

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4,

AND

THE STATE OF SOUTH CAROLINA,

AND

THE UNITED STATES DEPARTMENT OF THE NAVY

IN THE MATTER OF: )

)

THE UNITED STATES )

DEPARTMENT OF THE NAVY )

)

)

FEDERAL FACILITY

AGREEMENT UNDER

CERCLA SECTION 120

THE UNITED STATES MARINE CORPS )

RECRUIT DEPOT, )

PARRIS ISLAND, SOUTH CAROLINA )

)

Administrative

Docket Number:

CERCLA-04-2006-3756

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	)	CERCLA SECTION 120
MARINE CORPS RECRUIT DEPOT	)	
PARRIS ISLAND	)	Administrative
	)	Docket Number:
	)	CERCLA-04-2006-3756

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

I. PARTIES

The Parties to this Agreement are the United States Department of the Navy (Navy) on behalf of Marine Corps Recruit Depot, Parris Island (MCRD, Parris Island or MCRD), the State of South Carolina Department of Health and Environmental Control (State or SCDHEC), and the United States Environmental Protection Agency (U.S.EPA or EPA) (together, hereinafter the Parties).

## II. DEFINITIONS

- 2.1 Except as noted below or otherwise stated herein, the definitions set forth in Section 101 of CERCLA, 42 U.S.C. 9601, Section 1004 of RCRA, 42 U.S.C. 6903, and the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), found at 40 C.F.R. Part 300 *et seq.*, shall control the meaning of the terms used herein.
- a. "Agreement" shall refer to this document and shall include all Appendices and Attachments to this document. All such Appendices and Attachments are integral parts of this Agreement, and as such shall be enforceable to the extent provided in this Agreement.
  - b. "ARARs" shall mean legally applicable or relevant and appropriate requirements, standards, criteria or limitations, as those terms are used in Section 121 of CERCLA, 42 U.S.C. Section 9621, and as defined in the NCP.
  - c. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. No. 99-499, and any amendments thereto.
  - d. "Days" shall mean calendar days, unless business days are specified. Any submittal, written statement of position, or written statement of dispute which, under the terms of this Agreement, would be due on a Saturday, Sunday, or Federal or State holiday shall be due on the following business day.

- e. "Deadlines" shall mean the Near Term Milestones specifically established for the current fiscal year under the Plan. Deadlines are subject to stipulated penalties in accordance with Section XXXI- STIPULATED PENALTIES.
- f. "Deliver" or "Delivery" shall mean the following: any document or notice to be delivered by a certain date will be considered delivered on time if: (1) it is provided to the carrier on a next day mail basis no later than the day before it is due to be received according to the requirements of this Agreement; (2) it is hand-delivered by the due date; or (3) it is sent by certified mail, return receipt requested, no later than two (2) Days before it is due to be received according to the requirements of this Agreement. Any other means of transmission must effect receipt on or before the due date for delivery to be considered timely.
- g. "Dispute Resolution" shall mean the provisions of Section IX - RESOLUTION OF DISPUTES of this Agreement, except for those disputes regarding budget development, amendment of the Site Management Plan, and any other topics covered by Section XIII - BUDGET DEVELOPMENT AND AMENDMENT OF THE PLAN, which shall be covered by the latter Section.
- h. "Documents" or "records" shall mean any documents, writings, correspondence, or electronically stored information which relates to this Agreement or to any activities to be undertaken relating to this Agreement.

- i. "EPA" or "U.S. EPA" shall mean the United States Environmental Protection Agency, its employees, agents, authorized representatives, successors and assigns.
- j. "Facility" shall mean that property owned by the United States Department of the Navy and operated by the U. S. Marine Corps currently known as the MCRD Parris Island located in the state of South Carolina and including all areas identified in Appendix B. This definition is for the purpose of describing a geographical area and not a governmental entity.
- k. "Fiscal year" or "FY" shall mean the time period used by the United States Government for budget management; it commences on October 1 and ends September 30th of the following calendar year.
- l. "Focused Feasibility Study" or "FFS" shall mean a comparison of alternatives which concentrates on a particular contaminated medium or a discrete portion of the Site which does not need added investigation in order to progress forward in the remedial process.
- m. "Guidance" shall mean recommendations or policy interpretations published by EPA or published by the State of South Carolina, which are of general application to environmental matters and which are otherwise applicable to the Navy's Work.
- n. "Land use control" or "LUC" shall mean any restriction or administrative action, including engineering and

institutional controls, arising from the need to reduce risk to human health and the environment.

- o. "Milestones" shall mean the dates established by the Parties in the Plan for the initiation or completion of Primary Actions and the submission of Primary Documents and Project End Dates. Milestones shall include Near Term Milestones, Out Year Milestones, Primary Actions, and Project End Dates.
- p. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, and any amendment thereto.
- q. "Navy" shall mean the United States Department of the Navy, including the United States Marine Corps, the Naval Facilities Engineering Command, Southern Division (SOUTHDIV), the MCRD Parris Island, and their employees, members, successors and authorized representatives, and assigns. The Navy shall also include the United States Department of Defense (DoD) to the extent necessary to effectuate the terms of the Agreement, including, but not limited to, terms addressing appropriations and Congressional reporting requirements.
- r. "Near Term Milestones" shall mean the Milestones within the current fiscal year (FY), the next fiscal year or "budget year" (FY+1), and the year for which the budget is being developed or "planning year" (FY+2).



- s. "Non Time Critical Removal" or "NTCR" shall (for the purposes of this document) be equivalent to Interim Measures as defined under RCRA. Documents needed under NTCRs (such as work plans and reports) need regulator concurrence.
- t. "Operable Unit" or "OU" shall mean a discrete action that comprises an incremental step toward comprehensively remediating the Site. This discrete portion of a remedial response manages migration, or eliminates or mitigates a release, threat of release, or pathway of exposure related to the Site. OUs may address geographical portions of the Site, specific Site problems, or initial phases of an action, or may consist of any set of actions performed over time or any actions that are concurrent but located in different parts of the Site. The cleanup of the Site can be divided into a number of OUs, depending on the complexity of the problems associated with the Site. The term "Operable Unit" is not intended to refer to the term "operating unit" as used in RCRA. All OUs shall be addressed in accordance with the NCP, EPA Guidance, and the requirements of CERCLA.
- u. "Out Year Milestones" shall mean the Milestones within those years occurring after the planning year until the completion of the cleanup or phase of the cleanup (FY+3 through Project End Date).
- v. "Parties" shall mean the Navy, the State of South Carolina, and the U.S. EPA.

- w. "Plan" or "Site Management Plan" or "SMP" shall refer, unless the context indicates otherwise, to the MCRD Parris Island Site Management Plan.
- x. "Primary Actions" as used in these definitions and in this Agreement shall mean those specified major, discrete actions that the Parties identify as such in the Site Management Plan. The Parties should identify all major, discrete actions for which there is sufficient information to be confident that the date for taking such action is implementable.
- y. "Project End Dates" shall mean the dates established by the Parties in the Site Management Plan for the completion of major portions of the cleanup or completion of the cleanup of the Facility. The Parties recognize that, in many cases, a higher degree of flexibility is appropriate regarding Project End Dates due to uncertainties associated with establishing such dates.
- z. "Project Manager" shall mean that person or persons designated by the Parties to represent that Party's interests and manage all response actions undertaken at the site.
- aa. "RCRA" shall mean the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. No. 98-616, and any amendments thereto.

- bb. "Record(s) of Decision" or "ROD(s)" shall be the public document(s) that select(s) and explain(s) which cleanup alternative(s) will be implemented at the Site, and includes the bases for the selection of such remedy. The bases include, but are not limited to, information and technical analyses generated during the RI/FS and consideration of public comments and community concerns.
- cc. "Schedule" shall mean a timetable or plan that indicates the time and sequence of events.
- dd. "Site" shall include the Facility and any other areas where a hazardous substance, hazardous waste, hazardous constituent, pollutant, or contaminant from the Facility has been deposited, stored, disposed of, or placed, or has migrated or otherwise come to be located. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9). This definition is not intended to include hazardous substances or wastes intentionally transported from the Facility by motor vehicle.
- ee. "Site-Screening Areas" or "SSAs" shall mean those geographical areas listed in Appendix C and any additional areas agreed to by the Parties in the future. SSAs may be either RCRA Solid Waste Management Units (SWMUs) or RCRA or CERCLA Areas of Concern (AOCs). When the Parties agree, SSAs may expand or contract in size as information becomes available indicating the extent of contamination and the geographical area needed to be studied.

- ff. "State" or "South Carolina" shall mean the State of South Carolina, including all departments, offices and agencies thereof, as represented by the Department of Health and Environmental Control (SCDHEC).
- gg. "Target Dates" shall mean dates established for the completion and transmission of Secondary Documents. Target Dates are not subject to dispute resolution and they are not Milestones.
- hh. "Work" shall mean all activities the Navy is required to perform under this Agreement, except those required by Section XXV - RETENTION OF RECORDS.

### III. JURISDICTION

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

- 3.1. The U.S. Environmental Protection Agency (U.S. EPA), Region 4, enters into those portions of this Agreement that relate to the remedial investigation/feasibility study (RI/FS) pursuant to Section 120(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9620(e)(1), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499 (hereinafter jointly referred to as CERCLA/SARA or CERCLA) and Sections 6001, 3008(h) and 3004(u) and (v) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6961, 6928(h), 6924(u) and (v), as amended by the Hazardous and Solid Waste Amendments of 1984

(HSWA) (hereinafter jointly referred to as RCRA/HSWA or RCRA) and Executive Order 12580;

- 3.2. U.S. EPA, Region 4, enters into those portions of this Agreement that relate to interim remedial actions and final remedial actions pursuant to Section 120(e)(2) of CERCLA/SARA, Sections 6001, 3008(h) and 3004(u) and (v) of RCRA and Executive Order 12580;
- 3.3. The Navy enters into those portions of this Agreement that relate to the RI/FS pursuant to Section 120(e)(1) of CERCLA, Sections 6001, 3008(h) and 3004(u) and (v) of RCRA, Executive Order 12580, the National Environmental Policy Act, 42 U.S.C. 4321 and the Defense Environmental Restoration Program (DERP), 10 U.S.C. 2701 et seq.;
- 3.4. The Navy enters into those portions of this Agreement that relate to interim remedial actions and final remedial actions pursuant to Section 120(e)(2) of CERCLA/SARA, Sections 6001, 3004(u) and 3008(h) of RCRA, Executive Order 12580 and the DERP,
- 3.5. SCDHEC enters into this Agreement pursuant to sections 120(f) and 121(f) CERCLA/SARA, 42 U.S.C. 9620(f) and 9621(f), Section 3006 of RCRA, 42 U.S.C. 6926, and the following provisions of South Carolina State law implemented by the South Carolina Department of Health and Environmental Control: the Pollution Control Act, S.C. Code Ann. 48-1-10 et seq. (1987); the Hazardous Waste Management Act, S.C. Code Ann. 44-56-10 et seq. (1976, as

amended); and the Hazardous Waste Management Regulations, 25 S.C. Code Ann. Regulation 61-79 (Supp. 2000).

#### IV. PURPOSE

The general purposes of this Agreement are to:

- 4.1 Ensure that the environmental impacts associated with past and present activities at the Site are thoroughly investigated and appropriate remedial action taken as necessary to protect the public health, welfare and the environment;
- 4.2. Establish a procedural framework and Schedule for developing, implementing and monitoring appropriate response actions at the Site in accordance with CERCLA/SARA, the NCP, Superfund guidance and policy, RCRA, RCRA guidance and policy, and applicable state law; and,
- 4.3. Facilitate cooperation, exchange of information and participation of the Parties in such actions.
- 4.4. Specifically, the purposes of this Agreement are to:
  - a. Identify Interim Remedial Action (IRA) alternatives which are appropriate at the Site prior to the implementation of final remedial action(s) for the Site. IRA alternatives shall be identified and proposed to the Parties as early as possible prior to formal proposal of IRAs to U.S. EPA and SCDHEC pursuant to CERCLA/SARA/RCRA and SCHWMA/PCA. This process is designed to promote cooperation among the Parties in identifying IRA alternatives prior to selection of final remedial actions.

- b. Establish requirements for the performance of a RI to fully determine the nature and extent of the threat to the public health or welfare or the environment caused by the release and threatened release of hazardous substances, pollutants or contaminants at the Site and to establish requirements for the performance of a FS for the Site to identify, evaluate, and select alternatives for the appropriate remedial action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants, or contaminants at the Site in accordance with CERCLA/SARA/RCRA and SCHWMA/PCA.
- c. Identify the nature, objective and Schedule of response actions to be taken at the Site. Response actions at the Site shall attain that degree of cleanup of hazardous substances, pollutants or contaminants mandated by CERCLA/SARA/RCRA and SCHWMA/PCA.
- d. Implement the selected interim and final remedial action(s) in accordance with CERCLA/SARA/RCRA and SCHWMA/PCA and meet the requirements of Section 120(e)(2) of CERCLA for an interagency agreement among the Parties.
- e. Assure compliance, through this Agreement, with RCRA and other federal and South Carolina hazardous waste laws and regulations for matters covered herein.
- f. Coordinate response actions at the Site with the mission and support activities at the Parris Island Marine Recruit Depot, Parris Island, SC.

- g. Expedite the cleanup process to the extent consistent with protection of human health and the environment.
- h. Provide for SCDHEC involvement in the initiation, development, selection and enforcement of remedial actions to be undertaken at the Parris Island Marine Recruit Depot including the review of all applicable data as it becomes available and the development of studies, reports, and action plans; and to identify and integrate State ARARs into the remedial action process.
- i. Provide for operation and maintenance of any remedial action selected and implemented pursuant to this Agreement.

#### V. U.S. EPA AND STATE DETERMINATIONS

The following constitutes a summary of the determinations relied upon by EPA and the State to establish their authority and jurisdiction to enter into this Agreement:

5.1. The Navy is a person as defined in Section 101(21) of CERCLA, 42 U.S.C. 9601(21); Section 1004(15) of RCRA, 42 U.S.C. 6903(15); and S.C. Hazardous Waste Management Regulation 61-79.260.10, part of South Carolina's EPA-approved RCRA hazardous waste management program.

