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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II

AND THE

UNITED STATES DEPARTMENT OF THE ARMY

IN THE MATTER OF:

The U.S. ARMY TRAINING
CENTER & FORT DIX
WRIGHTSTOWN, NEW JERSEY

FEDERAL FACILITY
AGREEMENT UNDER
CERCLA SECTION 120

Administrative Docket Number:
II-CERCLA-FFA-10101

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

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

Attachment 1

Attachment 2

I.

PURPOSE*

A. The general purposes of this Agreement are to:

(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;

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

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

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

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

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

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

(4) Implement the selected interim and final remedial action(s) in accordance with CERCLA and applicable State law and meet the requirements of Section 120(e)(2) of CERCLA for an interagency agreement between USEPA and the U.S. Department of the Army (the Army);

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

(6) Coordinate response actions at the Site with the mission and support activities at the U.S. Army Training Center and Fort Dix;

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

(8) Provide for operation and maintenance of any Remedial Action selected and implemented pursuant to this Agreement.

II.

JURISDICTION*

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

A. The U.S. Environmental Protection Agency (USEPA), Region II, enters into those portions of this Agreement that relate to the Remedial Investigation/Feasibility Study (RI/FS) pursuant to 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) 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) and Executive Order 12580;

B. USEPA, Region II, enters into those portions of this Agreement that relate to Operable Units and interim Remedial Actions and final Remedial Actions pursuant to Section 120(e)(2) of CERCLA, 42 U.S.C. §9620(e)(2), Sections 6001, 3008(h) and 3004(u) and (v) of RCRA, 42 U.S.C. §§6961, 6928(h), 6924(u) and (v) and Executive Order 12580;

C. The Army enters into those portions of this Agreement that relate to the RI/FS pursuant to Section 120(e)(1) of CERCLA, Sections 6001, 3008(h) and 3004(u) and (v) of RCRA, 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.; and,

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

III.

DEFINITIONS

Except as noted below or otherwise explicitly stated, the definitions provided in CERCLA, 42 U.S.C. §9601 and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 (hereinafter National Contingency Plan or NCP), shall control the meaning of the terms used in this Agreement.

In addition:

A. "Administrative Consent Order" or "ACO" shall mean the tripartite agreement signed on September 16, 1985 by the USEPA, NJDEP and the Army. This order covered activities from the RI through the RA at the Fort Dix Landfill.

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

C. "Applicable State Laws" or "applicable State laws" shall mean those State laws, if any, determined by the Parties to be applicable to response actions taken under this Agreement.

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

E. "Authorized Representative" or "authorized representative" means a person or agency designated to act on behalf of a Party for a specific purpose, including, if so designated, contractors retained to perform work at or relating to the Site.

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

G. "Closure Plan" shall mean the plan pursuant to the ACO that identifies the steps necessary to completely close the Fort Dix Landfill in a manner that minimizes the need for further maintenance and controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of hazardous substances, leachate, contaminated rainfall, or waste decomposition products to the groundwater, or surface waters, or to the atmosphere. The Closure Plan shall include, at a minimum, the NJDEP and USEPA approved Phase III Remedial Action Report, the Remedial Alternative Selection

Support Package, as defined in the ACO (these documents have already been submitted by the Army and approved by the USEPA and NJDEP), the Record of Remedial Alternative Selection, full design plans and specifications for the Selected Alternative, and an implementation schedule for all work covered by the Closure Plan. Furthermore, the Closure Plan shall mean the "plan" as described in Section 1-601 of E.O. 12088 to achieve and maintain compliance with the applicable pollution control standards.

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

I. "Deadline" or "deadline" shall mean the time limitation applicable to a primary document or a discrete and significant portion of a primary document specifically established under the terms of this Agreement.

J. "Feasibility Study" or "FS" shall mean a study that fully evaluates and develops Remedial Action alternatives to prevent, mitigate or abate the release, threatened release or the migration of hazardous substances, pollutants, or contaminants at and from the Site.

K. "Fort Dix", the "U.S. Army Training Center & Fort Dix", or the "Site" shall mean all of the U.S. Army property known by that name, and comprising approximately 31,000 acres in Burlington County, New Jersey, as shown on Attachment I. The term "Site" shall also include any other areas into which hazardous substances pollutants or contaminants have or may have migrated therefrom, and all suitable areas in very close proximity to the contamination necessary for the implementation of the response action.

