolve any good faith dispute in accordance with the
21 procedures specified herein. All elements of the work required
22 by this Agreement that are not affected by the dispute shall
23 continue and be completed in accordance with the applicable
24 schedule.

25 21.9 When dispute resolution is in progress, work
26 affected by the dispute will immediately be discontinued if the

1 Division Director for U.S. EPA's Region 10 or the ADEC Section
2 Chief request, in writing, that work related to the dispute be
3 stopped because, in U.S. EPA's or ADEC's opinion, such work is
4 inadequate or defective, and such inadequacy or defect is likely
5 to yield an adverse effect on human health or the environment, or
6 is likely to have a substantial adverse effect on the remedy
7 selection or implementation process. To the extent possible,
8 U.S. EPA and ADEC shall consult with all Parties prior to
9 initiating a work stoppage request. After stoppage of work, if
10 any Party believes that the work stoppage is inappropriate or may
11 have potential significant adverse impacts, that Party may meet
12 with the other Parties to discuss the work stoppage. Following
13 this meeting, and further consideration of the issues, the
14 U.S. EPA Division Director will issue, in writing, a final
15 decision with respect to the work stoppage. The final written
16 decision of the U.S. EPA Division Director may immediately be
17 subjected to formal dispute resolution. Such dispute may be
18 brought directly to either the DRC or the SEC, at the discretion
19 of the Party requesting dispute resolution.

20 21.10 Within twenty-one (21) days of resolution of
21 a dispute pursuant to the procedures specified in this Part, USAF
22 shall incorporate the resolution and final determination into the
23 appropriate plan, schedule, or procedures and proceed to
24 implement this Agreement according to the amended plan, schedule,
25 or procedures.

26 21.11 Resolution of a dispute pursuant to this

1 Part of the Agreement constitutes a final resolution of that
2 dispute arising under this Agreement. All Parties shall abide by
3 all terms and conditions of any final resolution of dispute
4 obtained pursuant to this Part of this Agreement.

5
6 XXII. ENFORCEABILITY

7 22.1 The Parties agree that:

8 (a) Upon its effective date and to the extent
9 permitted by Section 310 of CERCLA, 42 U.S.C. § 9659, this
10 Agreement is enforceable by any person, and the violation of any
11 standard, regulation, condition, requirement, or order contained
12 herein will be subject to civil penalties under Sections 310(c)
13 and 109 of CERCLA, 42 U.S.C. §§ 9659(c) and 9609;

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

19 (c) All terms and conditions of this Agreement
20 that relate to interim or final remedial actions, including
21 corresponding schedules and deadlines, and all work associated
22 with the interim or final remedial actions, shall be enforceable
23 by any person pursuant to Section 310(c) of CERCLA, 42 U.S.C.
24 § 9659(c), and any violation of such terms or conditions will be
25 subject to civil penalties under Sections 109 and 310(c) of
26 CERCLA, 42 U.S.C. §§ 9609 and 9659(c); and

1 (d) Any final resolution of a dispute pursuant
2 to Part XXI of this Agreement that establishes a term, condition,
3 schedule, or deadline shall be enforceable by any person pursuant
4 to Section 310(c) of CERCLA, 42 U.S.C. § 9659(c), and any
5 violation of such term, condition, schedule, or deadline will be
6 subject to civil penalties under Sections 109 and 310(c) of
7 CERCLA, 42 U.S.C. §§ 9609 and 9659(c).

8 22.2 The Parties agree that all Parties shall
9 have the right to enforce the terms of this Agreement.

10
11 XXIII. STIPULATED PENALTIES

12 23.1 In the event that USAF fails to submit a
13 primary document to U.S. EPA and ADEC pursuant to the appropriate
14 timetable or deadline in accordance with the requirements of this
15 Agreement, or fails to comply with a term or condition of this
16 Agreement that relates to an interim or final remedial action,
17 U.S. EPA may assess a stipulated penalty against USAF. A
18 stipulated penalty may be assessed in an amount not to exceed
19 five thousand dollars (\$5,000) for the first week (or part
20 thereof), and ten thousand dollars (\$10,000) for each additional
21 week (or part thereof) for which a failure set forth in this
22 paragraph occurs.

23 23.2 Upon determining that USAF has failed in a
24 manner set forth in Paragraph 23.1, U.S. EPA shall so notify USAF
25 in writing. If the failure in question is not already subject to
26 dispute resolution at the time such notice is received, USAF

1 stipulated penalty in excess of the amount set forth in Section
2 109 of CERCLA, 42 U.S.C. § 9609, or Section 3008 of RCRA,
3 42 U.S.C. § 6928.

4 23.6 This Part shall not affect USAF's ability to
5 obtain an extension of a timetable, deadline, or schedule
6 pursuant to Part XXV of this Agreement.

7 23.7 Nothing in this Agreement shall be construed
8 to render any officer or employee of USAF personally liable for
9 the payment of any stipulated penalty assessed pursuant to this
10 Part.