5.2. MCRD Parris Island is a Facility as defined in Section 101(9) of CERCLA, 42 U.S.C. 9601(9), 10 U.S.C. 2701 et seq. (DERP ). MCRD Parris Island is also a Facility as defined in S.C. Regulation 61-79.260.10, as amended.



- 5.3. The United States is the owner/operator of the Facility, as that term is defined in Sections 101(20) and 107(a)(1) of CERCLA, 42 U.S.C. 9601(20) and 9607(a)(1); and S.C. Regulation 61-79.260.10. It also had, as defined in SC Code Ann. 44-56-10 et seq., control over discharged hazardous waste immediately prior to discharge. The Navy is the component of the United States charged with fulfilling the CERCLA response obligations of the owner/operator at this Facility.
- 5.4 The United States Marine Corps owned/operated the Facility as a hazardous waste treatment, storage or disposal facility on or after November 19, 1980, the applicable date which renders treatment, storage or disposal facilities subject to the interim status requirements or permitting requirements of Sections 3004 and 3005 of RCRA, 42 U.S.C. 6924 and 6925, as implemented by the State's EPA-approved RCRA hazardous waste management program codified at 25 S.C. Code Ann. Regulation 61-79.
- 5.5 There has been a release or a substantial threat of a release of hazardous substances, pollutants, contaminants, and/or hazardous wastes or constituents, at or from the Facility as those terms are defined in Section 101 of CERCLA, 42 U.S.C. 9601, and Section 1004 of RCRA, 42 U.S.C. 6903.
- 5.6. There has been a discharge or a substantial threat of a discharge of hazardous substances, pollutants or contaminants, or solid wastes, and/or hazardous wastes or constituents at or from the Facility as those terms are

defined in S.C. Code Ann. Sec. 44-56-10 et seq. (2002) and 25 S.C. Code Ann. R.61-79 (Supp. 2001).

5.7. EPA prepared a final Hazard Ranking System ("HRS") Scoring Package for the Facility, in accordance with Section 120(d)(2) of CERCLA, 42 U.S.C. 9620(d)(2). The Facility was placed on the NPL in 1995, and accordingly an agreement for the Navy's completion of remedial action at the Facility is required by CERCLA Section 120(e)(2), 42 U.S.C. 9620(e)(2).

5.8. The actions provided for in this Agreement are intended to be consistent with the NCP, 40 C.F.R. Section 300, and are necessary to protect human health and the environment.

#### VI. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

6.1. The Parties agree that, with respect to releases of hazardous waste or hazardous constituents from facilities that are or were authorized to operate under Section 3005(e) of RCRA, 42 U.S.C. 6925(e), the Facility is subject to the corrective action requirements of RCRA. The Parties intend to integrate and combine the Facility's CERCLA response obligations and RCRA corrective action obligations to include, but not be limited to, all administrative record keeping and public participation requirements into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will achieve compliance with CERCLA, 42 U.S.C. 9601 et seq.; satisfy the corrective action requirements of Sections 3004(u) and (v) of RCRA, 42 U.S.C. 6924(u) and (v), for a

RCRA permit, and Section 3008(h), 42 U.S.C. 6928(h), and applicable portions of the SCHWMA and PCA for interim status facilities; and meet or exceed all applicable or relevant and appropriate Federal and State laws and regulations, to the extent required by Section 121 of CERCLA, 42 U.S.C. 9621 and applicable state law.

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

6.3. The Parties further recognize that on-going hazardous waste management activities at the Parris Island Marine Recruit Depot may require the issuance of permits under Federal and State laws. This Agreement does not affect the requirements, if any, to obtain such permits. However, if a permit is issued to the Navy for on-going hazardous waste management activities at the Site, U.S. EPA and/or SCDHEC shall reference and incorporate any appropriate provisions, including appropriate Schedules (and the provision for

extension of such Schedules), of this Agreement into such permit.

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

#### VII. FINDINGS OF FACT/DESCRIPTION OF SITE

For purposes of this Agreement, and without constituting an admission of law or fact by the Parties, the following represents a summary of the findings of fact upon which this Agreement is based. Such findings shall not be used by any Party or any person related or unrelated to this Agreement for purposes other than determining the bases for this Agreement.

- 7.1. Marine Corps Recruit Depot (MCRD), Parris Island, is located along the southeastern coast of South Carolina, roughly one mile south of the city of Port Royal and 30 miles northeast of Savannah, Georgia. Hilton Head Island, the closest point on the mainland, is located approximately three miles southwest of MCRD across Port Royal Sound. The Site has been operated as a recruit training facility for the U.S. Marine Corps since 1915 and consists mainly of administrative office buildings, training facilities, family and recruit housing, building and vehicle maintenance shops and community facilities. MCRD, Parris Island, lies within a system of islands, marshes and interconnecting man-made causeways that form a peninsula and consist of roughly 2,894 acres of dry land at the depot and approximately 3,816 acres of salt marshes, tidal ponds and streams. Commercial and recreational fishing

activities are conducted in the vicinity of MCRD and the surrounding area also serves as habitat for migratory threatened and endangered species of wildlife (including the southern bald eagle, the wood stork, the Eskimo curlew and the short-nosed sturgeon), as well as their food sources. Regional and local Site location maps are attached to this Agreement as Appendices A and B, respectively.

- 7.2. The islands comprising MCRD Parris Island consist primarily of barrier-island sand, silt and clay deposits that contain a surficial aquifer. This shallow unconfined aquifer, existing throughout Parris Island, is estimated to be 30 feet thick and is typically found at a depth of 3 feet. Although the surficial aquifer is not used at Parris Island, the State Water Classifications and Standards "GB" classify the aquifer, effective June 28, 1985, as a potential underground source of drinking water. The actual condition of the aquifer will be assessed during field investigation activities. Beneath the surficial aquifer lies the Floridan Aquifer. It is a relatively large aquifer, extending from South Carolina to Florida that serves as a viable drinking water source. The surface of the aquifer lies 40 to 90 feet below the surface of the land with more than 20 feet of the low permeable Hawthorn formation and a layer of clay under the marshes separating the two aquifers. This low permeable formation has been discovered to be thinned or missing in localized areas in and around Parris Island. The presence of the confining unit and any potential impact to the Floridan Aquifer from contamination that may be present in the surficial aquifer

will be assessed during field investigation activities. Water from the Floridan Aquifer on base is not used due to high saltwater infiltration.

7.3. The marsh areas and tidal creeks that border the Site drain into the Beaufort River and Broad River to form the Port Royal Sound. Surface runoff from most of the Site flows into the surrounding surface water bodies or storm drains that discharge into the marshes. Because MCRD Parris Island has past disposal sites adjacent to, or in direct contact with, salt water marshes, and because previous studies have documented contaminant releases from some of these sites the potential exists for contamination to impact those fish and shellfish populations that inhabit the surrounding marshes and tidal waters. Since surface waters in the area are used for both commercial and recreational fishing and shellfish harvesting, any impacts to these marine species from contamination migrating from the facility could result in potentially adverse ecological and human health impacts.

7.4 The Navy has been conducting various Installation Restoration Program (IRP) activities at MCRD Parris Island since 1986. The first phase of such activities was the completion of an Initial Assessment Study (IAS). Performed by the Navy in 1986, the IAS revealed sixteen (16) contaminated sites onboard MCRD Parris Island. The majority of these sites are former active landfills and spills where groundwater and sediment have been found to be contaminated from the prior release or disposal of paint wastes, construction debris, incinerator ash, solvents and

petroleum products. After completion of the IAS, three Underground Storage Tank (UST) sites were added to the list of total sites identified based upon further facility-wide site investigations (SI) conducted by the Navy. Fifteen (15) of these sites were recommended for no further investigation following completion of SI. In 1990, EPA conducted a RCRA Facility Assessment (RFA) of the MCRD. The RFA identified forty-four (44) Solid Waste Management Units (SWMUs) and four (4) Areas of Concern (AOCs). All of the sites previously identified by the Navy were included as a SWMU or AOC. The EPA later recommended Twenty (20) of these SWMUs and one AOC for no further evaluation. An additional site (Site 45) was identified in 1995. Additional sites (site 53, site 54, and site 55) were identified in 2001, 2002, and 2003, respectively.

- 7.5. Since MCRD Parris Island was placed on the NPL in early 1995, the representatives of the Parties to this Agreement have considered the need for future investigative activities at each site identified in the IAS and RFA and have determined that twenty-two (22) sites require further investigation and possible remediation. The remaining twenty-two (22) sites are identified in Appendix C to this Agreement. Current operations at MCRD Parris Island include pollution prevention technologies to prevent further contamination. In June 1995, following placement of the MCRD on the NPL, the Agency for Toxic Substances and Disease Registry (ATSDR) initiated a public health assessment. The results of that assessment were issued in September 1996. Of 59 areas examined, ATSDR concluded that the causeway landfill and facility rifle range posed

no apparent public health hazard but recommended that follow-on monitoring be conducted. In connection with the remaining 57 areas assessed, ATSDR concluded that they posed no public health hazard.

7.6. In 1998 a Master Work Plan developed by Navy contractor Tetra Tech Inc. was approved for environmental work at MCRD. The MCRD Environmental Team held quarterly meetings to review and discuss work plans, investigations, reports, and remediation. The first sites investigated were the primary drivers in the NPL listing: Site 1, the Incinerator Landfill, Site 2, the Borrow Pit Landfill, and Site 3, the Causeway Landfill. The Site 3 RI/RFI Report and Feasibility Study (FS) are complete. The Site 3 Proposed Plan and Interim Record of Decision recommended a landfill cap and this work began in June 2000. The Causeway banks were stabilized, contaminated sediment was covered and a two-foot soil cover placed over the length of the causeway landfill. After this was completed, a roadway was placed on the landfill cap. The work was completed in September 2001. At Site 2 no waste or contamination was found during the RI/RFI. Test pitting was conducted to ensure correct assumptions and no action was recommended. For Site 1 the RI/RFI and FS recommended sediment excavation with placement onsite under a landfill cap. The Remedial Design for Site 1 was initiated in 2002. The Remedial Action was started in 2003. A Record of Decision has been drafted at each of these three sites and the environmental team is in agreement with all work accomplished to date.



7.7. At Site 45, The Dry Cleaner, an accidental spill in 1994 resulted in a PCE/TCE groundwater plume. A Pump and Treat system was installed in 1998 as a Removal action to slow any flow of groundwater contamination. The RI/RFI was completed in 2001 and the RFI/RI Report was submitted to the EPA and SCDHEC in 2002. Several technologies are being considered for cleaning / removal of the groundwater contamination but a final remedy is not in place.

7.8 At Site 12, Jerico Island, an RI has been completed and regulatory comments have been made on the FS. The Proposed Plan and ROD for Site 12 is scheduled for FY04. RD and RA start are scheduled at Site 12 in FY05.

7.9 Site 50 - Hue City Range Waste Munitions Disposal Site - This site consists of the remains of buried munitions discovered during renovation of the Hue City Range. Intact and degraded rifle rounds circa 1918 were discovered.

7.10 Eleven other sites are currently in the process of preliminary investigation and should be completed in 2004-2005.

#### VIII. CONSULTATION WITH U.S. EPA AND

#### THE STATE OF SOUTH CAROLINA

Review and Comment Process for Draft and Final Comments

8.1 Applicability:

- a. The provisions of this Section establish the procedures that shall be used by the Parties to provide each other with appropriate notice, review, comment, and response to comments regarding RI, FS, and RD/RA Documents, specified herein as either primary or secondary Documents. In accordance with Section 120 of CERCLA and 10 U.S.C. 2705, the Navy will normally be responsible for issuing primary and secondary Documents to U.S. EPA and SCDHEC. As of the Effective Date of this Agreement, all draft and final reports for any deliverable document identified herein shall be prepared, distributed and subject to dispute in accordance with Paragraphs 8.2. through 8.10. below.
- b. The designation of a document as "draft" or "final" is solely for purposes of consultation with U.S. EPA and SCDHEC in accordance with this Section. Such designation does not affect the obligation of the Parties to issue Documents, which may be referred to herein as final, to the public for review and comment as appropriate and as required by law.

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

- a. Primary Documents include those Documents that are major, discrete portions of the RI, FS, and RD/RA activities. Primary Documents are initially issued by the Navy in draft subject to review and comment by U.S. EPA and SCDHEC. Following receipt of comments on a particular draft primary document, the Navy will respond to the comments received and issue a draft final primary document subject to dispute

resolution. The draft final primary document will become the final primary document in accordance with the Schedule reflected in the SMP and each annual update thereto. The SMP and all annual updates to that plan shall indicate the specific primary document review and comment periods, which shall also be reflected in each Fiscal Year's Cooperative Agreement Workplan to be developed by the Navy and SCDHEC in consultation with U.S.EPA, consistent with requirements of the Department of Defense and State Memorandum of Agreement (DSMOA). EPA and the State should review and deliver their respective comments, if any, on a given draft document within thirty (30) Days after receipt from the Navy. In the event the SMP establishes a review and comment period different than thirty (30) Days, the review and comment period shall be as reflected in the SMP. Either EPA or the State may extend this initial review and comment period by an additional twenty (20) Days (or longer if mutually agreed to by all Parties) provided written notice of the extension is delivered prior to the end of the review and comment period. If dispute resolution is invoked as to any draft final primary document, that document will become final as resolved by that process.

- b. Secondary Documents include those Documents that are discrete portions of the primary Documents and are typically input or feeder Documents. Secondary Documents are issued by the Navy in draft subject to review and comment by U.S. EPA and SCDHEC. Although the Navy will respond to comments received, the draft secondary Documents may be finalized in the context of the corresponding draft final primary document. Secondary Documents shall not be

subject to dispute resolution until the time the corresponding draft final primary document is finalized.