L. "Fort Dix Landfill" or "the landfill" shall mean the U.S. Army property approximately 130 acres in size and located in the southwestern section of Fort Dix, Wrightstown, Burlington County, New Jersey. The landfill is approximately 2200 feet from the base boundary. Significant Site features are two streams, Cannon Run to the east of the landfill and an unnamed stream northwest of the landfill, both flowing into the North Branch of Rancocas Creek. To the west of the landfill is a swamp.

M. "Hazardous Substance" or "hazardous substance" shall include hazardous substances as defined by CERCLA and hazardous waste/hazardous constituents as defined by RCRA.

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

O. "NJAC" shall mean the New Jersey Administrative Code promulgated pursuant to NJSA 13:1E-1 et seq.

P. "NJDEP" or "the State" shall mean the New Jersey Department of Environmental Protection, its employees and authorized representatives.

Q. "On Scene Coordinator" or "OSC" shall mean the person designated by the Army, which person shall be charged with the duty of, at all times, coordinating and directing the Army's response activities and being knowledgeable about and overseeing the progress of all work performed pursuant to the ACO for the closure of the Fort Dix Landfill.

R. "Operable Unit" shall mean a discrete action that comprises an incremental step toward comprehensively addressing Site problems. This discrete portion of a remedial response manages migration, or eliminates or mitigates a release, threat of a release, or pathway of exposure. The cleanup of a Site can be divided into a number of Operable Units, depending on the complexity of the problems associated with the Site. Operable Units may address geographical portions of a 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 a Site.

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

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

U. "Record(s) of Decision" or "ROD(s)" or ["Record of Remedial Alternative Selection" (for the Fort Dix Landfill only)] shall be the public document(s) that explain(s) which cleanup alternative(s) will be implemented at the Site, and include(s) the bases for the selection of such remedy(ies). The bases include information and technical analyses generated during the Remedial Investigation and Feasibility Study and consideration of public comments and community concerns.

V. "Remedial Action" or "RA" shall have the meaning of that term as defined in Section 101(24) of CERCLA, 42 U.S.C. §9601(24).

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

X. "Remedial Investigation" or "RI" shall mean an investigation conducted to fully assess the nature and extent of any release or threat of release of hazardous substances, pollutants, or contaminants and to gather necessary data to support the corresponding Feasibility Study and the Risk Assessment.

Y. "Schedule" or "schedule" shall mean time limitations established for the construction, implementation and completion of response actions at the Site.

Z. "Submittal" shall mean every document, report, schedule, deliverable, work plan or other item to be submitted to USEPA pursuant to this Agreement.

AA. "U.S. Army" or "Army" shall mean the U.S. Department of the Army, its employees and authorized representatives.

BB. "USEPA" shall mean the U.S. Environmental Protection Agency, its employees and authorized representatives.

IV.

PARTIES

The Parties to this Agreement are the USEPA and the Army. The terms of this Agreement shall apply to and be binding upon the USEPA, their agents and assigns, and the Army, its agents and assigns, and all subsequent owners, operators, and lessees of Fort Dix. The Army will notify the USEPA of the identity and assigned tasks of each of its primary contractors performing work under this Agreement upon their selection. This Agreement shall be enforceable against all of the above-mentioned Parties by the Parties to this Agreement. This Part shall not be construed as an agreement to indemnify any person. The Army shall notify its agents, employees, primary response action contractors, and all subsequent owners, operators, and lessees of Fort Dix of the existence of this Agreement. Each undersigned representative of a Party certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and do legally bind such Party to this Agreement.

V.

FINDINGS

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

A. The Fort Dix Landfill (the landfill), approximately 130 acres in size, is located in the southwestern section of Fort Dix, Wrightstown, Burlington County, New Jersey. The landfill is approximately 2200 feet from the base boundary. Significant Site features are two streams, Cannon Run to the east of the landfill and an unnamed stream northwest of the landfill, both flowing into the North Branch of Rancocas Creek. To the west of the landfill is a swamp.

B. The Site was used as an artillery impact range prior to its development as a landfill. The landfill itself began operation in 1950, and was officially closed on July 6, 1984. During this time the landfill was used by Fort Dix, and from 1969-1984 was also used by McGuire Air Force Base. Access to the landfill had not been controlled until 1980, so records of what was buried there are incomplete. However, after controls were established, drums of liquid waste were not landfilled.