11 XXIV. DEADLINES

12 24.1 Deadlines (subject to extension pursuant to
13 Part XXV) for the draft primary documents are established as
14 follows:

			<u>Submittal Date</u>
A.	Site RI/FS	Management Plan	6/17/91
		RI/FS	7/15/94
		ROD	4/1/95
B.	Operable Unit #1A	Management Plan	1/15/93
		RI/FS	11/20/93
		ROD	4/29/94
	Interim Action #1B	ROD	3/24/92
C.	Operable Unit #2	Management Plan	6/17/91
		RI/FS	4/21/92
		ROD	9/28/92
D.	Operable Unit #3	Management Plan	1/15/92
		RI/FS	11/19/92
		ROD	4/28/93

E.	Operable Unit #4	Management Plan	1/15/92
		RI/FS	11/19/92
		ROD	4/28/93
F.	Operable Unit #5	Management Plan	2/15/92
		RI/FS	12/20/92
		ROD	5/29/93
G.	Operable Unit #6A	Management Plan	1/15/93
		RI/FS	11/20/93
		ROD	4/29/94
	Interim Action #6B	ROD	12/15/92

The current source distribution for each OU is included in Attachment B.

24.2 The final overall RI/FS that incorporates all sources under this Agreement will be initiated upon signature of the Agreement by establishment of the administrative record. The draft ROD for this final RI/FS shall be submitted no later than April 1, 1995, subject to extensions available pursuant to Paragraph 24.7 and Part XXV.

24.3 Within twenty-one (21) days of the effective date of this Agreement, USAF shall propose target dates for completion of appropriate draft secondary documents identified in Paragraph 20.7(a)-(j) for each of the OUs specified above. For any additional future OUs, the USAF shall propose target dates for completion of these draft secondary documents in the SER that identifies the specific OU.

24.4 Within twenty-one (21) days of issuance of each ROD, USAF shall propose target dates for completion of the draft secondary documents identified in Paragraph

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20.7(k)-(l), and deadlines for completion of the following draft primary documents:

(a) Remedial Design

(b) Remedial Action Work Plan

If the Parties agree on the proposed deadlines, the finalized deadlines shall be incorporated into the Agreement. If the Parties fail to agree within thirty (30) days of the proposed deadlines, the matter shall immediately be submitted for dispute resolution pursuant to Part XXI of this Agreement. The deadlines shall be published utilizing the procedures set forth in Paragraph 24.11.

24.5 With respect to known potential source areas not identified in Paragraph 24.1, USAF shall submit Phase 1 or 2 SERs and the Sampling and Analysis Plan ("SAP") for the Phase 2 SER pursuant to the deadlines specified below:

Submittal Date

A.	Phase 1 SER A	10/15/91
B.	Phase 2 SER B	10/15/91
C.	Phase 2 SER C SAP	2/15/92

The current source distribution for each SER is included in Attachment B.

24.6 In the SER, the USAF shall propose: 1) no further study; 2) referral to another state or federal program; 3) limited fieldwork for an additional source inspection; or 4) a schedule for inclusion in the CERCLA process either under an existing OU or subject to a remediation schedule that is in

accordance with the generic schedules (Attachment A).
Recommendations for the disposition of sources upon completion of
the Phase 1 or Phase 2 SER process shall be based on: 1)
compliance with ARARs; 2) overall protection of human health and
the environment, as outlined in the NCP; and 3) whether the
source is more appropriately and effectively addressed under
other applicable state or federal environmental programs.

24.7 If a source is to be incorporated into the
CERCLA process, the SER shall include proposed deadlines and
target dates for appropriate primary and secondary documents.
The Parties agree to prioritize and stagger the implementation
start dates associated with schedules developed pursuant to this
Paragraph based on degree of potential threat to human health and
the environment.

24.8 USAF shall provide notification to U.S. EPA
and ADEC within thirty (30) days of identifying a new potential
source area that appears to require additional investigation
and/or remediation under the Agreement. A remedial source
evaluation shall, if appropriate, be undertaken by the USAF to
evaluate the potential releases of hazardous substances,
pollutants, or contaminants. Upon notification to the U.S. EPA
and ADEC, the USAF shall: 1) initiate a preliminary assessment;
or 2) proceed directly to the site inspection process outlined in
Paragraph 24.10.

24.9 If a preliminary assessment is deemed
appropriate for a given source, USAF shall submit the preliminary

1 assessment in a Phase 1 SER within ninety (90) days of
2 notification. The Phase 1 SER shall include a preliminary
3 assessment consisting of: 1) a review of existing information
4 such as the source and description of the probable nature of the
5 release, potential pathways of exposure, and exposure targets;
6 2) a source reconnaissance, where appropriate; and 3) a
7 recommendation on whether further action is warranted or whether
8 a Phase 2 SER source inspection should be undertaken.