8.3. Primary Documents:

- a. The Navy shall complete and transmit draft Documents for the following primary Documents to U.S. EPA and SCDHEC for review and comment in accordance with the provisions of this Part:
  1. RI/FS (including Baseline Risk Assessment for human health and the environment) and FFS Work Plans
  2. Remedial Investigation Reports (including Baseline Risk Assessments for human health and the environment)
  3. FS and FFS Reports
  4. Proposed Plans
  5. Records of Decision
  6. Remedial Action Work Plans
  7. Document Memorializing Remedial Action Completion
  8. Site Management Plan
  9. Final Remedial Designs (including a land use control component where such controls are employed as part of the remedy)
- b. The listed CERCLA Documents are accepted by the State as equivalent RCRA documents. Equivalency tables are provided in the appendix to the FFA to match CERCLA Documents to RCRA documents (Appendix D)
- c. The primary Document Memorializing Remedial Action Completion at each OU shall document the cleanup activities that took place at the OU and that performance standards

specified in the ROD have been met. For each remedial action, a primary Document Memorializing Remedial Action Completion shall be prepared when the physical construction of the system is complete and the unit is operating as designed. Such primary Document Memorializing Remedial Action Completion shall be amended and finalized when the Long Term Remedial Action performance standards specified in the ROD are achieved. The primary Document Memorializing Remedial Action Completion shall outline in detail, and provide an explanation for, any Work that was not conducted in accordance with the final RD and/or RA Work Plan(s).

- d. Only the draft final Documents for the primary Documents identified above shall be subject to dispute resolution. The Navy shall complete and transmit draft primary Documents in accordance with the timetable and Deadlines established in Section XII - CONTENTS OF PLAN of this Agreement.

8.4. Secondary Documents:

- a. The Navy shall complete and transmit draft Documents for the following secondary Documents to U.S. EPA and SCDHEC for review and comment in accordance with the provisions of Section XIII - CONTENTS OF PLAN of this Agreement:

1. Health and Safety Plans
2. Non-Time Critical Removal Action Plans (40 C.F.R. § 300.415(b) (4) (ii))
3. Pilot/Treatability Study Work Plans

4. Pilot/Treatability Study Reports
  5. Engineering Evaluation/Cost Analysis Report
  6. Well Closure Methods and Procedures
  7. Preliminary/Conceptual Designs, or Equivalents
  8. Pre-final Remedial Designs
  9. Removal Action Memoranda
- b. Although U.S. EPA and SCDHEC may comment on the secondary Documents listed above, such Documents shall not be subject to dispute resolution except as provided by subsection 8.2., above. Target Dates shall be established for the completion and transmission of draft secondary Documents pursuant to Section XII - CONTENTS OF PLAN of this Agreement.
- 8.5. Meetings of the Project Managers on Development of Documents:
- 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 on the primary and secondary Documents. Prior to preparing any draft Document specified in Paragraphs 8.3 and 8.4 above, the Project Managers shall meet to discuss the Document results in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft Document.
- 8.6. Identification and Determination of Potential ARARs:

a. For those primary Documents or secondary Documents that consist of or include ARAR determinations, the Project Managers shall meet prior to the issuance of a draft Document, to identify and propose, to the best of their ability, all potential ARARs pertinent to the Document being addressed. SCDHEC shall identify all potential state ARARs as early in the remedial process as possible consistent with the requirements of CERCLA Section 121 and the NCP. The Navy shall consider any written interpretations of ARARs provided by the State. Draft ARAR determinations shall be prepared by the Navy in accordance with Section 121(d)(2) of CERCLA, the NCP and pertinent Guidance issued by U.S. EPA consistent with CERCLA and the NCP.

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

8.7. Review and comment on Draft Documents:

a. The Navy shall complete and transmit each draft primary Document to U.S. EPA and SCDHEC on or before the corresponding Deadline established for the issuance of the Document. The Navy shall complete and transmit the draft

secondary Document in accordance with the Target Dates established for the issuance of such Documents established pursuant to Section XII - CONTENTS OF PLAN of this Agreement.

- b. Unless the Parties mutually agree to another time period, all draft Documents shall be subject to the review and comment periods negotiated under the SMP. Review of any Document by the U.S. EPA and SCDHEC may concern all aspects of the Document (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the Document, and consistency with CERCLA, RCRA, the NCP and any pertinent Guidance, and with applicable State law. Comments by the U.S. EPA and SCDHEC shall be provided with adequate specificity so that the Navy may respond to the comment and, if appropriate, make changes to the draft Document. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of the Navy, the U.S. EPA or SCDHEC shall provide a copy of the cited authority or reference.
- c. Representatives of the Navy shall make themselves readily available to U.S. EPA and SCDHEC during the review and comment period for purposes of informally responding to questions and comments on draft Documents. Oral comments made during such discussions need not be the subject of a written response by the Navy on the close of the review and comment period.
- d. In commenting on a draft Document which contains a proposed



ARAR determination, U.S. EPA or SCDHEC shall include a reasoned statement of whether they object to any portion of the proposed ARAR determination. To the extent that U.S. EPA or SCDHEC does object, it shall explain the basis for its objection in detail and shall identify any ARARs which it believes were not properly addressed in the proposed ARAR determination.

- e. Following the close of the comment period for a draft Document, the Navy shall give full consideration to all written comments on the draft Document submitted during the review and comment period. Within thirty (30) Days after the close of the review and comment period on a draft secondary Document, the Navy shall transmit to U.S. EPA and SCDHEC its written response to comments received within the comment period. Within sixty (60) Days after the close of the comment period on a draft primary Document, the Navy shall transmit to U.S. EPA and SCDHEC a draft final primary Document, which shall include the Navy's response to all written comments received within the comment period. While the resulting draft final Document shall be the responsibility of the Navy, it shall be the product of consensus to the maximum extent possible.
- f. The Navy may extend the 30-day period for either responding to comments on a draft Document or for issuing the draft final primary Document for an additional twenty (20) Days by providing notice to U.S. EPA and SCDHEC. In appropriate circumstances, this time period may be further extended in accordance with Section XI - EXTENSIONS hereof.

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

- a.    Dispute resolution shall be available to the Parties for draft final primary Documents as set forth in Section IX - RESOLUTION OF DISPUTES.
- b.    When dispute resolution is invoked on a draft final primary Document, Work may be stopped in accordance with the procedures set forth in Section IX - RESOLUTION OF DISPUTES.

8.9.        Finalization of Documents:

The draft final primary Document shall serve as the final primary Document, in accordance with paragraph 8.2a, Section VIII - CONSULTATION WITH U.S. EPA AND THE STATE OF SOUTH CAROLINA, if no Party invokes dispute resolution regarding the Document or, if invoked, at completion of the dispute resolution process should the Navy's position be sustained. If the Navy's determination is not sustained in the dispute resolution process, the Navy shall prepare, within not more than thirty-five (35) Days after the issuing of a dispute resolution decision, a revision of the draft final primary Document which conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Section XI - EXTENSIONS hereof.

8.10.       Subsequent Modifications of Final Documents:

Following finalization of any primary Document pursuant to paragraph 8.9, Section VIII - CONSULTATION WITH U.S. EPA AND THE STATE OF SOUTH CAROLINA above, any Party to this

Agreement may seek to modify the Document, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in Paragraphs 8.10.a and 8.10.b below.

- a. A Party may seek to modify a primary Document after finalization if it determines, based on new information (i.e., information that became available, or conditions that became known, after the Document was finalized) that the requested modification is necessary. A Party may seek such a modification by submitting a concise written request to the Project Managers of the other Parties. The request shall specify the nature of the requested modification and how the request is based on new information.
- b. In the event that a consensus is not reached by the Project Managers on the need for a modification, any Party may invoke dispute resolution to determine if such modification shall be conducted. Modification of a report shall be required only upon a showing that: (1) the requested modification is based on significant new information, and (2) the requested modification could be of significant assistance in evaluating impacts on the public health or the environment, in evaluating the selection of remedial alternatives, or in protecting human health and the environment.
- c. Nothing in this Subsection shall alter U.S. EPA's or SCDHEC's ability to request the performance of additional Work, which was not contemplated by this Agreement. The Navy's obligation to perform such Work must be established

by either a modification of a report or Document or by amendment to this Agreement.

8.11 Post-ROD Activities.

- a. EPA, the Navy, and South Carolina have committed to streamlining procedures and documentation for post-ROD activities. In addition EPA and the Navy have agreed that those procedures should be consistent with the EPA-Navy *Principles and Procedures for Specifying, Monitoring and Enforcement of Land Use Controls and Other Post-ROD Actions* (October 2003). Revised procedures may be amended to this Agreement upon consensus by the Parties. Until any new procedures and documentation are agreed upon, the following provisions will be applicable.
  
- b. Construction Completion. The Navy agrees that it shall submit to the EPA and South Carolina a primary Document Memorializing Remedial Action Completion in accordance with the Schedule in the SMP following the completion of the RA for each OU. The primary Document Memorializing Remedial Action Completion shall document the cleanup activities that took place at the OU, and that performance standards specified in the ROD have been met. Where required for each long-term response action, an interim primary Document Memorializing Remedial Action Completion shall be prepared when the physical construction of the system is complete and the unit is operating as designed. Such interim primary Document Memorializing Remedial Action Completion shall be amended and finalized when the remedial goals specified in the ROD are achieved. The primary Document Memorializing Remedial Action Completion shall outline in detail, and

provide an explanation for, any Work that was not conducted in accordance with the final RD and/or RA Work Plan(s).

c. Remedial Action/ Site Completion.

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

- A. Performance standards specified in all RODs have been met, and all cleanup actions and other measures identified in the RODs have been successfully implemented.
- B. The constructed remedies are operational and performing according to engineering specifications.
- C. The site is protective of human health and the environment.
- D. The only remaining activities, if any, at the site are operation and maintenance activities (which may include long-term monitoring).

2. Information provided shall summarize Work at the entire site (i.e., all OUs). As outlined in paragraph 8.3.c. of this Agreement, the primary Document Memorializing Remedial Action Completion for each OU, including the final OU, is required to document that Work was performed according to design specifications. Information amended to the final primary Document Memorializing Remedial Action Completion

to indicate remedial action completion shall include a discussion regarding any operation and maintenance requirements and/or land use controls at the Site.

3. Information provided for remedial action completion shall be signed by the Navy's signatory authority or designee, certifying that remedial activities have been completed in full satisfaction of the requirements of this Agreement, and shall include a request for EPA certification of remedial action completion at the Site. Within ninety (90) Days after EPA's receipt of the Navy's request for certification of Site completion, EPA, in consultation with SCDHEC, shall:
  - A. Certify that all response actions have been completed at the Site in accordance with CERCLA, the NCP and this Agreement, based on conditions known at the time of certification; or
  - B. Deny the Navy's request for certification of Site completion, stating the basis of its denial and detailing the additional Work needed for completion and certification.
4. If EPA, in consultation with SCDHEC, denies the request for certification for Site completion in accordance with this Agreement, the Navy may invoke dispute resolution in accordance with Section IX - RESOLUTION OF DISPUTES of this Agreement within twenty (20) Days after receipt of the written denial of certification or determination that additional Work is necessary. If the denial of certification is upheld through the dispute resolution process, the Navy will perform the requested additional Work.

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

#### IX. RESOLUTION OF DISPUTES

- 9.1 Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Section shall apply. All Parties to this Agreement shall make reasonable efforts to informally resolve disputes at the Project Manager or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this Section shall be implemented to resolve a dispute.
- 9.2 Within thirty (30) Days after: (1) issuance of a Draft Final Primary Document pursuant to Section VIII - CONSULTATION WITH U.S. EPA AND THE STATE OF SOUTH CAROLINA of this Agreement, or (2) any action that leads to or generates a dispute, the disputing Party shall submit to the

other Parties a written statement of dispute setting forth the nature of the dispute, the Work affected by the dispute, the disputing Party's position with respect to the dispute and the information the disputing Party is relying upon to support its position.

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

9.4 The Dispute Resolution Committee (DRC) will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (Senior Executive Service [SES] or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The EPA's representative on the DRC is the Waste Division Director of EPA Region 4. The SCDHEC's representative on the DRC is the Bureau Chief, Bureau of Land and Waste Management. The Navy's designated member is the Commander, SOUTHDIV, NAVFAC. Written notice of any delegation of authority from the Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Section XVI - PROJECT MANAGERS.



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

9.6 The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The EPA's representative on the SEC is the Regional Administrator of EPA Region 4, or his or her delegatee. The Navy's representative on the SEC is the Assistant Secretary of the Navy (Installations and Environment) or his or her delegatee. The SCDHEC representative on the SEC is the Deputy Commissioner, or his or her delegatee. In the event of a delegation, the positions presented by the delegates shall represent the positions of the Regional Administrator of EPA Region 4, the Deputy Commissioner, and the Assistant Secretary of the Navy (Installations and Environment). Any documents issued by the SEC or its members pertaining to a dispute shall be issued by the Regional Administrator of EPA Region 4, the Assistant Secretary of the Navy (Installations and Environment), and the Deputy Commissioner. Notice of any delegation of authority from a Party's designated representative on the SEC shall be provided to the other Parties in writing before the delegation takes effect. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a unanimous written decision signed by all Parties. If

unanimous resolution of the dispute is not reached within twenty-one (21) Days after elevation to the SEC, the EPA Regional Administrator shall issue a written position on the dispute. The Secretary of the Navy or the Deputy Commissioner may, within twenty-one (21) Days after the Regional Administrator's issuance of the EPA's position, issue a written notice elevating the dispute to the Administrator of the EPA for resolution in accordance with all applicable laws and procedures. In the event that the Navy and/or the SCDHEC elect not to elevate the dispute to the Administrator within the designated 21-Day escalation period, the decision will become final and the Work will proceed in accordance with the Regional Administrator's written position with respect to the dispute.