C. In May, 1979, the Army submitted an application to the New Jersey Department of Environmental Protection (NJDEP) for approval of the 130 acre landfill, with a projected life expectancy of three years to 1982.

D. In July, 1982, NJDEP approved the Fort Dix engineering design for 103 acres; in addition, NJDEP granted approval for an additional 34 acres of fill area or maximum elevation of 130 feet, whichever occurred first. The approval extended the landfill closure date to July 6, 1984.

E. During November, 1982, samples were taken from the Fort Dix Landfill's monitoring wells. Results of the sampling revealed that the groundwater was contaminated, including high levels of volatile organic constituents in excess of 14,000 ppb.

F. In August, 1983, the Army requested an extension of the landfill's permit to operate beyond the July 6, 1984 closure date. By letter dated October 18, 1983, NJDEP denied the Army's request.

G. From November, 1983 to January, 1984, samples were taken from the Fort Dix monitoring wells to determine the nature and extent of the groundwater contamination. Results of the sampling revealed that a possible source of the contamination was an abandoned dumping pit located on the Southwest boundary of the

landfill. In January, 1984, NJDEP and the Army agreed that additional analytical testing was necessary.

H. In January 1984, the Army submitted to NJDEP a proposal for an investigation of pollution emanating from the landfill entitled, "Proposed Investigation of Pollution Plume from Fort Dix Sanitary Landfill" developed by the Army's Construction Engineering Research Laboratory (CERL) and Waterways Experiment Station (WES). The investigation proposal summarized the Army's three-phased approach for sample collection, monitoring well data collection, remedial alternatives and final closure.

I. Samples collected in February, 1984 indicated that the groundwater was contaminated. High concentrations of ethyl benzene in excess of 50 ppb and diethyl phthalate in excess of 120 ppb were found. The standards for mercury and cadmium were exceeded.

J. In April, 1984, the Army initiated a program to determine the nature and extent of the groundwater contamination emanating from the abandoned grease pit and the landfill. The program, implemented by the U.S. Army CERL and WES, was thought to be necessary because of inadequacies of previous studies. It was concluded that both the grease pit and the landfill were contributing to groundwater contamination.

K. The Army was notified in April, 1984, to submit to the NJDEP a closure plan. The Army submitted the plan in July, 1984.

L. An Interim New Jersey Pollutant Discharge Elimination System (NJPDDES) permit was issued for the Fort Dix Landfill on May 29, 1984.

M. On July 6, 1984, the Army ceased the disposal of waste at the Fort Dix Landfill.

N. By letter dated July 16, 1984, the NJDEP notified the Army that its closure plan was deficient and incomplete and that the Army was to resubmit the closure plan to the NJDEP by August 16, 1984. On August 16, 1984, the Army resubmitted the closure plan as requested.

O. In October, 1984, 32 Federal facilities Sites were proposed in the Federal Register for addition to the National Priorities List (NPL). Included was the Fort Dix Landfill.

P. In January, 1985 NJDEP notified the Army that its closure plan was rejected.

Q. A tripartite Administrative Consent Order was signed on September 16, 1985 by the USEPA, NJDEP and the Army. This Order covered activities from the RI through the RA at the Fort Dix

Landfill.

R. In September, 1985, the Army retained Camp, Dresser & McKee, Inc. (CDM) to perform a Remedial Investigation/Feasibility Study (RI/FS) at the Fort Dix Landfill.

S. In October, 1986 the Army submitted the RI report, entitled Proposed Response. The RI indicated that contamination was coming from the landfill and not the grease pit. It revealed elevated levels of volatile organic compounds (VOCs) in the groundwater, as well as hot spots of heavy metals contamination, adjacent to the landfill. In addition, it recommended a Phase II investigation to resample selected wells, carry out a private potable well survey, and perform an environmental assessment.

T. In January, 1987, the Army submitted the Proposed Response Addendum I containing the results of the Phase II investigation. Following this, USEPA and NJDEP requested further studies be conducted to better characterize the Manasquan and Vincentown formations, and to confirm or deny the presence of trichloroethane (TCE) in the Vincentown aquifer.