9 24.10 Within one hundred and twenty (120) days of
10 determining the need for a Phase 2 SER source inspection, USAF
11 shall submit a Sampling and Analysis Plan that provides a process
12 and schedule for obtaining data of sufficient quality and
13 quantity to satisfy data needs of a remedial site inspection.
14 Within one hundred and twenty (120) days of completion of the
15 inspection, USAF shall submit a Phase 2 SER to U.S. EPA and ADEC
16 in accordance with procedures outlined in this Part.

17 24.11 The final deadlines established pursuant to
18 this Part shall be published by U.S. EPA, in conjunction with
19 ADEC.

20 24.12 The deadlines set forth in this Part may be
21 extended pursuant to Part XXV of this Agreement. The Parties
22 recognize that one possible basis for extension of the deadlines
23 for completion of the RI/FS Reports is the identification of
24 significant new site conditions during performance of the RI.

1 XXV. EXTENSIONS

2 25.1 Either a deadline or a schedule shall be
3 extended upon receipt of a timely request for extension and when
4 good cause exists for the requested extension. Any request for
5 extension by USAF shall be submitted in writing to the Project
6 Managers and shall specify:

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

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

- 13 a. An event of Force Majeure;
14 b. A delay caused by another Party's failure to meet
15 any requirement of this Agreement;
16 c. A delay caused by the good faith invocation of
17 dispute resolution or the initiation of judicial
18 action;
19 d. A delay caused, or that is likely to be caused,
20 by the grant of an extension in regard to another
21 deadline or schedule; and
22 e. Any other event or series of events mutually
23 agreed to by the Parties as constituting good
24 cause.

25 25.2 Absent agreement of the Parties with respect
26 to the existence of good cause, USAF may seek and obtain a
27 determination through the dispute resolution process that good
28 cause exists.

25 25.3 Within seven (7) days of receipt of a
26 request for an extension of a deadline or a schedule, the other
27

1 Parties shall attempt to advise USAF, in writing, of their
2 respective positions on the request. Any failure by the other
3 Parties to respond within twenty-one (21) days shall be deemed to
4 constitute concurrence in the request for extension. If either
5 U.S. EPA or ADEC does not concur in the requested extension, it
6 shall include in its statement of nonconcurrence an explanation
7 of the basis for its position.

8 25.4 If there is consensus among the Parties that
9 the requested extension is warranted, USAF shall extend the
10 affected deadline or schedule accordingly. If there is no
11 consensus among the Parties as to whether all or part of the
12 requested extension is warranted, the deadline or schedule shall
13 not be extended except in accordance with a determination
14 resulting from the dispute resolution process.

15 25.5 Within twenty-one (21) days of receipt of a
16 statement of nonconcurrence with the requested extension, USAF
17 may invoke dispute resolution.

18 25.6 A timely and good faith request for an
19 extension shall toll any assessment of stipulated penalties,
20 forfeiture of comment rights, or application for judicial
21 enforcement of the affected deadline or schedule until a decision
22 is reached on whether the requested extension will be approved.
23 If dispute resolution is invoked and the requested extension is
24 denied, stipulated penalties may be assessed and may accrue from
25 the date of the original deadline or the date U.S. EPA or ADEC
26 denied, in writing, USAF's requested extension, whichever is

1 later. Following the grant of an extension, an assessment of
2 stipulated penalties or an application for judicial enforcement
3 may be sought only to compel compliance with the timetable and
4 deadline or schedule as most recently extended.

5
6 XXVI. FORCE MAJEURE

7 26.1 A Force Majeure shall mean any event arising
8 from causes beyond the control of a Party that causes a delay in
9 or prevents the performance of any obligation under this
10 Agreement, including, but not limited to, acts of God; fire; war;
11 insurrection; civil disturbance; explosion; unanticipated
12 breakage or accident to machinery, equipment, or lines of pipe
13 despite reasonably diligent maintenance; adverse weather
14 conditions that could not be reasonably anticipated; unusual
15 delay in transportation; restraint by court order or order of
16 public authority; inability to obtain, at a reasonable cost and
17 after exercise of reasonable diligence, any necessary
18 authorizations, approvals, permits, or licenses due to action or
19 inaction of any governmental agency or authority other than USAF;
20 delays caused by compliance with applicable statutes or
21 regulations governing contracting, procurement, or acquisition
22 procedures, despite the exercise of reasonable diligence; and
23 insufficient availability of appropriated funds, if USAF shall
24 have made timely request for such funds as part of the budgetary
25 process as set forth in Part XXVII of this Agreement. A Force
26 Majeure shall also include any strike or other labor dispute,

1 whether or not within the control of the Parties affected
2 thereby. Force Majeure shall not include increased costs or
3 expenses of response actions, whether or not anticipated at the
4 time such response actions were initiated, or normally-occurring
5 difficulties posed by winter conditions in an arctic climate that
6 could have been reasonably anticipated.

8 XXVII. FUNDING

9 27.1 It is the expectation of the Parties to this
10 Agreement that all obligations of USAF arising under this
11 Agreement will be fully funded. USAF agrees to seek sufficient
12 funding through the U.S. Department of Defense budgetary process
13 to fulfill its obligations under this Agreement.