- 9.7        Upon escalation of a dispute to the Administrator of the EPA pursuant to Subsection 9.6 above, the Administrator will review and resolve the dispute within twenty-one (21) Days after elevation. Upon request, and prior to resolving the dispute, the EPA Administrator shall meet and confer with the Secretary of the Navy and the Commissioner of the SCDHEC to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the other Parties with a written final decision setting forth resolution of the dispute. The duties of the Administrator pursuant to this Subsection may be delegated only to the EPA Assistant Administrator for Enforcement and Compliance Assurance. The duties of the Secretary of the Navy pursuant to Subsection 9.7 may be delegated only to the Assistant Secretary of the Navy (Installations and Environment). The duties of the Commissioner of the SCDHEC pursuant to

Subsection 9.7 may be delegated only to the SCDHEC Deputy Commissioner.

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

9.9 When dispute resolution is in progress, Work affected by the dispute will immediately be discontinued if the Waste Division Director for EPA Region 4 requests, in writing, that Work related to the dispute be stopped because, in EPA's opinion, such Work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. The Chief of the Bureau of Land and Waste Management for the State may also request Work be stopped for the reasons set out above. To the extent possible, the Party seeking a Work stoppage shall consult with the other Parties prior to initiating a Work stoppage request. After stoppage of Work, if a Party believes that the Work stoppage is inappropriate or may have potential significant adverse impacts, the Party may meet with the Party ordering a Work stoppage to discuss the

Work stoppage. Following this meeting, and further consideration of the issues, the EPA Division Director will issue, in writing, a final decision with respect to the Work stoppage. The final written decision of the EPA Waste Division Director may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the Party requesting dispute resolution.

9.10 Within twenty-one (21) Days after resolution of a dispute pursuant to the procedures specified in this Section, the Navy shall incorporate the resolution and final determination into the appropriate plan, Schedule, or procedures and proceed to implement this Agreement according to the amended plan, Schedule, or procedures.

9.11 Resolution of a dispute pursuant to this Section of the Agreement constitutes a final resolution to any dispute arising under this Agreement. All Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Section of this Agreement except as provided for in Section XXIII - RESERVATION OF RIGHTS/COVENANT NOT TO SUE.

9.12 If the State continues to dispute the position of the Administrator of the EPA, State reserves its rights, to the extent provided by law including Sections 113(h), 121 and 310 of CERCLA, Section 7002 of RCRA, and Section X - ENFORCEABILITY of this Agreement, to bring an action in federal court to seek relief regarding such dispute and to seek injunctive relief. This Subsection, however, does not

create any rights that the State does not already have under applicable laws.

- 9.13 The State reserves the right to maintain an action under CERCLA Section 121(f)(3)(B), 42 U.S.C. Section 9621(f)(3)(B), to challenge the selection of a RA that does not attain a State ARAR.

#### X. ENFORCEABILITY

- 10.1. The Parties agree that:
- a. Upon the Effective Date of this Agreement, any standard, regulation, condition, requirement or order which has become effective under CERCLA and is incorporated into this Agreement is enforceable by any person pursuant to Section 310 of CERCLA, and any violation of such standard, regulation, condition, requirement or order will be subject to civil penalties under Sections 310(c) and 109 of CERCLA; and
  - b. All timetables or Deadlines associated with the RI and FS shall be enforceable by any person pursuant to Section 310 of CERCLA, and any violation of such timetables or Deadlines will be subject to civil penalties under Sections 310(c) and 109 of CERCLA;
  - c. All terms and conditions of this Agreement which relate to interim or final remedial actions, including corresponding timetables, Deadlines or Schedules, and all Work associated with the interim or final remedial actions, shall be enforceable by any person pursuant to Section 310(c) of CERCLA, and any violation of such terms or conditions will

be subject to civil penalties under Sections 310(c) and 109 of CERCLA; and

- d. Any final resolution of a dispute pursuant to Section IX - RESOLUTION OF DISPUTES or Section XIII - BUDGET DEVELOPMENT AND AMENDMENT OF PLAN, of this Agreement which establishes a term, condition, timetable, Deadline or Schedule shall be enforceable by any person pursuant to Section 310(c) of CERCLA, and any violation of such term, condition, timetable, Deadline or Schedule will be subject to civil penalties under Sections 310(c) and 109 of CERCLA.

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

10.3 The Parties agree to exhaust their rights to dispute resolution pursuant to this Agreement prior to exercising any rights to judicial review that they may have.

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

#### XI. EXTENSIONS

11.1. A Deadline and/or Schedule shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension. Any request for extension by the Navy shall be submitted in writing and shall specify:

- a. The timetable, Deadline and/or Schedule that is sought to be extended:

- b. The length of the extension sought;
- c. The good cause(s) for the extension; and
- d. Any related Deadline and/or Schedule that would be affected if the extension were granted.

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

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

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

11.4. Within fourteen (14) Days after receipt of a request for an extension of a Deadline and/or Schedule, U.S. EPA and SCDHEC shall advise the U.S. Navy in writing of their respective positions on the request. Any failure by U.S. EPA or SCDHEC to respond within the 14-day period shall be deemed to constitute concurrence in the request for extension. If U.S. EPA or SCDHEC does not concur in the requested extension, it shall include in its statement of non-concurrence an

explanation of the basis for its position.

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

11.6. Within seven (7) Days after receipt of a statement of non-concurrence with the requested extension, the Navy may invoke dispute resolution.

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

## XII. CONTENTS OF PLAN

12.1. The Plan is attached to this Agreement as Appendix E.

The Plan and each annual Amendment to the Plan shall be Primary Documents. **Milestones established in a Plan or established in a final Amendment to a Plan remain unchanged**



unless otherwise agreed to by the Parties or unless directed to be changed pursuant to the agreed dispute resolution process set out in Subsections 13.5 or 13.6. In addition, if an activity is fully funded in the current FY, Milestones associated with the performance of Work and submittal of Primary Documents associated with such activity (even if they extend beyond the current FY) shall be enforceable.

12.2. The Plan includes proposed actions for both CERCLA responses and actions which would otherwise be handled pursuant to RCRA corrective actions per Section VI - STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION, and outlines all response activities and associated documentation to be undertaken at the facility. The Plan (will) incorporate(s) all existing Milestones contained in approved Work Plans, and all Milestones approved in future Work Plans immediately become incorporated into the Plan.

12.3. Milestones in the Plan reflect the priorities agreed to by the Parties through a process of "Risk Plus Other Factors". Priority Setting. Site activities have been prioritized by weighing and balancing a variety of factors including, but not limited to: (i) the DoD relative risk rankings for the site; (ii) current, planned, or potential uses of the Facility; (iii) ecological impacts; (iv) impacts on human health; (v) intrinsic and future value of affected resources; (vi) cost effectiveness of the proposed activities; (vii) environmental justice considerations; (viii) regulatory requirements; and, (ix) actual and anticipated funding levels. While Milestones should not be

driven by budget targets, such targets should be considered when setting Milestones. Furthermore, in setting and modifying Milestones, the Parties agree to make good faith efforts to accommodate federal fiscal constraints, which include budget targets established by the Navy.

- 12.4. The Plan and its annual Amendments include:
- a. A description of actions necessary to mitigate any immediate threat to human health or the environment;
  - b. A listing of all currently identified Site Screening Areas (SSAs) (if applicable), Operable Units, Interim Remedial Actions, Supplemental Response Actions, and Critical and Non-Time Critical Removal Actions covered or identified pursuant to this Agreement;
  - c. Activities and Schedules for response actions covered by the Plan, including at a minimum:
    - Identification of any Primary Actions;
    - All Deadlines;
    - All Near Term Milestones;
    - All Out Year Milestones;
    - All Target Dates;

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

- All Project End Dates.

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

12.6. The Milestones established in accordance with this Section and Section XIII - BUDGET DEVELOPMENT AND AMENDMENT OF PLAN, remain the same unless otherwise agreed by the Parties, or unless changed in accordance with the dispute resolution procedures set out in Subsections 13.5 and 13.6.

The Parties recognize that possible bases for requests for changes or extensions of the Milestones include but are not limited to (i) the identification of significant new site conditions at the Facility; (ii) reprioritization of activities under this Agreement caused by changing priorities or new site conditions elsewhere in the Navy; (iii) reprioritization of activities under this Agreement caused by budget adjustments (e.g., rescissions, inflation adjustments, and reduced Congressional appropriations); (iv) an event of Force Majeure; (v) a delay caused by another Party's failure to meet any requirement of this Agreement; (vi) a delay caused by the good faith invocation of dispute resolution or the initiation of judicial action; (vii) a delay caused, or which is likely to be caused, by the grant of an extension in regard to another Deadline and/or Schedule; and (viii) any other event or series of events mutually agreed to by the Parties as constituting good cause.

- 12.7. The Deadlines established in the Plan and its Amendments shall be published by EPA and the State.

XIII. BUDGET DEVELOPMENT AND AMENDMENT OF PLAN

- 13.1. The Navy, as a federal agency, is subject to fiscal controls, hereinafter referred to as the Future Years Defense Plan (FYDP). The planning, programming, and budgeting process, hereinafter referred to as the POM process, is used to review total requirements for DoD programs and make appropriate adjustments within the FYDP for each program while adhering to the overall FYDP control. The Parties recognize that the POM process is a multi-year process. The Parties also agree that all Parties should be involved in the full cycle of POM activities as specified in this Agreement. Further, the Parties agree that each Party should consider the factors listed in Subsection 12.3, including federal fiscal constraints as well as each of the other factors, in their priority-setting decisions. Initial efforts to close any gap between cleanup needs and funding availability shall be focused on the identification and implementation of cost savings.

- 13.2. Facility-Specific Budget Building: In order to promote effective involvement by the Parties in the POM process, the Parties will meet at the Project Manager level for the purpose of (1) reviewing the FYDP controls; (2) developing a list of requirements/work to be performed at the Site for inclusion in the Navy's POM process; and, (3) participating in development of the Naval Facilities Engineering Command's (NAVFAC) submission to the

President's proposed budget, based on POM decisions for the FY currently under consideration. Unless the Parties agree to a different time frame, the Navy agrees to notify the other Parties within ten (10) Days after receipt, at the Project Manager level, that budget controls have been received. Unless the Parties agree to a different time frame or agree that a meeting is not necessary, the Parties will meet, at the Project Manager level, within five (5) Days after receiving such notification to discuss the budget controls. However, this consultation must occur at least ten (10) Days prior to the Navy's initial budget submission to NAVFAC. In the event that the Project Managers cannot agree on funding levels required to perform all Work outlined in the Plan, the Parties agree to make reasonable efforts to informally resolve these disagreements, either at the immediate or secondary supervisor level; this would also include discussions, as necessary, with NAVFAC. If agreement cannot be reached informally within a reasonable period of time, the Navy shall resolve the disagreement, if possible with the concurrence of all Parties, and notify each Party. If all Parties do not concur in the resolution, the Navy will forward through NAVFAC to the Chief of Naval Operations (hereinafter CNO or OPNAV) its budget request with the views of the Parties not in agreement and also inform CNO of the possibility of future enforcement action should the money requested not be sufficient to perform the Work subject to disagreement. In addition, if the Navy's budget submission to NAVFAC relating to the terms and conditions of this Agreement does not include sufficient funds to complete all Work in the existing Plan, such budget

submission shall include supplemental documents that fully disclose the Work required by the existing Plan, but not included in the budget request due to fiscal controls (e.g., a projected budget shortfall). These supplemental documents shall accompany the cleanup budget that the Southern Division submits through its higher Headquarters levels until the budget shortfall has been satisfied. If the budget shortfall is not satisfied, the supplemental documents shall be included in the Navy's submission to the DoD Comptroller. Deputy Under Secretary of Defense (Environmental Services) DUSD(ES) shall receive information copies of any supplemental documents submitted to the DoD Comptroller.

- 13.3. Navy Budget for Clean Up Activities: The Navy shall forward to the other Parties documentation of the budget requests (and any supplemental documents) for the site, as submitted by the Navy to NAVFAC, and by NAVFAC to the CNO, within fourteen (14) Days after the submittal of such documentation to the CNO by NAVFAC. If the Navy proposes a budget request relating to the terms and conditions of this Agreement that impacts other installations, discussions with other affected EPA Regions and states regarding the proposed budget request need to take place.

- 13.4. Amended Plan: No later than June 15 of each year after the initial adoption of the Plan, the Navy shall submit to the other Parties a draft amendment to the Plan.

When formulating the draft Amendment to the Plan, the Navy shall consider funding circumstances (including OMB targets/guidance) and "risk plus other factors" outlined in

Subsection 12.3 to evaluate whether the previously agreed-upon Milestones should change. Prior to proposing changes to Milestones in its annual Amendment to the Plan, the Navy will first offer to meet with the other Parties to discuss the proposed changes. The Parties will attempt to agree on Milestones before the Navy submits its annual Amendment by June 15, but failure to agree on such proposed changes does not modify the June 15 date, unless agreed by all the Parties. Any proposed extensions or other changes to Milestones must be explained in a cover letter to the draft Amendment to the Plan. The draft Amendment to the Plan should reflect any agreements made by the Parties during the POM process outlined in this Section. Resolution of any disagreement over adjustment of Milestones pursuant to this subsection shall be resolved pursuant to Subsection 13.5.

13.5 Meeting to Discuss Plan Amendments:

- a. The Parties shall meet as necessary to discuss the draft Amendment to the Plan. The Parties shall use the consultation process contained in Section VIII - CONSULTATION WITH U.S. EPA AND THE STATE OF SOUTH CAROLINA, except that none of the Parties will have the right to use the extension provisions provided therein. Accordingly, comments on the draft Amendment will be due to the Navy no later than thirty (30) Days after receipt by EPA and the State of the draft Amendment. If either EPA or the State provide comments and are not satisfied with the draft Amendment during this comment period, the Parties shall meet to discuss the comments within fifteen (15) Days after the Navy's receipt of comments on the draft Amendment. The

draft final Amendment to the Plan will be due from the Southern Division no later than thirty (30) Days after the end of the EPA and State comment period. During this second 30-Day time period, the Navy will, as appropriate, make revisions and re-issue a revised draft herein referred to as the draft final Amendment. To the extent that Section VIII - CONSULTATION WITH U.S.EPA AND THE STATE OF SOUTH CAROLINA, contains time periods differing from these 30 Day periods, this provision will control for consultation on the Amendment to the Plan.