U. In July, 1987 the Draft Feasibility Study (FS) Report was submitted to USEPA and NJDEP. Of seven Remedial Action alternatives selected for evaluation, alternative 2 -- landfill closure with monitoring -- was selected by the Army.

V. The Army submitted in August, 1987, the Proposed Response Addendum 2, detailing the results of the Manasquan and Vincentown studies. According to the report, the Manasquan appears to be continuous in the area of the Fort Dix Landfill, thus providing a barrier to vertical migration into the Vincentown. Also, it indicated the TCE which has been found in the Vincentown was not attributable to the landfill.

W. In February, 1989 EPA submitted comments on the Draft FS Report and on the Army's proposed alternative.

X. In August, 1989 the Army submitted the Feasibility Study Report Addendum I in response to comments made by EPA and NJDEP. The Army also submitted the Proposed Response Addendum III containing the revised Health and Environmental Assessment.

Y. This Part contains a Findings of Facts determined by the USEPA and shall not be used by any person related or unrelated to this Agreement in any action other than an action to enforce this Agreement.

VI.

USEPA Determinations

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

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

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

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

(e) The observed releases of hazardous substances onto the soil and into the groundwater at the Site (as noted in the Findings part above) are releases within the meaning of the term "release" as defined in CERCLA Section 101(22), 42 U.S.C. §9601(22).

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

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

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

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

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

VII.

Army Determinations

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

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

VIII.

STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION*

A. The Parties intend to integrate the Army's CERCLA response obligations and RCRA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes, pollutants or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will be deemed to achieve compliance with CERCLA, 42 U.S.C. §9601 et seq.; to 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), for interim status facilities; and to meet or exceed all applicable or relevant and appropriate Federal and State laws and regulations, to the extent required by Section 121 of CERCLA, 42 U.S.C. §9621.

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

C. The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties further recognize that on-going hazardous waste management activities at the U.S. Army Training Center and Fort Dix 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 Army for on-going hazardous waste management activities at the Site, USEPA shall reference and incorporate any appropriate provisions, including appropriate schedules (and the provision for extension of such schedules), of this Agreement into such permit. The Parties intend that the judicial review of any permit conditions which reference this Agreement shall, to the extent authorized by law, only be reviewed under the provisions of CERCLA.

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

IX.

SCOPE OF AGREEMENT

A. The Parties agree that the USEPA shall be the lead agency in overseeing the Army's compliance with the terms of this Agreement. The Parties further agree that the NJDEP shall maintain an oversight role of all Army response activities under this Agreement for the Fort Dix Landfill.

B. The Parties agree that this Agreement and the schedules to be developed in accord with Part XIII hereof shall supersede as to the USEPA the 1985 ACO covering the Fort Dix Landfill and shall exclusively define the obligations of the Army to the USEPA for the remediation of the Fort Dix Landfill.

C. The Parties further agree that prior to the effective date of this Agreement, the RI/FS for the Fort Dix Landfill has been completed and approved, and the Proposed Plan for the Fort Dix Landfill has been completed, approved, and made available for public comment.

D. The Army agrees to conduct all response actions set forth in this Agreement, Part X (Removal Actions), Part XI (Records of Decision) and Part XII (Remedial Design/Remedial Action Implementation) and to do so in accord with the timetables and deadlines established pursuant to Part XIII (Deadlines), and in Attachment II of this Agreement for all the potentially contaminated areas on the Site. These actions may consist of any or all of the following activities for any or all of the potentially contaminated areas:

(1) Operable Units - The Army agrees that it shall develop, where appropriate, interim remedial measures or final remedial measures to be addressed as Operable Units. After consultation with USEPA as described in Part XVI, the Army shall publish its proposed interim remedial measure alternative(s) or final remedial measure alternative(s) for public review and comment. Selection of interim measures shall proceed in the same manner as the remedy selection and implementation process described in Part XI (Records of Decision) and Part XII (Remedial Design/Remedial Action Implementation) in this Agreement.

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

(3) Remedial Investigation - The Army agrees it shall develop, implement and report upon the RI for the Site. A Party can suggest that an Operable Unit be determined based on information obtained in the RI. The RI document shall be subject to the review and comment procedures described in Part XVI. The

RI shall be conducted in accordance with the requirements and time schedules set forth in Attachment 2 and Part XIII (Deadlines) of this Agreement. The RI shall meet the purposes set forth in Part I (Purpose) of this Agreement.