14 27.2 In accordance with Section 120(e)(5)(B) of
15 CERCLA, 42 U.S.C. § 9620(e)(5)(B), USAF shall provide to the
16 U.S. Department of Defense for its annual report to Congress the
17 specific cost estimates and budgetary proposals associated with
18 the implementation of this Agreement.

19 27.3 Funds authorized and appropriated annually
20 by Congress under the "Environmental Restoration, Defense"
21 appropriation in the U.S. Department of Defense Appropriation Act
22 and allocated by the DASD(E) to USAF will be the source of funds
23 for activities required by this Agreement consistent with Section
24 211 of SARA, 10 U.S.C. Chapter 160. However, should the
25 Environmental Restoration, Defense appropriation be inadequate in
26 any year to meet the total U.S. Department of Defense

1 implementation requirements, the U.S. Department of Defense shall
2 employ and USAF shall follow a standardized U.S. Department of
3 Defense prioritization process that allocates that year's
4 appropriations in a manner that maximizes the protection of human
5 health and the environment. The standardized U.S. Department of
6 Defense prioritization model shall be utilized.

7 27.4 Any requirement for the payment or
8 obligation of funds, including stipulated penalties, by USAF
9 established by the terms of this Agreement shall be subject to
10 the availability of appropriated funds, and no provision herein
11 shall be interpreted to require obligation or payment of funds in
12 violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. In cases
13 where payment or obligation of funds, including stipulated
14 penalties, would constitute a violation of the Anti-Deficiency
15 Act, the dates established requiring the payment or obligation of
16 such funds shall be appropriately adjusted.

17 27.5 If appropriated funds are not available to
18 fulfill USAF's obligations under this Agreement, U.S. EPA and
19 ADEC reserve the right to initiate an action against any other
20 person or to take any response action that would be appropriate
21 absent this Agreement.

22 27.6 USAF shall submit copies of all budget
23 request documents to U.S. EPA and ADEC by October 1 of each year
24 after the execution of this Agreement, and shall notify U.S. EPA
25 and ADEC of the actual amounts budgeted by February 1 of each
26 year. The budget documents shall clearly establish that USAF has

1 requested all necessary funds to carry out its obligations under
2 this Agreement for the applicable budget year. USAF shall honor
3 all reasonable requests by U.S. EPA or ADEC to obtain additional
4 documentation or information regarding the budget, and shall
5 respond to such requests within fifteen (15) days of the request.

7 XXVIII. RECOVERY OF EXPENSES

8 28.1 USAF and U.S. EPA agree to amend this Part
9 at a later date in accordance with any subsequent resolution of
10 the currently contested issue of cost reimbursement.

11 28.2 USAF and ADEC agree to use the Defense/State
12 Memorandum of Agreement signed on June 1, 1990, for the
13 reimbursement of services provided in direct support of the USAF
14 environmental restoration activities at the Site pursuant to this
15 Agreement.

17 XXIX. OTHER CLAIMS

18 29.1 Nothing in this Agreement shall constitute
19 or be construed as a bar or release from any claim, cause of
20 action, or demand in law or equity by or against any persons,
21 firm, partnership, or corporation not a signatory to this
22 Agreement for any liability it may have arising out of or
23 relating in any way to this Agreement or the generation, storage,
24 treatment, handling, transportation, release, or disposal of any
25 hazardous substances, hazardous wastes, hazardous constituents,
26 pollutants, or contaminants found at, taken to, or taken from

1 Eielson AFB.

2 29.2 U.S. EPA and ADEC shall not be held as a
3 Party to any contract entered into by USAF to implement the
4 requirements of this Agreement.

5 29.3 USAF shall notify the appropriate federal
6 and state natural resource trustees as required by Section
7 104(b)(2) of CERCLA, 42 U.S.C. § 9604(e), and Section 2(e)(2) of
8 Executive Order 12580. Except as provided herein, USAF is not
9 released from the liability that it may have pursuant to any
10 provisions of state and federal law for any claim for damages or
11 liability for destruction of, or loss of, natural resources.

12 29.4 This Agreement shall not restrict U.S. EPA
13 and/or ADEC from taking any legal or response action for any
14 matter not covered by this Agreement.

15
16 XXX. OTHER APPLICABLE LAWS

17 30.1 All actions required to be taken pursuant to
18 this Agreement shall be undertaken in accordance with the
19 requirements of all applicable state and federal laws and
20 regulations unless an exemption from such requirements is
21 provided in this Agreement, CERCLA, or the NCP.