- b. (1) If the Navy proposes, in the draft final Amendment to the Plan, modifications of Milestones to which either EPA or the State have not agreed, those proposed modifications shall be treated as a request by the Navy for an extension.

Milestones may be extended during the Plan review process by following Subsections 13.4 through 13.7. All other extensions will be governed by Section XI - EXTENSIONS. The time period for EPA to respond to the request for extension will begin on the date EPA receives the draft final Amendment to the Plan, and EPA and the State shall advise the Navy in writing of their respective positions on the request within thirty (30) Days after receipt of the draft final Amendment to the Plan. If EPA and the State approve of the Navy's draft final Amendment, the Document shall then await finalization in accordance with paragraph 13.5.b(3) through Subsection 13.6. If EPA denies the request for extension, then the Navy may amend the Plan in conformance with EPA and State comments or seek and obtain a determination through the dispute resolution process established in Section IX - RESOLUTION OF DISPUTES, within



twenty-one (21) Days after receipt of notice of denial. Within twenty-one (21) Days after the conclusion of the dispute resolution process, the Navy shall revise and reissue, as necessary, the draft final Amendment to the Plan. If EPA or the State initiates a formal request for a modification to the Plan to which the Navy does not agree, EPA or the State may initiate dispute resolution as provided in Section IX - RESOLUTION OF DISPUTES, with respect to such proposed modification. In resolving a dispute, the persons or person resolving the dispute shall give full consideration to the bases for changes or extensions of the Milestones referred to in Subsection 12.6 asserted to be present, and the facts and arguments of each of the Parties.

(2) Notwithstanding paragraph 13.5.b(1), if the Navy proposes, in the draft final Amendment to the Plan, modifications of Project End Dates which are intended to reflect the time needed for implementing the remedy selected in the Record of Decision but to which either EPA or the State have not agreed, those proposed modifications shall not be treated as a request by the Navy for an extension, but consistent with Section IX - RESOLUTION OF DISPUTES, EPA or the State may initiate dispute resolution with respect to such Project End Date.

(3) In any dispute under this Section, the time periods for the standard dispute resolution process contained in Subsections 9.2, 9.5 and 9.6 of Section IX - RESOLUTION OF DISPUTES, shall be reduced by half (rounding up for any half days) in regard to such dispute, unless the Parties

agree to dispute directly to the SEC level.

- c. The Navy shall finalize the draft final Amendment as a final Amendment to the Plan consistent with the mutual consent of the Parties, or in the absence of mutual consent, in accordance with the final decision of the dispute resolution process. The draft final Amendment to the Plan shall not become final until twenty-one (21) Days after the Navy receives official notification of Congress' authorization and appropriation of funds if funding is sufficient to complete Work in the draft final Plan or, in the event of a funding shortfall, following the procedures in Subsection 13.6. However, upon approval of the Draft Final Amendment or conclusion of the dispute resolution process, the Parties shall implement the Plan while awaiting official notification of Congress' authorization and appropriation.

- 13.6. Resolving Appropriations Shortfalls: After authorization and appropriation of funds by Congress and within twenty-one (21) Days after the Navy has received official notification of the Navy's allocation based on the current year's Environmental Restoration, Navy (ER,N) Account, the Navy shall determine if planned Work (as outlined in the draft final Amendment to the Plan) can be accomplished with the allocated funds. (1) If the allocated funds are sufficient to complete all planned Work for that fiscal year and there are no changes required to the draft final Amendment to the Plan, the Navy shall immediately forward a letter to the other Parties indicating that the draft final Amendment to the Plan has

become the final Amendment to the Plan. (2) If the Navy determines within the 21-day period specified above that the allocated funds are not sufficient to accomplish the planned Work for the Site (an appropriations shortfall), the Navy shall immediately notify the Parties. The Project Managers shall meet within thirty (30) Days after notification to determine if planned Work (as outlined in the draft final Amendment to the Plan) can be accomplished through: (A) rescoping or rescheduling activities in a manner that does not cause previously agreed upon Near Term Milestones and Out Year Milestones to be missed; or (B) developing and implementing new cost-saving measures. If, during this thirty 30-day discussion period, the Parties determine that rescoping or implementing cost-saving measures are not sufficient to offset the appropriations shortfall such that Near Term Milestones, Out Year Milestones, and Project End Dates should be modified, the Parties shall discuss these changes and develop modified Milestones. Such modifications shall be based on the "Risk Plus Other Factors" prioritization process discussed in Subsection 12.3, and shall be specifically identified by the Navy. The Navy shall submit a new draft final Amendment to the Plan to the other Parties within thirty (30) Days after the end of the 30-day discussion period. In preparing the revised draft final Amendment to the Plan, the Southern Division shall give full consideration to EPA and State input during the 30-day discussion period. If the EPA and State concur with the modifications made to the draft final Amendment to the Plan, EPA and the State shall notify the Navy and the revised draft final Amendment shall become the final Amendment. In the case of modifications

of Milestones due to appropriations shortfalls, those proposed modifications shall, for purposes of dispute resolution, be treated as a request by the Navy for an extension, which request is treated as having been made on the date that EPA receives the new draft final Plan or draft final Amendment to the Plan. EPA and the State shall advise the Navy in writing of their respective positions on the request within twenty-one (21) Days. The Navy may seek and obtain a determination through the dispute resolution process established in Section IX - RESOLUTION OF DISPUTES. The Navy may invoke dispute resolution within fourteen (14) Days after receipt of a statement of nonconcurrence with the requested extension. In any dispute concerning modifications under this Section, the Parties will submit the dispute directly to the SEC level, unless the Parties agree to utilize the standard dispute resolution process, in which case the time periods for the dispute resolution process contained in Subsections 9.2, 9.4 and 9.5 - RESOLUTION OF DISPUTES, shall be reduced by half in regard to such dispute. Within twenty-one (21) Days after the conclusion of the dispute resolution process, the Navy shall revise and reissue, as necessary, the final Amendment to the Plan.

- 13.7. It is understood by all Parties that the Navy will work with representatives of the other Parties to reach consensus on the reprioritization of Work made necessary by any annual appropriations shortfalls or other circumstances as described in Subsection 13.6. This may also include discussions with other EPA Regions and states with installations affected by the reprioritization; the Parties

may participate in any such discussions with other states.

13.8. Public Participation: In addition to any other provision for public participation contained in this Agreement, the development of the Plan, including its annual Amendments, shall include participation by members of the public interested in this action. The Navy must ensure that the opportunity for such public participation is timely; but this Subsection 13.8 shall not be subject to Section XXXI - STIPULATED PENALTIES.

- a. The Parties will meet, after seeking the views of the general public, and determine the most effective means to provide for participation by members of the public interested in this action in the POM process and the development of the Plan and its annual Amendments. The "members of the public interested in this action" may be represented by inclusion of a restoration advisory board or technical review committee, if they exist for the Facility, or by other appropriate means.
- b. The Navy shall provide timely notification under Subsection 13.6, regarding allocation of ER, N, to the members of the public interested in this action.
- c. The Navy shall provide opportunity for discussion under subsections 13.2, 13.5, 13.6, and 13.7 to the members of the public interested in this action.
- d. The Navy shall ensure that public participation provided for in this Subsection 13.8 complies with Executive Order

12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*.

#### XIV. FUNDING

- 14.1. It is the expectation of the Parties to this Agreement that all obligations of the Navy arising under this Agreement will be fully funded. The Navy agrees to seek sufficient funding through its budgetary process to fulfill its obligations under this Agreement.
- 14.2. In accordance with CERCLA Section 120(e)(5)(B), 42 U.S.C. Section 9620(e)(5)(B), the Navy shall submit to DoD for inclusion in its annual report to Congress the specific cost estimates and budgetary proposals associated with the implementation of this Agreement.
- 14.3. Any requirement for the payment or obligation of funds, including stipulated penalties, by the Navy established by the terms of this Agreement shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted.
- 14.4. If appropriated funds are not available to fulfill the Navy's obligations under this Agreement, EPA and the State reserve the right to initiate an action against any other

person, or to take any response action, which would be appropriate absent this Agreement.

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

#### XV. FORCE MAJEURE

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

- A. Acts of God;
- B. Fire;
- C. War;
- D. Insurrection;
- E. Civil disturbance;

- F. Explosion;
- G. Unanticipated breakage or accident to machinery, equipment, or lines of pipe despite reasonably diligent maintenance;
- H. Adverse weather conditions that could not be reasonably anticipated;
- I. Unusual delay in transportation due to circumstances beyond the control of the Navy;
- J. Restraint by court order or order of public authority;
- K. Inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits, or licenses due to action or inaction of any governmental agency or authority other than the Navy;
- L. Delays caused by compliance with applicable statutes or regulations governing contracting, procurement, or acquisition procedures, despite the exercise of reasonable diligence; and
- M. Insufficient availability of appropriated funds, if the Navy made a timely request for such funds as a part of the budgetary process as set forth in Section XIV - FUNDING, of this Agreement.

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

- 15.2 When circumstances, which may delay or prevent the completion of the Navy's obligation under this Agreement, are caused by a Force Majeure event, the Navy shall notify the EPA and the State Project Managers orally of the



circumstances within 48 hours after the Navy first became aware of these circumstances. Within fifteen (15) Days after the oral notification, the Navy shall supply to the EPA and the State in writing an explanation of the cause(s) of any actual or expected delay and the anticipated duration of any delay. The Navy shall exercise its best efforts to avoid or minimize any such delay and any effects of such delay.

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

XVI. PROJECT MANAGERS / NOTIFICATIONS / FIELD MODIFICATIONS

- 16.1 Each Party shall, prior to the Effective Date of this Agreement, designate a Project Manager to coordinate the implementation of this Agreement. The Parties shall notify each other in writing of the individual(s) designated within thirty (30) Days after the Effective Date of this Agreement. Any Party may change its designated individual Project Manager by delivering written notification to the other Parties. To the maximum extent practicable, communications among the Parties shall be directed through the Project Managers. The Parties may designate an Alternate Project Manager to exercise the authority of the Project Manager in his or her absence. Designated Project Managers may be reached at the following addresses:

Navy/Marine Corps

Commander, Southern Division  
Naval Facilities Engineering Command  
Remedial Project Manager, MCRD Parris Island  
2155 Eagle Drive  
North Charleston, S.C. 29406

and  
Commanding General  
Marine Corps Recruit Depot  
Attn: NREAO  
PO Box 5028  
Parris Island, SC 29905-9001

Environmental Protection Agency

Remedial Project Manager MCRD Parris Island  
Federal Facilities Branch  
US Environmental Protection Agency  
61 Forsyth Street  
Atlanta, GA 30303

State of South Carolina

Project Manager, MCRD Parris Island  
Bureau of Land and Waste Management  
SC DHEC  
2600 Bull Street  
Columbia, SC 29201

16.2. Unless otherwise agreed upon by the Project Managers, any report, document or other submittal required to be delivered pursuant to this Agreement shall be sent to the designated Project Managers via certified mail, return receipt requested, or any other similar method as long as such method provides a written record of the sending and delivery dates, (e.g., facsimile transmission, overnight, or second day air deliveries). All other routine correspondence or other documentation not subject to an enforceable Deadline or delivery date may be sent via regular mail or electronically transmitted to the Project Managers.

16.3. A Project Manager may also recommend and request minor field modifications to the Work performed pursuant to this Agreement, or in techniques, procedures or designs utilized

in carrying out this Agreement. Minor field modifications proposed under this Subsection must be approved orally by all the Parties' Project Managers to be effective. If agreement cannot be reached on the proposed additional Work or modification to Work, the dispute resolution provisions of this Agreement may be invoked by the Party proposing the modification, by submitting a written statement to the other Parties in accordance with Section IX - RESOLUTION OF DISPUTES. If all Parties agree to the modification, within five (5) business days following a modification made pursuant to this Subsection, the Project Manager who requested the modification shall prepare a written memorandum detailing the modification and the reasons therefore and shall provide or mail a copy of the memorandum to the Project Managers of the other Parties for signature and return. No such Work modifications may be implemented without the authorization of the Navy Contracting Officer if the modification would result in an increase in contract cost.

16.4. The Project Managers shall meet or confer informally as often as necessary to ensure compliance with this Agreement. Although the Navy shall have the ultimate responsibility for meeting its enforceable Deadlines, the Project Managers for EPA and the State shall endeavor to assist the Navy's Project Manager by scheduling meetings to review Documents and discuss issues as the need arises.

16.5. The Project Managers shall have the authority, with concurrence of their supervisors, as appropriate, and responsibility to scope Work efforts; review, comment, and

approve or disapprove Documents; make good cause determinations; make and approve or disapprove proposals to amend this Agreement, and undertake all other responsibilities set forth in this Agreement except as specifically stated otherwise in this Agreement.

XVII. QUALITY ASSURANCE/SAMPLING AVAILABILITY

17.1. The Navy shall use quality assurance, quality control, and chain of custody procedures throughout all field investigation, sample collection and laboratory analysis activities. A Quality Assurance/Quality Control (QA/QC) Project Plan shall be submitted as a component of each SSP, RI, FS, RD, and RA Work Plan(s) as appropriate, and will be reviewed with the Work Plans pursuant to Section VIII - CONSULTATION WITH U.S. EPA AND THE STATE OF SOUTH CAROLINA of this Agreement. QA/QC Plans shall be prepared in accordance with applicable EPA Guidance.

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

17.3. The Navy shall ensure that lab audits are conducted as appropriate and are made available to EPA and the State upon request. The Navy shall ensure that EPA and/or the State and/or their authorized representatives shall have

access to all laboratories performing analyses on behalf of MCRD Parris Island pursuant to this Agreement.

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

17.5. At the request of any Party, a Party shall allow the other Parties or their authorized representatives to observe field Work and to take split or duplicate samples of any samples collected pursuant to this Agreement. Each Party shall notify the other Parties by telephone not fewer than fourteen (14) Days in advance of any scheduled sample collection activity unless otherwise agreed upon by the Parties. The notifying Party shall provide written confirmation within three (3) Days aft'er the telephonic notification.