(4) Feasibility Study - The Army agrees it shall design, propose, undertake and report upon FSs for the Site (including any Operable Unit). The FS documents shall be subject to the review and comment procedures described in Part XVI. The FSs shall be conducted in accordance with the requirements and time schedules set forth in Attachment 2 and Part XIII (Deadlines) of this Agreement. The FSs shall meet the purposes set forth in Part I (Purpose) of this Agreement.

(5) Remedial Action Selection and Implementation - Following completion of the RI and any corresponding FS(s) and in consultation with the USEPA as described in Part XVI, the Army shall publish its proposed Remedial Action alternative(s) for public comment in accordance with Part XI of this Agreement, Section 117(a) of CERCLA, applicable State laws and comply with all other applicable sections of Section 117 of CERCLA. Remedial selection and implementation shall proceed in accordance with Part XI (Records of Decision) and Part XII (Remedial Design/Remedial Action Implementation) of this Agreement.

X.

Removal Actions

A. (1) The provisions of this Subpart shall apply to all removal actions as defined in CERCLA Section 101(23), 42 U.S.C. § 9601(23), including all modifications to, or extensions of, the ongoing removal actions, and all new removal actions proposed or commenced following the effective date of this Agreement.

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

(3) All reviews conducted by USEPA will be expedited to the extent practicable so as not to unduly jeopardize fiscal resources of the Army for funding the removal actions.

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

B. Notice and Opportunity to Comment

(1) The Army shall provide the USEPA with timely notice and opportunity to review and comment upon any proposed removal action for the Site, pursuant to CERCLA §211.

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

(3) For any other removal actions, the Army will provide USEPA with any information required by CERCLA, the NCP, and in accordance with pertinent USEPA guidance, such as the Action Memorandum, the Engineering Evaluation/Cost Analysis (EE/CA) (in the case of non-time critical removals) and, to the extent it is not otherwise included, all information required to be provided in accordance with Section B.2 of this Subpart. Such information shall be furnished as early as practicable, but not less than forty-five (45) days before the response action is to begin.

(4) All activities related to ongoing removal actions shall be reported by the Army in the progress reports as described in Part XXVI (Reporting).

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

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

XI.

RECORDS OF DECISION

A. The Army shall submit an all encompassing draft final RI for the Site, (the RI for the Fort Dix Landfill having already been submitted prior to the effective date of this Agreement) to USEPA for review and comment, in accordance with Part XVI of this Agreement and within the time schedules set forth in Attachment 2 to this Agreement.

B. For each Operable Unit, the Army shall submit the draft final FS Report to USEPA for review and comment in accordance with Part XVI of this Agreement and within the time schedules set forth in Attachment 2 to this Agreement. Each draft final FS document shall include a presentation of the preferred remedial alternative(s). Following final approval of the FS report by USEPA, the Army shall submit a Proposed Plan in accordance with Part XIII which includes a presentation of the preferred remedial alternative(s). After consultation with USEPA as described in Part XVI, the FS and Proposed Plan shall be distributed for public comment. A public comment period will be announced, and a public meeting will be held by the Army to receive comments on the FS and Proposed Plan for each Operable Unit. Copies of all written and oral public comments received will be provided to the Parties. Public review and comment shall be conducted in accordance with Section 117(a) of CERCLA. Following public comment, the Parties will determine in accordance with Part XVI and XVIII if the FS or Proposed Plan should be modified based on the comments received. These modifications will be made by the Army and the modified documents will be reviewed by USEPA. Any of the Parties may recommend that additional public comment be solicited if modifications to the Proposed Plan substantially change the remedy originally proposed to the public.

C. Based on comments received from USEPA and the public, the Army will draft and submit to USEPA a draft Record of Decision for each Operable Unit in accordance with the procedures in Parts XVI and XVIII. The draft Record of Decision will include a Responsiveness Summary in accordance with applicable USEPA guidance. The Parties shall have 30 days to attempt to jointly select a remedy following the Army's submission of a draft Record of Decision. If the Parties agree on the draft Record of Decision, USEPA shall co-sign the Record of Decision and the draft Record of Decision shall be adopted by USEPA and the Army. Within 10 days of receipt of the Record of Decision with USEPA's signature, the Army shall issue the final Record of Decision. If the Parties are unable to reach agreement on the draft Record of Decision, selection of a Remedial Action shall be made by the USEPA Administrator and USEPA shall then prepare the final Record of Decision. The selection of Remedial Action(s) by the USEPA Administrator shall be final and not subject to dispute

by the Army. If a final Record of Decision prepared by USEPA departs significantly from the Proposed Plan which was subject to public comment, then USEPA shall subject the new Proposed Plan to public comment.