22
23 XXXI. CONFIDENTIAL INFORMATION

24 31.1 USAF may assert on its own behalf, or on
25 behalf of a contractor, subcontractor, or consultant, a
26 confidentiality claim covering all or part of the information

1 requested by any Party to this Agreement pursuant to Section 104
2 of CERCLA, 42 U.S.C. § 9604(e), and 32 CFR Part 806. Analytical
3 data shall not be claimed as confidential by USAF, unless it may
4 disclose information that has already been so classified for
5 reasons of national security. Information determined to be
6 confidential by USAF pursuant to 32 CFR Part 806 shall be
7 afforded the protection specified therein and such information
8 shall be treated by ADEC as confidential. If no claim of
9 confidentiality accompanies the information when it is submitted
10 to either regulatory agency, the information may be made
11 available to the public without further notice to USAF.

12 13 XXXII. TRANSFER OF PROPERTY

14 32.1 Conveyance of title, easement, or other
15 interest in Eielson AFB shall be in accordance with Section 120
16 of CERCLA, 42 U.S.C. § 9620.

17 18 XXXIII. MODIFICATION/AMENDMENT OF AGREEMENT

19 33.1 Modifications to and/or actions taken
20 pursuant to Parts XI (Sampling and Data/Document Availability),
21 XII (Quality Assurance), XX (Consultation with U.S. EPA and
22 ADEC), XXIV (Deadlines), and XXV (Extensions) may be effected by
23 the unanimous agreement of the Project Managers.

24 33.2 Modifications or amendments not permitted by
25 Paragraph 33.1 may be effected only by the unanimous agreement of
26 the signatories or upon completion of Dispute Resolution, as

1 applicable.

2 33.3 Any modification or amendment shall be
3 reduced to writing; shall be effective as of the date it is
4 signed by all the Project Managers or signatories, as applicable;
5 and shall be incorporated into, and modify, this Agreement.

6 XXXIV. SEVERABILITY

7 34.1 If any provision of this Agreement is ruled
8 invalid, illegal, or unconstitutional, the remainder of the
9 Agreement shall not be affected by such ruling.

10 XXXV. TERMINATION AND SATISFACTION

11 35.1 The provisions of this Agreement shall be
12 deemed satisfied when the Parties unanimously agree that USAF has
13 completed its obligations under the terms of this Agreement. Any
14 Party may propose in writing the termination of this Agreement
15 upon a showing that the requirements of this Agreement have been
16 satisfied. A Party opposing termination of this Agreement shall
17 serve its objection upon the proposing Party within thirty (30)
18 days of receipt of the proposal. Any objection shall describe in
19 detail the additional work needed to satisfy the requirements of
20 the Agreement. Any Party may invoke dispute resolution as to the
21 request for or objection to a proposal to terminate.

22 XXXVI. RESERVATION OF RIGHTS

23 36.1 The Parties agree to exhaust their rights
24 under Parts XX and XXI prior to exercising any administrative or
25 judicial rights that have been reserved under this Agreement.

26 36.2 Nothing in this Agreement shall be construed

1 as a restriction or waiver of any rights that U.S. EPA or ADEC
2 may have under CERCLA, including, but not limited to, any rights
3 under Section 113 and 310 of CERCLA, 42 U.S.C. §§ 9613 and 9659.
4 The U.S. Department of Defense does not waive any rights it may
5 have under CERCLA Sections 120 and 121(f)(3)(C), 42 U.S.C.
6 §§ 9620 and 9621(f)(3)(C); Section 211 of SARA, 10 U.S.C.
7 Chapter 160; and Executive Order 12580.

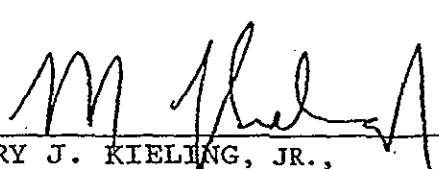
8 36.3 ADEC reserves its right to maintain an
9 action under Section 121(f)(3)(B) of CERCLA, 42 U.S.C.
10 § 9621(f)(3)(B), to challenge the selection of a remedial action
11 that does not attain a legally applicable or relevant and
12 appropriate standard, requirement, criteria, or limitation
13 ("ARAR"). If ADEC exercises its right under Section 121(f)(3)(B)
14 of CERCLA, 42 U.S.C. § 9621(f)(3)(B), ADEC shall withdraw from
15 this Agreement within sixty (60) days following the effective
16 date of the ROD. If ADEC exercises its right to withdraw from
17 this Agreement, USAF expressly reserves any jurisdictional claim
18 or defense that it may have in regard to any legal right or
19 remedies pursued by ADEC.

20 36.4 Nothing in this Agreement shall be construed
21 as authorizing any person to seek judicial review of any action
22 or work where review is barred by any provision of CERCLA,
23 including Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).


24 XXXVII. EFFECTIVE DATE

25 37.1 This Agreement is effective upon signature
26 by all the Parties to this Agreement.

Signature sheet for the foregoing Federal Facility
Agreement for the Eielson Air Force Base, among the
U.S. Environmental Protection Agency, the U.S. Department of the
Air Force, and the Alaska Department of Environmental
Conservation.