17.6 If preliminary analysis of any sampling indicates an imminent or substantial endangerment to human health or the environment may exist, the Project Managers of the other Parties shall be immediately notified.

#### XVIII. ACCESS

18.1. The EPA and the State and/or their representatives shall have the authority to enter the Facility at all reasonable times for purposes consistent with this Agreement. Such purposes shall include, but not be limited to: inspecting records, logs, contracts, and other Documents relevant to implementation of this Agreement;

reviewing and monitoring the progress of the Navy, its contractors, and lessees in carrying out the activities under this Agreement; conducting, with opportunity for the Navy to take split samples, tests which EPA or the State deem necessary; assessing the need for planning additional Remedial Response Actions at the Facility; and verifying data or information submitted to EPA and the State. On behalf of the Navy, the Marine Corps shall honor all reasonable requests for access to the Facility made by EPA or the State, upon presentation of credentials showing the bearer's identification and that he/she is an employee or agent of the EPA or the State. The Navy/Marine Corps Project Manager or his/her designee will provide briefing information, coordinate access and escort to restricted or controlled-access areas, arrange for Base passes, and coordinate any other access requests which arise. The Navy/Marine Corps shall use their best efforts to ensure that conformance with the requirement of this Subsection does not delay access. Nothing herein shall be construed as limiting EPA's or the State's statutory authority regarding access or information gathering. Upon request by EPA or the State, the Navy shall deliver to EPA and the State copies of records and other Documents that are relevant to oversight activities, including sampling and monitoring data.

- 18.2. The rights granted in Subsections 18.1 and 18.4 to EPA and the State regarding access shall be subject to regulations and statutes, including MCRD Parris Island's security regulations, applicable to the protection of national security information (classified information) as

defined in Executive Order 12356, and shall be subject to MCRD Parris Island's health and safety requirements. Such requirements shall not be applied so as to unreasonably hinder EPA or the State from carrying out their responsibilities and exercising their authority pursuant to this Agreement.

18.3. On behalf of the Navy, the Marine Corps shall provide an escort whenever EPA or the State requires access to restricted areas of MCRD Parris Island for purposes consistent with this Agreement. EPA and the State shall provide reasonable notice (which may, if practicable, be 48 hours advance notice) to the Marine Corps Project Manager or his designee to request any necessary escorts for such restricted areas. The Marine Corps shall not require an escort to any area of the Facility unless it is a restricted or controlled-access area. Upon request of EPA or the State, the Marine Corps, to the extent permitted by law, shall promptly provide a written list of current restricted or controlled-access areas.

18.4. EPA and the State shall have the right to enter all areas of the Facility that are entered by contractors performing Work under this Agreement. Upon a denial of access to any such area, the Marine Corps shall provide an immediate explanation of the reason for the denial, including reference to the applicable regulations, and upon request, a copy of such regulations. Within forty-eight (48) hours, the Marine Corps shall provide a written explanation for the denial. To the extent possible, the Marine Corps shall expeditiously provide a recommendation

for accommodating the requested access in an alternate manner.

18.5. To the extent that this Agreement or any other provision of federal or State law or regulation requires the Navy to conduct off-installation activities, the Navy shall use its best efforts to obtain access to the affected property, including, where necessary, exercise of its authority pursuant to Section 104(e) of CERCLA, 42 U.S.C., 9604(e), or relevant State laws or regulations for as long as may be necessary to complete these activities.

18.6. The Navy/Marine Corps shall ensure that all response measures undertaken pursuant to this Agreement in areas which are in any manner under the control of the Navy/Marine Corps, or any lessees or agents of the Navy/Marine Corps, shall not be impeded or impaired in any manner by any transfer of title or change in occupancy or any other change in circumstances of such areas.

#### XIX. AMENDMENT OF AGREEMENT

19.1. Except as specifically provided elsewhere in this Agreement, this Agreement can be amended or modified solely upon written consent of all the Parties. Major amendments or modifications as defined in this Section shall be proposed in writing, and shall become effective on the third business day following the date on which EPA signs the amendments or modifications. The Parties may agree on a different effective date. As the last signing Party, EPA will provide notice to each signatory of the effective date.



19.2 Proposed amendments or modifications shall be considered major modifications if designated "major" by any Party. If any Party disagrees with the designation of an amendment or modification as major, that Party may invoke dispute resolution pursuant to this Agreement. Following written approval by all Parties, a proposed major modification is subject to the same public participation procedural requirements established for the Draft Agreement that are set forth in Section XX - PUBLIC PARTICIPATION of this Agreement. All other modifications shall be considered minor modifications and can be made informally upon consent of the Parties. The Party requesting a minor modification shall transmit to the other Parties a written proposal detailing the modification and the reasons therefore. If approved, a minor modification shall be confirmed in writing, and signed by all Parties to this Agreement, within ten (10) business days following the consent of the Parties. If a Party's proposed modification (whether major or minor) is not approved by another Party within thirty (30) Days after delivery of the proposal, the proposing Party may invoke dispute resolution pursuant to this Agreement.

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

- a. Statutes and regulations shall be applied in accordance with any statutory or regulatory language on applicability, and if applied to ongoing activities, shall be applied in accordance with 40 CFR 300.430(f)(1)(ii)(B)(1). However, the Parties shall, to the extent practicable and in accordance with the NCP, apply them in such a way as to avoid the need for repeating Work already accomplished.
- b. Applicable Guidance shall be applied as it exists at the time of initiation of the Work in issue.
- c. Applicable Guidance which is changed after the initiation of the Work in issue or after its completion shall be applied subject to Section IX - RESOLUTION OF DISPUTES. The Party proposing application of such changed Guidance shall have the burden of proving the appropriateness of its application. In any case, the Parties shall, to the extent practicable, apply any changed Guidance in such a way as to avoid repeating Work already accomplished.

## XX. PUBLIC PARTICIPATION

- 20.1. Within fifteen (15) Days after all Parties have approved a draft version of this Agreement (Draft Agreement) to be released for public review and comment, or as soon thereafter as possible, the Navy/Marine Corps shall notify the public of the availability of the Draft Agreement for review and comment during the period ending forty-five (45) Days after notification is published. Such notification shall be published in the Beaufort Gazette, shall include information about the purpose of this Agreement, how and where copies of the Draft Agreement will

be made available for review, and the address to which comments may be submitted.

20.2. In addition to fulfilling its obligation to release agency records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552 during the public comment period, the Navy shall make available agency records which will be included in the administrative record for the MCRD Parris Island National Priorities List Site, such as Documents, plans, and Schedules.

20.3 At the start of the public comment period, the Navy will deliver copies of the Draft Agreement to the applicable federal, State, and local Natural Resource Trustees inviting their review and comment within that period.

20.4 Within twenty-one (21) Days after completion of the public comment period, the Navy shall deliver to the other Parties copies of all comments received, and the Parties shall thereafter review the comments and confer for the purpose of addressing the comments and incorporating such changes in the Draft Agreement as may be appropriate based on their consideration of these comments. The final version of the Agreement shall become effective in accordance with the provisions of Section XXXII - EFFECTIVE DATE.

20.5 Work performed pursuant to this Agreement shall comply with the public participation requirements of CERCLA, including Section 117 of CERCLA, 42 U.S.C. 9617, the NCP,

all applicable Guidance developed by EPA, RCRA and 25 S.C. Code Ann. R.61-79.264.113 and 264.117. In furtherance of fulfilling these obligations, the Navy shall develop and implement a Community Relations Plan (CRP).

20.6 The Navy shall deliver a Draft CRP to the Parties within sixty (60) Days after the Effective Date of this Agreement. Review and comment of the Draft CRP shall be in accordance with Section VIII - CONSULTATION WITH U.S. EPA AND THE STATE OF SOUTH CAROLINA. The Parties agree that the CRP shall, to the extent practicable, integrate the public participation requirements of CERCLA, the NCP, all applicable Guidance developed by EPA, RCRA and 25 S.C. Code Ann. R.61-79.270.42. All Parties agree to abide by EPA guidance on community relations efforts and conduct of restoration advisory boards.

20.7 Except in imminent hazard situations, any Party issuing an official news release with reference to Work performed pursuant to this Agreement shall advise the other Parties of such news release and the contents thereof at least two (2) business days prior to issuance of the news release.

20.8 Nothing in this Agreement shall be construed to preclude any Party from responding to public and/or media inquiries at any time.

20.9 All agency records related to the implementation of this Agreement shall be available to the public except for information that is classified, controlled or otherwise

properly withheld pursuant to FOIA, FOIA regulations, U. S. Department of Justice policy, or any other relevant federal or State law or regulation.

#### XXI. RECOVERY OF EXPENSES

- 21.1. The Navy and the State agree to use the Defense State Memorandum of Agreement (DSMOA) for the reimbursement of services provided in direct support of Navy environmental restoration activities at the Site pursuant to this Agreement.
- 21.2 The Parties agree to amend this Agreement at a later date in accordance with any subsequent national resolution of the issue of reimbursement of CERCLA response costs incurred by EPA. Pending such resolution, EPA reserves the rights it may have with respect to cost reimbursement.

#### XXII. DISCLAIMERS/NOTICE TO CONTRACTORS

- 22.1. Nothing in this Agreement shall constitute or be construed as a release by the Navy, EPA or the State of any claims, causes of action or demands in law or equity against any person, firm, partnership or corporation not a signatory to this Agreement for any liability arising out of or related in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous substances, pollutants or contaminants, or hazardous wastes and hazardous constituents found at, taken to, or taken from the Facility.
- 22.2. This Agreement shall not constitute a decision or

preauthorization by EPA of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. 9611(a)(2), for any person, agent, contractor or consultant acting for the Navy.

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

22.4. This Agreement shall not restrict EPA or the State from taking any legal, equitable, and administrative or other action for any matter not part of the Work covered by this Agreement.

22.5. Nothing in this Agreement shall be considered an admission by any Party with respect to any unrelated claims by any Party or any claims by any person not a Party to this Agreement.

22.6. The Navy shall provide or cause to be provided, prior to the start of Work, a copy of this Agreement to each contractor, subcontractor, laboratory, consultant or other person or firm retained to perform any portion of Work pursuant to this Agreement.

#### XXIII. RESERVATION OF RIGHTS/COVENANT NOT TO SUE

23.1. In consideration of the Navy's compliance with the terms and conditions of this Agreement, and based on the information known to the Parties on the Effective Date of this Agreement, EPA and the State agree that compliance with this Agreement shall stand in lieu of any administrative, legal and equitable remedies available to

EPA and the State against the Navy with regard to all currently known releases or threatened releases of hazardous substances, pollutants or contaminants, or hazardous wastes and hazardous constituents at the Site which will be addressed by a response action as provided for under this Agreement.

23.2. The State agrees that it shall pursue dispute resolution (and adhere to the terms of any decision rendered through use of the dispute resolution process) through the entire dispute resolution process as set forth in Section IX - RESOLUTION OF DISPUTES, prior to taking any other action regarding all known releases or threatened releases of hazardous substances, pollutants or contaminants, or hazardous wastes and hazardous constituents at the Site which will be addressed by a response action as provided for under this Agreement.

23.3. Nothing in this Agreement shall preclude EPA or the State from pursuing any administrative, legal or equitable remedy (including damages and the assessment of civil penalties) to require additional response actions by the Navy in the event that Work performed under this Agreement is no longer protective of human health and the environment or for matters not specifically covered by this Agreement.

Moreover, nothing herein shall limit any and all authority available to EPA or the State to challenge a removal action.

23.4. Except as otherwise expressly provided in this Agreement, this Agreement shall not be construed as waiving

any of the State's rights or authorities and shall not be construed as a bar or release of any State claims, causes of action or demands in law or equity, including any right the State may have to assess penalties for the Navy's failure to comply with any term or condition of this Agreement or any timetable or Deadline established pursuant to this Agreement.

23.5. Nothing in this Section shall be deemed to affect the rights of any person not a Party to this Agreement.

23.6. This Agreement shall not release the Navy from any claim brought against it for damages relating to injury to, destruction of, or loss of natural resources pursuant to Section 107 of CERCLA, 42 U.S.C. 9607.

23.7. EPA and the State reserve the right to bring any enforcement action against any other potentially liable party, including contractors, subcontractors and/or operators. For matters covered under this Agreement, however, this reservation of right may be exercised only if the Navy fails to comply with the terms and conditions of this Agreement.

23.8 The State reserves any and all rights to recover any past or future costs incurred as a result of CERCLA or State response activities conducted at the Site.

23.9 Pursuant to Section 121(e)(1) of CERCLA and the NCP, the Navy believes that it is not obligated to obtain any federal, state or local permit for that portion of any



removal or remedial action conducted entirely on-site. SCDHEC disagrees with that position. The Parties do agree, however, that the issue of whether or not a permit from SCDHEC is required for any contemplated removal or remedial action to be undertaken pursuant to this Agreement should be raised during the consultation process set forth in Section VIII - CONSULTATION WITH U.S. EPA AND STATE OF SOUTH CAROLINA and that any dispute relating thereto, should be resolved, if at all possible, in a timely manner accordance with the procedures set forth under Section IX - RESOLUTION OF DISPUTES so as not to adversely affect the progress of Work under this Agreement.

23.10 Nothing in this Agreement shall be construed as a restriction or waiver of any rights the U.S. EPA or SCDHEC may have under CERCLA, including but not limited to any rights under sections 113 and 310, 42 U.S.C. 9613 and 9659. The DoD does not waive any rights it may have under CERCLA Section 120, SARA Section 211 and Executive Order 12580. Nothing in this Agreement shall be construed as a restriction or waiver of any rights or authority SCDHEC may have under State law. The SCDHEC expressly reserves all rights and authorities it may have under law except that it expressly agrees to exhaust any applicable remedies provided in the section of this Agreement titled Resolution of Disputes. Specifically, if the Navy fails to comply with the terms and conditions of this Agreement, the SCDHEC reserves any right and authority it may have to require corrective action in accordance with the SCHWMA, the PCA and its right to challenge the selection of Remedial Actions under Section 121 (f)(3)(a) of CERCLA, 42 U.S.C.