D. Notice of the final Record of Decision shall be published by the Party preparing it and the Record of Decision shall be made available to the public prior to commencement of the Remedial Action, in accordance with Section 117(b) of CERCLA.

E. Upon issuance of the final Record of Decision for the final Remedial Action as an Operable Unit pursuant to Section B above, the RI/FS for that Operable Unit will be deemed completed.

F. Upon approval by USEPA, all terms, conditions, timetables, deadlines, schedules, proposed work, and Records of Decision relating to any interim or final Remedial Actions that are required by this Part and Part XII of this Agreement shall be incorporated into this Agreement and become an enforceable part thereof.

XII.

REMEDIAL DESIGN/REMEDIAL ACTION IMPLEMENTATION

A. Within twenty-one (21) days of issuance of a Record of Decision for an Operable Unit, the Army shall propose deadlines for the submission of the Remedial Design and Remedial Action (RD/RA) Workplans in accordance with Part XIII (Deadlines) of this Agreement. Upon finalization of the RA Workplan, the final deadlines established pursuant to Part XIII (Deadlines) shall be published by USEPA as reflected and updated in Attachment 2.

B. Following the issuance of the Record of Decision for the Fort Dix Landfill, the Army shall submit a Closure Plan, including Remedial Design and a schedule of implementation, for the Fort Dix Landfill pursuant to the ACO.

C. The Remedial Design Workplan is a primary document subject to the review and comment process in Part XVI (Consultation). The Remedial Design Workplan shall contain at a minimum: (1) the tentative formation of the design team, (2) a Health and Safety Plan for design activities, (3) the requirements for additional field data collection, (4) the requirements for treatability studies, (5) a schedule for completion of the design, (6) tentative treatment schemes, and (7) permitting requirements. Upon approval of the Remedial Design Workplan by USEPA, the Army will implement the Workplan in accordance with the Remedial Design schedule contained therein. Such implementation shall include the review and approval of the design by USEPA which shall be submitted in two reports. The two reports are:

(a) Preliminary Design Report, which is a secondary document that begins with an initial design and ends with the completion of approximately thirty percent (30%) of the design effort.

(b) Pre-Final/Final Design Report, which is a primary document that includes the following: (i) final design plans, specifications, or performance standards; (ii) a remediation schedule; (iii) an Operation and Maintenance (O&M) plan; (iv) a Field Sampling Plan; (v) Contractor Quality Assurance Plan; (vi) a Contingency Plan; and, (vii) a Waste Management Plan.

D. The Remedial Action Workplan is a primary document subject to the review and comment process in Part XVI (Consultation). The Remedial Action Workplan shall contain at a minimum: (1) a Contractor Quality Control Plan which is a description of the method by which the Contractor Quality Assurance Plan shall be implemented, including criteria and composition of the Independent Quality Assurance Team, (2) a project schedule for the Remedial Action and the process to

continuously update the project schedule, (3) an operation and maintenance plan which shall cover both implementation and long term maintenance of the Remedial Action, (4) a construction quality assurance plan which shall ensure that a completed Remedial Action meets or exceeds all design criteria, plans and specifications, (5) a sampling and analysis plan, (6) a waste management plan, (7) a contingency plan for a response to system malfunctions, (8) a Health and Safety Plan for field activity, (9) the strategy for implementing the Contingency Plan, (10) the requirements for project closeout, (11) a description of the roles and relationships of the Army Project Manager, Contractor, Independent Quality Assurance Team, remedial design professional, and the Remedial Action contractor, (12) the process for the selection of the Remedial Action contractor, and (13) the procedure for data collection during the Remedial Action to validate the completion of the project. The Army shall implement the Remedial Action Workplan immediately upon approval by USEPA.