HARRY J. KIELING, JR.,
Colonel, USAF
Vice Commander, 343 Tactical Fighter Wing
Eielson Air Force Base, Alaska

30 Nov 1990
Date


ROBERT D. CLARK
Colonel, USAF
Vice Commander, 11th Air Force
Elmendorf Air Force Base, Alaska

10 Dec 1990
Date

REPRESENTED BY:

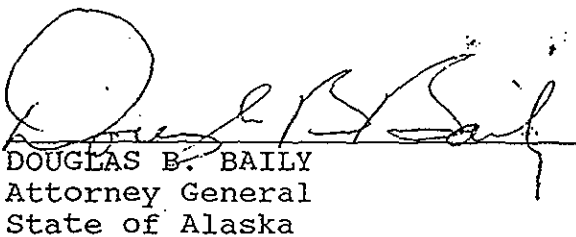
Major James G. Van Ness, Esq.

Signature sheet for the foregoing Federal Facility
Agreement for the Eielson Air Force Base, among the
U.S. Environmental Protection Agency, the U.S. Department of the
Air Force, and the Alaska Department of Environmental
Conservation.


DENNIS D. KELSO

Commissioner
Alaska Department of Environmental Conservation
State of Alaska

November 4, 1990
Date


DOUGLAS B. BAILLY
Attorney General
State of Alaska

Nov 6, 1990
Date

REPRESENTED BY:

Cameron M. Leonard, Esq.

Signature sheet for the foregoing Federal Facility
Agreement for the Eielson Air Force Base, among the
U.S. Environmental Protection Agency, the U.S. Department of the
Air Force, and the Alaska Department of Environmental
Conservation.



5-21-91

DANA A. RASMUSSEN
Regional Administrator
Region 10
United States Environmental Protection Agency

Date

REPRESENTED BY:

Monica Kirk, Esq.

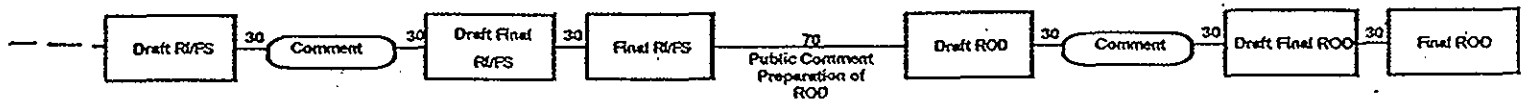
ATTACHMENT A: GENERIC SCHEDULES

Note: Unless otherwise noted, schedules below include dates for completion of primary reports only.

TYPE 1: No additional sampling required; proceed to ROD

With RI/FS:

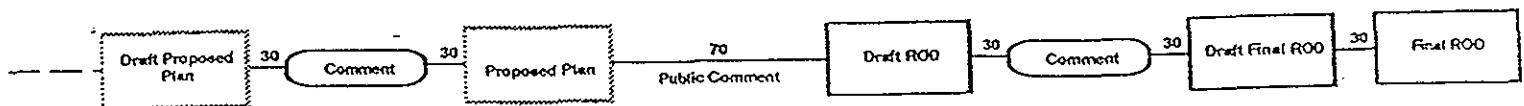
Day 1: Initiate Type 1 process with RI/FS
Day 45: Submit Draft RI/FS
Day 75: Regulatory agencies submit comments on Draft RI/FS
Day 105: Submit Draft Final RI/FS
Day 135: Finalize RI/FS and begin public comment period
Day 195: Complete public comment period
Day 205: Submit Draft ROD
Day 235: Regulatory agencies submit comments on Draft ROD
Day 265: Submit Draft Final ROD
Day 295: Final signature of ROD completed



or

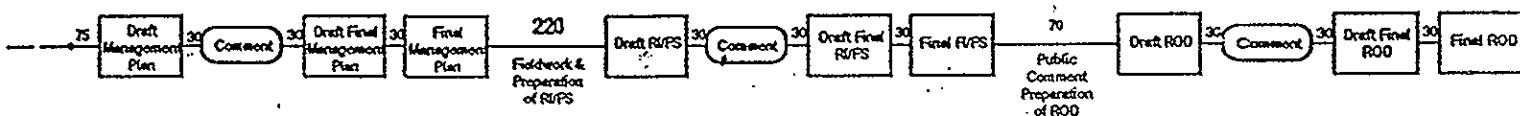
With Proposed Plan (secondary document) - This option may be used only for interim actions in those instances where the relevant data can be summarized briefly and the alternatives are few and straightforward (55FR8704):

Day 1: Initiate Type 1 process with Proposed Plan
Day 30: Submit Draft Proposed Plan
Day 60: Regulatory agencies submit comments on Draft Proposed Plan
Day 90: Release Proposed Plan for public comment
Day 150: Complete public comment period
Day 160: Submit Draft ROD
Day 190: Regulatory agencies submit comments on Draft ROD
Day 220: Submit Draft Final ROD
Day 250: Final signature of ROD completed