9621 (f)(3)(a). Unless expressly waived by law, the State of South Carolina does not waive its sovereign immunity by entering into this Agreement.

#### XXIV. FIVE YEAR REVIEW

- 24.1 Consistent with Section 121(c) of CERCLA, 42 U.S.C. 9621(c), the NCP, 40 CFR 300.430(f)(4)(ii), and Section VIII - CONSULTATION WITH U.S. EPA AND THE STATE OF SOUTH CAROLINA of this Agreement, where a selected remedial action results in any hazardous substances, pollutants or contaminants remaining at the site above levels allowing for unlimited use and unrestricted exposure, the Parties shall review the remedial action no less often than every five years (hereinafter Five Year Review Process) following the initiation of the remedial action to ensure that implementation of the measure(s) remains protective of human health and the environment.
- 24.2 As part of this review, the Navy shall report the findings of the review to the EPA and the SCDHEC upon its completion. This report, the Periodic Review Assessment Report, shall be submitted to EPA and SCDHEC for review and comment. Target Dates shall be established for the completion and transmission of the Periodic Review Assessment Report pursuant to Section XII - CONTENTS OF PLAN, of this Agreement.
- 24.3. If based upon a Five Year Review, EPA or the State determines that additional action or modification of a remedial action is appropriate pursuant to CERCLA, RCRA or relevant State law or regulation, then EPA or the State

shall deliver a written notice to the other Parties setting forth such determination. The Navy shall have thirty (30) Days after delivery of such notice to either: 1) deliver to the Parties a proposal to implement such additional or modified action; or 2) invoke dispute resolution.

#### XXV. RETENTION OF RECORDS

The Navy, for a period of time beginning on the Effective Date of this Agreement and ending no less than ten (10) years following termination of this Agreement, shall preserve and retain the complete Administrative Record and all primary and secondary Documents. After the 10-year period following termination has expired, the Navy shall deliver written notice to the Parties at least ninety (90) Days prior to the destruction of any records, Documents or reports. Upon request by EPA or the State, the Navy shall make available any such records, Documents or reports or copies thereof.

#### XXVI. PROPERTY TRANSFER

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

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

#### XXVII. ADMINISTRATIVE RECORD

27.1. The Navy shall establish and maintain the complete Administrative Record for the Site. A complete copy of the Administrative Record shall be available to the public at the Beaufort County Public Library Headquarters Location, 311 Scott Street, Beaufort, South Carolina, 29902. EPA shall also maintain a current index to the Administrative Record at its Atlanta, Georgia, Region 4 office. As shall be specified in the approved Community Relations Plan, copies of the current index to the Administrative Record may also be made available at other locations, along with Documents from the Administrative Record selected pursuant to the approved Community Relations Plan.

27.2. The selection of each response action shall be based on the Administrative Record, as required by Section 113(k) of CERCLA, 42 U.S.C. 9613(k), the NCP (and any other regulations and Guidance related thereto), and EPA and the State's respective RCRA administrative records.

27.3. The Navy shall deliver copies of Documents included as part of the Administrative Record upon request by EPA or the State and shall annually deliver each June to the

Parties an updated version of the current index to the Administrative Record. EPA and the State shall deliver to the Navy copies of Documents to be included in the Administrative Record.

- 27.4. The Project Managers shall confer or meet every quarter, following delivery of the updated version of the current index to the Administrative Record, to ensure that the Administrative Record remains current and complete.

#### XXVIII. TERMINATION

This Agreement shall terminate upon the satisfactory completion of all response actions undertaken pursuant to the terms and conditions contained herein. The Navy shall deliver to the Parties a written request for termination upon completion of all response actions and Work to be performed pursuant to this Agreement. Within ninety (90) Days after such request, EPA and the State shall jointly deliver to the Navy a written notice stating that termination has been either granted or denied. Any written notice denying the Navy's request for termination shall include an explanation of the denial and the Navy may invoke dispute resolution upon delivery of such a notice.

#### XXIX. OTHER CLAIMS

Nothing in this Agreement shall constitute or be construed as a release from any claim, cause of action, demand, or defense in law or equity, against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or

disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken or migrating from the Facility.

XXX. CONFIDENTIAL INFORMATION

- 30.1. MCRD may possess information which is subject to a confidentiality of business information claim as established by the Navy pursuant to regulation found at 32 C.F.R., Part 701. In the event that the Navy submits information to other Parties pursuant to this Agreement which is subject to a confidentiality of business information claim, such information shall be clearly designated by the Navy as confidential. If no confidentiality of business information claim accompanies the information when it is submitted, the information may be made available to the public without further notice to the Navy.
- 30.2. Upon receipt of material claimed as confidential, EPA shall review the confidentiality of business information claim pursuant to 40 C.F.R. Part 2, and shall make an independent confidentiality determination. The Navy's prior confidentiality determination shall be relevant to, but shall not control, EPA's confidentiality determination.
- 30.3. In the event that EPA determines that information submitted by the Navy pursuant to this Agreement contains confidential business information (CBI). EPA shall manage such information according to EPA procedures for the management of CBI.

30.4. In the event that EPA determines that information submitted by the Navy pursuant to this Agreement does not contain CBI as established pursuant to 40 C.F.R. Part 2, the Parties to this Agreement recognize that the conflicting confidentiality determinations made by EPA and the Navy give rise to a unique inter-agency dispute. Therefore, in the event of such conflicting determinations, EPA and the Navy agree to jointly elevate the resulting dispute to their respective Offices of General Counsel for assistance in resolving the dispute. The Parties agree to abide by the final inter-agency resolution of the dispute resulting from such elevation, including appropriate management of the information in question in accordance with the resolution of the dispute.

30.5. Nothing in this Agreement shall serve as a limitation on the Navy's right to classify information for national security purposes pursuant to the national security provisions referenced in Section 120(j)(2) of CERCLA, 42 U.S.C. 9620(j)(2), or to seek Site-specific Presidential orders under Section 120(j)(1) of CERCLA, 42 U.S. C. 9620(j)(1). Except as provided by Section 120(j)(1) of CERCLA, 42 U.S.C. 120(j)(1), analytical data shall not be claimed as confidential by the Navy.

30.6. If Federal law so requires, such information shall not be publicly disclosed by the State pursuant to applicable South Carolina laws. If no claim of confidentiality accompanies the information when it is submitted, the information may be made available to the public without

further notice to the Navy.

XXXI. STIPULATED PENALTIES

- 31.1. If the Navy fails to submit a Primary Document, as listed in Section VIII. - CONSULTATION WITH U.S. EPA AND THE STATE OF SOUTH CAROLINA, to the EPA and the State pursuant to the appropriate timetable or Deadlines in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement that relates to an interim or final remedial action, the EPA may assess a stipulated penalty against the Navy. A stipulated penalty may be assessed in an amount not to exceed \$5,000 for the first week (or part thereof), and \$10,000 for each additional week (or part thereof) for which a failure set forth in this Subsection occurs.
- 31.2. Upon determining that the Navy has failed in a manner set forth in Subsection 31.1, the EPA or the State shall so notify the Navy in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the Navy shall have fifteen (15) Days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. The Navy shall not be liable for the stipulated penalty assessed by the EPA if the failure is determined, through the dispute resolution process, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.
- 31.3. The annual reports required by CERCLA Section



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

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

31.4 In the event that stipulated penalties become payable by the Navy under this Agreement, the Navy will seek Congressional approval and authorization to pay such penalties in equal amounts to the federal Hazardous Substances Superfund and to the South Carolina Department of Environmental Health and Control Hazardous Waste Contingency Fund - Uncontrolled Sites Fund. Such payment will not entail expenditures that exceed available appropriations, and nothing in this Agreement may be considered as implying that Congress will, at a later date, appropriate funds sufficient to pay such penalties.

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

31.6. This Section shall not affect the Navy's ability to obtain an extension of a timetable, Deadline, or Schedule.

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

XXXII. EFFECTIVE DATE

32.1. This Agreement shall become effective when executed by all the Parties, subject to provisions of Subsection 32.2. EPA shall be the last signatory and shall promptly provide a copy of the completed signature page and shall indicate the date the Agreement becomes effective.

32.2. This Agreement shall not be effective until all public comment received during the public comment period on this Agreement pursuant to Section XX - PUBLIC PARTICIPATION, has been addressed by the Parties and incorporated into the Agreement to the extent appropriate.

IT IS SO AGREED

1/21/05  
Date

Donald R. Schenck  
Donald R. Schenck  
Deputy Assistant Secretary of the Navy  
(Environmental)

1/21/05  
Date

Robert W. King, Jr., P.E.  
Robert W. King, Jr., P.E.  
Deputy Commissioner  
South Carolina Department of Health and  
Environmental Control


1/21/05  
Date

J. L. Palmer, Jr.  
J. L. Palmer, Jr.  
Regional Administrator  
Region 4  
United States Environmental  
Protection Agency

APPENDIX A

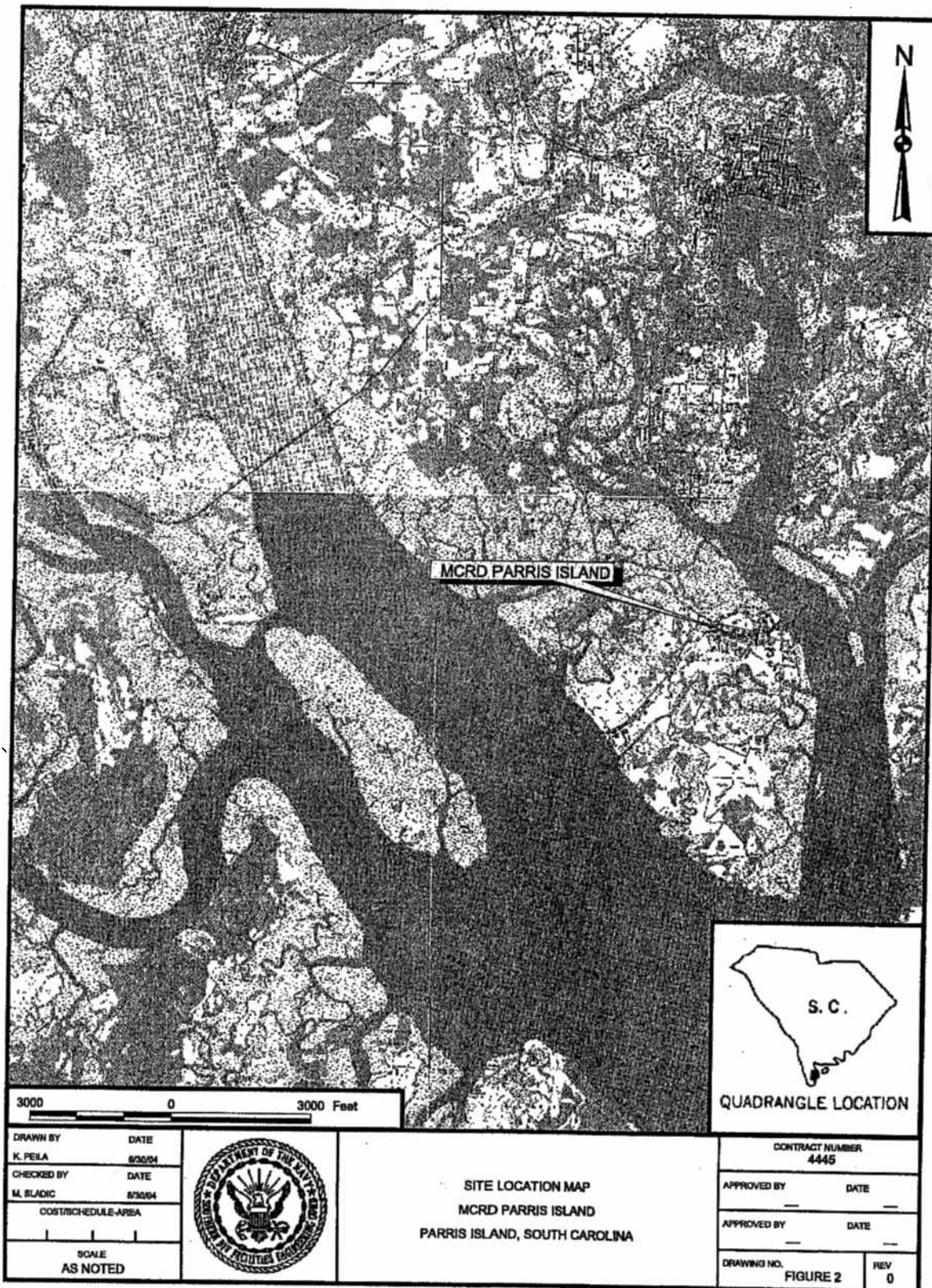
REGIONAL MAP OF MARINE CORPS RECRUIT DEPOT - PARRIS ISLAND, SC



Date: _____ By: _____ Title: _____ Distribution: _____ Date: _____ ASAC/SGO		FREEDOMSHIP MOREHEAD ISLAND MOREHEAD ISLAND, SOUTH CAROLINA	Date: _____ By: _____ Title: _____ Date: _____ Page: 1 of 1
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APPENDIX B

LOCATION MAP OF MARINE CORPS RECRUIT DEPOT - PARRIS ISLAND, SC



P:\065\PARRISLAND\_MCRD\APR\FFA\_REPORT.APR SITELOCATION 6/30/04 10MP

APPENDIX C - LISTING OF SITES WHICH REQUIRE FURTHER  
INVESTIGATION

MCRD PARRIS ISLAND, SC			
Listing of sites which require further investigation			
Site	SWMU	Description	Status
1	1	Incinerator Landfill	FY03 cap
2	2	Borrow Pit Landfill	NFA proposed
3	3	Causeway Landfill	LTM
4	4	Dredge Spoils Fire Training w/SWMU13	Under review
5	5	Former Paint Shop Disposal Area	FY 07 CS under review
7	7	Page Field Fire Training Pit	Under review
8	AOC A&B	PCB Spill Areas	
9	8	Paint Waste Storage (RFA AOC C)	Under review
12	10	Jericho Island (RFA site 10)	FY04 ROD & RA
13	13	Inert disposal Dredge Spoils Area C	Under review
14	14	Storm Sewer Outfall	
15	15	Dirt Road with Site 2	NFA proposed
16	16	Pesticide Rinsate Disposal Area	Under review
21	21	Weapons Power Plant Oil/Water Sep	Future ROD FY05
27	27	Equipment Parade Deck	Under review
32	32	Laundry SAA with SWMU 45	W/SWMU 45
35	35	DRMO	Under review
39	39	Electrolyte Basin	Under review
41	41	Former Incinerator	W/SWMU1
45	45	Dry Cleaning Facility	Treatability



APPENDIX C - LISTING OF SITES WHICH REQUIRE FURTHER  
INVESTIGATION

MCRD PARRIS ISLAND, SC			
Listing of sites which require further investigation			
Site	SWMU	Description	Status
			Study FY04
46	46	Hobby Shop	Under Review
47	47	Old Photo Shop	Under Review
48	48	Existing Photo Shop	Under Review
49	49	DRMO	Under Review
50	50	Hue City Range Waste Munitions Disposal Site	To be addressed when the range closes
52	52	Old Weapons Cleaning Areas	Under Review
53	53	Debris near Causeway	FY04
54	54	Old Waste Water Treatment Plant	FY04
55	55	Fiber Optic Vault	Under Review

**List of Acronyms in Table**

CS/SI - Confirmatory Sampling/Site Investigation  
FY - Fiscal Year  
IM - Interim Measure  
NFI - No Further Investigation  
PA - Preliminary Assessment  
RI/FS - Remedial Investigation/ Feasibility Study  
SAA - Satellite Accumulation Area

# APPENDIX D - CERCLA/RCRA DOCUMENT EQUIVALENCY TABLES

PRIMARY DOCUMENTS	
CERCLA DOCUMENTS	RCRA DOCUMENTS
RI/FS Work Plans (including Baseline Risk Assessment for human health and the environment) and FFS Work Plans	RFI/ CMS Work Plans
Remedial Investigation Reports (including Baseline Risk Assessments for human health and the environment)	RFI Reports
FS and FFS Reports	CMS Reports
Proposed Plans	Statements of Basis
Records of Decision	RCRA Decision Document
Final Remedial Designs	CMI Work Plan
Remedial Action Work Plans	CMI Work Plan
Document Memorializing Remedial Action Completion	Construction Completion Report
Site Management Plan	Corrective Action Management Plan

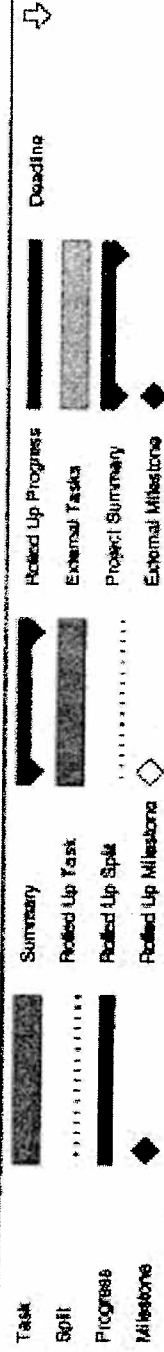
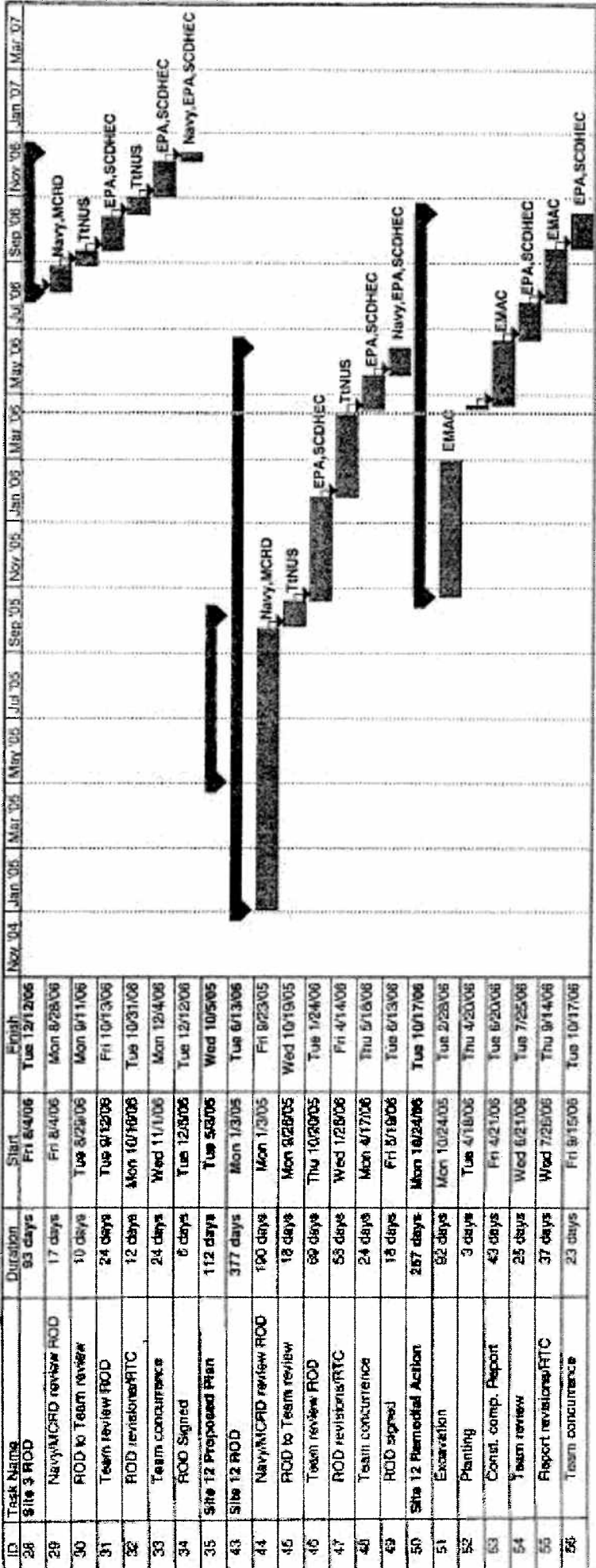
APPENDIX D - CERCLA/RCRA DOCUMENT EQUIVALENCY TABLES

<b>SECONDARY DOCUMENTS</b>	
CERCLA DOCUMENTS	RCRA DOCUMENTS
Health and Safety Plans	Health and Safety Plans
Non-Time Critical Removal Action Plans (40 C.F.R. § 300.415(b) (4) (ii))	Interim Measure Work Plans
Pilot/Treatability Study Work	Treatability Study Work Plans
Pilot/Treatability Study Reports	Treatability Study Reports
Engineering Evaluation/Cost Analysis Report	Interim Measure Work Plan
Well Closure Methods and Procedures	Well Closure Methods and Procedures
Preliminary/Conceptual Designs, or Equivalents	Preliminary/Conceptual Designs, or Equivalents
Prefinal Remedial Designs	Prefinal CM Designs
Removal Action Memoranda	N/A

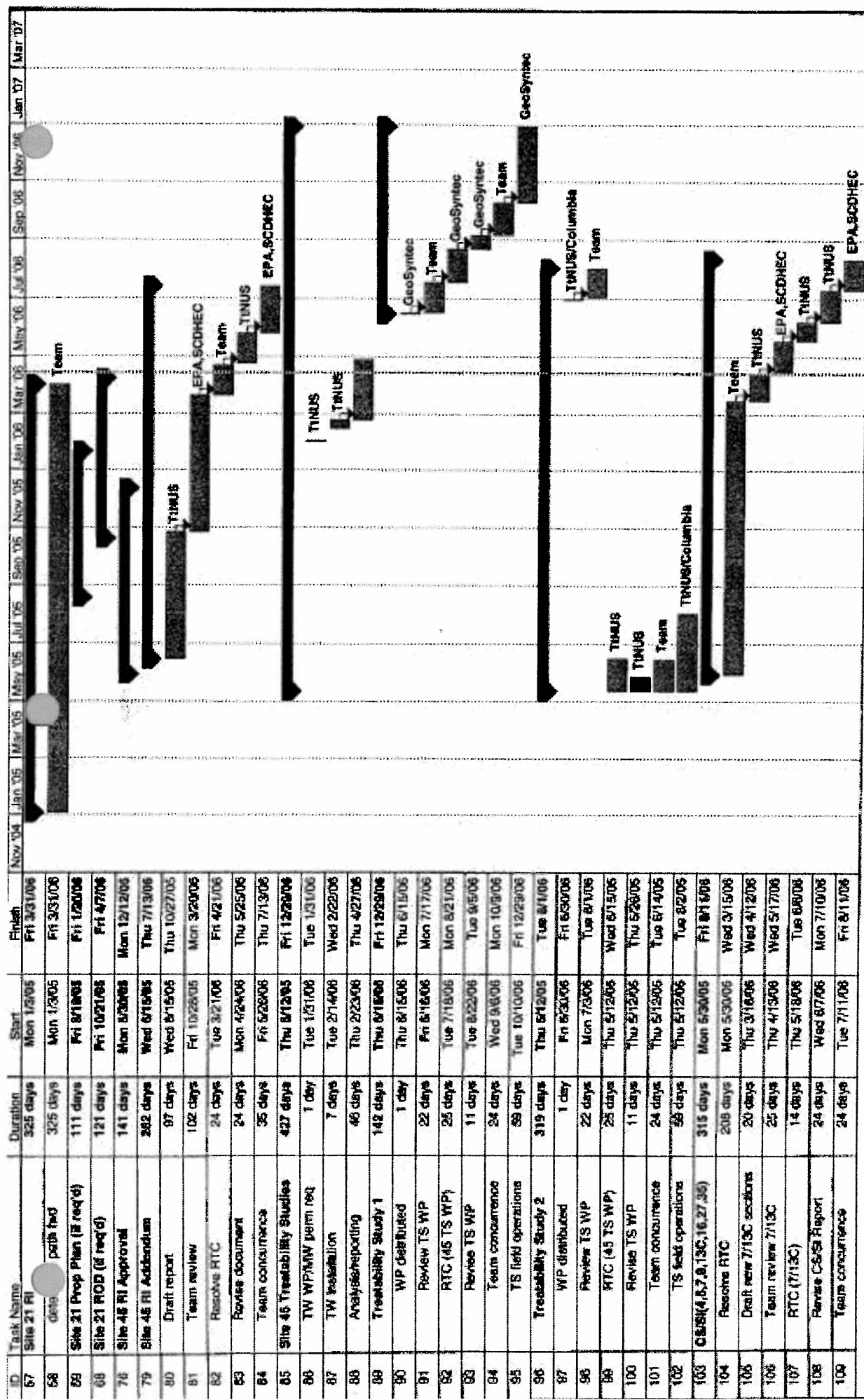
APPENDIX E

SITE MANAGEMENT PLAN





Project: MCRD PI document schedule  
Date: Thu 4/13/06



Task

Summary

Roll Up Task

Roll Up Milestone

Split

Roll Up Progress

External Tasks

Project Summary

External Milestone

Progress

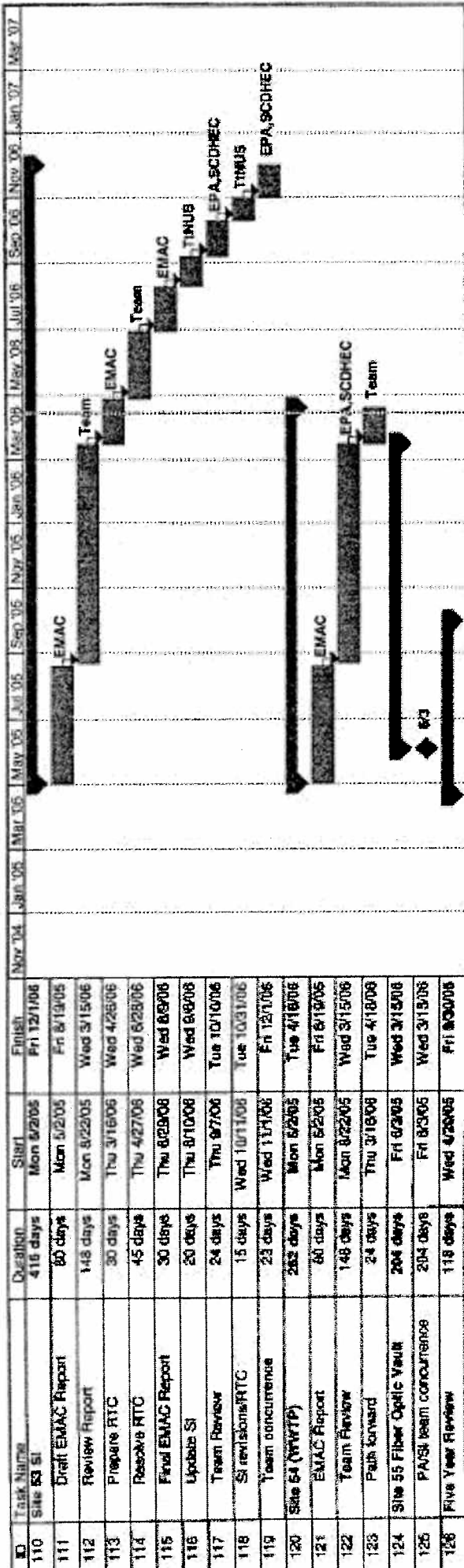
Roll Up Milestone

Milestone

Project: MCHD RI document schedule

Date: Thu 4/13/06

Page 3



Task

Split

Progress

Milestone

Summary

Rollup Up Task

Rollup Up Split

Rollup Up Milestone

Rollup Up Progress

External Tasks

Project Summary

External Milestone

Deadline

Project MCRD PI document schedule

Date: Thu 4/13/06