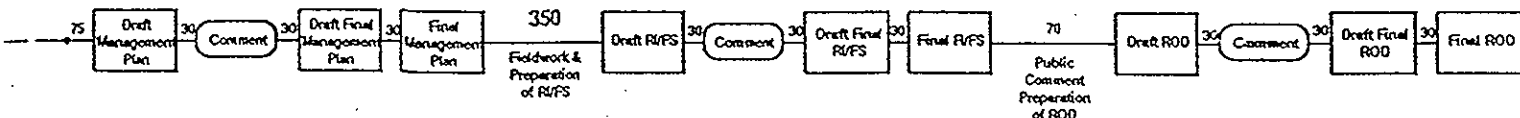
TYPE 2: Limited additional sampling and/or fieldwork required.
Scenario below assumes three sources; schedule may be
adjusted based on number of sources within specific OU:

Day 1: Initiate Type 2 process
Day 75: Submit Draft Management Plan
Day 105: Regulatory agencies submit comments on Draft Management Plan
Day 135: Submit Draft Final Management Plan
Day 165: Finalize Management Plan and perform fieldwork.
Contractor mobilization = 14 days
Sampling = 7 days/source
Day 385: Submit Draft RI/FS
Day 415: Regulatory agencies submit comments on Draft RI/FS
Day 445: Submit Draft Final RI/FS
Day 475: Finalize RI/FS and begin public comment period
Day 535: Complete public comment period
Day 545: Submit Draft ROD
Day 575: Regulatory agencies submit comments on Draft ROD
Day 605: Submit Draft Final ROD
Day 635: Final signature of ROD completed



TYPE 3: Full RI/FS; assumes minimum of three quarterly sampling events for groundwater:

Day 1: Initiate Type 3 process
Day 75: Submit Draft Management Plan
Day 105: Regulatory agencies submit comments on Draft Management Plan
Day 135: Submit Draft Final Management Plan
Day 165: Finalize Management Plan and perform fieldwork
Day 515: Submit Draft RI/FS
Day 545: Regulatory agencies submit comments on Draft RI/FS
Day 575: Submit Draft Final RI/FS
Day 605: Finalize RI/FS and begin public comment period
Day 665: Complete public comment period
Day 675: Submit Draft ROD
Day 705: Regulatory agencies submit comments on Draft ROD
Day 735: Submit Draft Final ROD
Day 765: Final signature of ROD completed



ATTACHMENT B: SOURCE DISTRIBUTION

OPERABLE UNIT #1:

ST20	Refueling Loop, Fuel Saturated Area
ST48	Power Plant Fuel Spills
ST49	Building 1300 LUST Spill Site
SS50	Blair Lakes Vehicle Maintenance
SS51	Blair Lakes Ditch
SS52	Blair Lakes Diesel Spill
SS53	Blair Lakes Fuel Spill
DP54	Blair Lakes Drum Disposal Site

OPERABLE UNIT #2:

ST10	E-2 POL Storage
ST11	Fuel Saturated Area
ST13	E-4 Diesel Fuel Spill
SS14	E-2 RR JP-4 Fuel Spill Area
ST18	Oil Boiler, Fuel Saturated Area
ST19	JP-4 Fuel Line Spill

OPERABLE UNIT #3:

DP44	Battery Shop Leach Field
WP45	Photo Lab Building 1183

OPERABLE UNIT #4:

DP25	E-6 Fuel Tank Sludge Burial Site
DP26	E-10 Fuel Tank Sludge Burial Pit
ST27	E-11 Fuel Tank Storage Area
SS36	Drum Storage Site
SS37	Drum Storage, Asphalt Mixing Area
SS39	Asphalt Lake

OPERABLE UNIT #5:

LF03	Current Base Landfill
LF04	Old Army Landfill and EOD Area
FT09	Fire Training Area (present)

OPERABLE UNIT #6:

WP38	Ski Lodge Well Contamination
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PHASE 1 SER A:

LF07	Test Landfill
SS12	JP-4 Spill, Building 2351
ST17	Canal Pipeline Spill
DP28	Fly Ash Disposal Site
WP33	Treatment Effluent Filtration Pond
DP40	Power Plant Sludge Pit
DP55	Birch Lakes Burial Site
SS62	Garrison Slough

PHASE 2 SER B:

LF02	Old Base Landfill
LF05	Old Army Landfill
LF06	Old Landfill
FT08	Fire Training Area (past)
DP29	Drum Burial Site
WP32	Sewage Treatment Plant Spill
SS35	Asphalt Mixing Area
SS42	Miscellaneous Storage and Disposal Area
SS47	Commissary Parking Lot Fuel Spill
WP60	New Auto Hobby Shop

PHASE 2 SER C:

LF01	Original Base Landfill
ST15	Multiproduct Fuel Line
ST16	Mogas Fuel Line Spill
SD21	Road Oiling - Quarry Road
SD22	Road Oiling - Industrial Road
SD23	Road Oiling - Manchu Road
SD24	Road Oiling - Gravel Haul Road
SS30	PCB Storage Facility
SS31	PCB Storage Facility
SS41	Auto Hobby Shop (past)
ST56	Engineer Hill Spill Site
ST57	Fire Station Parking Lot
ST58	Old QM Service Station
SS61	Vehicle Maintenance Building 3213
SS63	Asphalt Lake Spill Site
SS64	Transportation Maintenance Drum Storage Site

1 Part of the Agreement constitutes a final resolution of that
2 dispute arising under this Agreement. All Parties shall abide by
3 all terms and conditions of any final resolution of dispute
4 obtained pursuant to this Part of this Agreement.

5
6 XXII. ENFORCEABILITY

7 22.1 The Parties agree that:

8 (a) Upon its effective date and to the extent
9 permitted by Section 310 of CERCLA, 42 U.S.C. § 9659, this
10 Agreement is enforceable by any person, and the violation of any
11 standard, regulation, condition, requirement, or order contained
12 herein will be subject to civil penalties under Sections 310(c)
13 and 109 of CERCLA, 42 U.S.C. §§ 9659(c) and 9609;

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

19 (c) All terms and conditions of this Agreement
20 that relate to interim or final remedial actions, including
21 corresponding schedules and deadlines, and all work associated
22 with the interim or final remedial actions, shall be enforceable
23 by any person pursuant to Section 310(c) of CERCLA, 42 U.S.C.
24 § 9659(c), and any violation of such terms or conditions will be
25 subject to civil penalties under Sections 109 and 310(c) of
26 CERCLA, 42 U.S.C. §§ 9609 and 9659(c); and

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

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

XXIII. STIPULATED PENALTIES

23.1 In the event that USAF fails to submit a primary document to U.S. EPA and ADEC 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 that relates to an interim or final remedial action, U.S. EPA may assess a stipulated penalty against USAF. A stipulated penalty may be assessed in an amount not to exceed five thousand dollars (\$5,000) for the first week (or part thereof), and ten thousand dollars (\$10,000) for each additional week (or part thereof) for which a failure set forth in this paragraph occurs.

23.2 Upon determining that USAF has failed in a manner set forth in Paragraph 23.1, U.S. EPA shall so notify USAF in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, USAF

1 shall have fifteen (15) days after receipt of the notice to
2 invoke dispute resolution on the question of whether the failure.
3 did, in fact, occur. USAF shall not be liable for the stipulated
4 penalty assessed by U.S. EPA if the failure is determined,
5 through the dispute resolution process, not to have occurred. No
6 assessment of a stipulated penalty shall be final until the
7 conclusion of dispute resolution procedures related to the
8 assessment of the stipulated penalty.

9 23.3 The annual reports required by Section
10 120(e)(5) of CERCLA, 42 U.S.C. § 9620(e)(5), shall include, with
11 respect to each final assessment of a stipulated penalty against
12 USAF under this Agreement, each of the following:

- 13 a. The facility responsible for the failure;
- 14 b. A statement of the facts and circumstances
15 giving rise to the failure;
- 16 c. A statement of any administrative or other
17 corrective action taken at the relevant
18 facility, or a statement of why such
19 measures were determined inappropriate;
- 20 d. A statement of any additional action taken
21 by or at the facility to prevent recurrence
22 of the same type of failure; and
- 23 e. The total dollar amount of the stipulated
24 penalty assessed for the particular failure.

25 23.4 Stipulated penalties assessed pursuant to
26 this Part shall be payable to the Hazardous Substances Response
27 Trust Fund only in the manner and to the extent expressly
28 provided for in Acts authorizing funds for, and appropriations
to, the U.S. Department of Defense.

29 23.5 In no event shall this Part give rise to a
30
31 FEDERAL FACILITY AGREEMENT
32 EIELSON AIR FORCE BASE - Page 51 October 25, 1990

1 stipulated penalty in excess of the amount set forth in Section
2 109 of CERCLA, 42 U.S.C. § 9609, or Section 3008 of RCRA,
3 42 U.S.C. § 6928.

4 23.6 This Part shall not affect USAF's ability to
5 obtain an extension of a timetable, deadline, or schedule
6 pursuant to Part XXV of this Agreement.

7 23.7 Nothing in this Agreement shall be construed
8 to render any officer or employee of USAF personally liable for
9 the payment of any stipulated penalty assessed pursuant to this
10 Part.

11 XXIV. DEADLINES

12 24.1 Deadlines (subject to extension pursuant to
13 Part XXV) for the draft primary documents are established as
14 follows:

			<u>Submittal Date</u>
15	A.	Site RI/FS	
16		Management Plan	6/17/91
17		RI/FS	7/15/94
		ROD	4/1/95
18	B.	Operable Unit #1A	
19		Management Plan	1/15/93
		RI/FS	11/20/93
		ROD	4/29/94
20		Interim Action #1B	
		ROD	3/24/92
21	C.	Operable Unit #2	
22		Management Plan	6/17/91
23		RI/FS	4/21/92
		ROD	9/28/92
24	D.	Operable Unit #3	
25		Management Plan	1/15/92
		RI/FS	11/19/92
26		ROD	4/28/93