E. Once the Remedial Action Workplan is approved by USEPA, the Army shall implement the Remedial Action(s) in accordance with the requirements of this Agreement and time schedules and deadlines as described in Attachment 2 and Part XIII of this Agreement. The Remedial Action(s) for each Operable Unit shall meet the purposes set forth in Part I (Purpose) of this Agreement.

F. At a time approved by USEPA, the Army shall conduct a pre-final and final inspection of completed work. The purpose of the inspection is to determine if all aspects of the design have been implemented at the Site.

G. The Project Closeout Report is a primary document subject to the review and comment process in Part XVI (Consultation). At the completion of the Remedial Action, the Army will prepare the Project Closeout Report which certifies that all items contained in this Agreement and any documents incorporated herein have been completed in accordance with USEPA comments or approved documents.

H. The Remedial Design and Remedial Action shall be developed and implemented in accordance with the requirements of CERCLA, the NCP, and relevant guidance.

XIII.

DEADLINES*

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

1. RI/FS Workplan, including Sampling and Analysis Plan and QAPjP
2. RI Report
3. Risk Assessment(s)
4. FS Report(s)
5. Proposed Plan(s)
6. Record(s) of Decision

Within fifteen (15) days of receipt, USEPA, in conjunction with the State, shall review and provide comments to the Army regarding the proposed deadlines. Within fifteen (15) days following receipt of the comments the Army shall, as appropriate, make revisions and reissue the proposal. The Parties shall meet as necessary to discuss and finalize the proposed deadlines. If the Parties agree on proposed deadlines, the finalized deadlines shall be incorporated into the appropriate Work Plans. If the Parties fail to agree within thirty (30) days on the proposed deadlines, the matter shall immediately be submitted for dispute resolution pursuant to Part XVIII of this Agreement. The final deadlines established pursuant to this Paragraph shall be published by USEPA, in conjunction with the State.

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

1. Remedial Design Workplan(s)
2. Pre-Final/Final Remedial Design Report(s)
3. Remedial Action Work Plan(s)
4. Project Cleanout Report(s)

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

C. Within twenty-one (21) days after the effective date of this Agreement, the Army shall provide target completion dates for secondary documents required pursuant to Part XVI.D. Target dates for secondary documents are not subject to Parts XVII, XVIII, XX, and XXI. Nothing in this subparagraph will affect the deadlines for primary documents established pursuant to this Agreement.

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

E. Pursuant to the ACO and in accordance with the deadlines established therein, the Army shall submit to the NJDEP and USEPA, for review and approval, a Closure Plan. The RD/RA Workplans submitted pursuant to this Agreement shall be included as part of the Closure Plan submitted pursuant to the ACO.

XIV.

PROJECT MANAGERS

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

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

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

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

E. Within ten (10) business days following an agreement for any minor field modification made pursuant to this Part, the Project Manager who requested the modification shall prepare a memorandum detailing the modification and the reasons therefore and shall provide a copy of the memorandum to the other Project Manager. The Parties recognize that modifications and corresponding changes to Remedial Investigation and response

action contracts may necessitate extensions of timetables and deadlines and that such extensions are subject to Part XVII hereof.

F. The Project Manager for the Army shall supervise all work performed at the U.S. Army Training Center and Fort Dix during implementation of the work performed pursuant to this Agreement. The Project Manager for the Army shall be reasonably available to the USEPA Project Manager throughout the performance of all work required by this Agreement. The absence of the USEPA Project Manager from the Site shall not be cause for work stoppage.

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

H. The Army shall appoint an OSC who shall, to the extent provided by the NCP, be responsible for coordinating and directing the implementation of the closure of the Fort Dix Landfill pursuant to the ACO. All NJDEP and USEPA correspondence shall be sent to the OSC.

XV.

NOTIFICATION

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

B. Notice to the individual Parties shall be provided under this Agreement to the following addressees:

(1) For USEPA:

Paul G. Ingrisano
Project Manager
Emergency & Remedial Response Division
U.S. Environmental Protection Agency
26 Federal Plaza, Room 2930
New York, New York 10278

(2) For the Army:

Directorate of Engineering & Housing
LTC D.L. Henley
DEH, ATZD-EH
Fort Dix, New Jersey 08640

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

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

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

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

F. The Parties agree that the NJDEP may designate a Project Manager for Fort Dix. Such Project Manager will be invited to attend and participate in the meetings of the Parties' Project Managers. The Army will provide to the NJDEP four (4) copies of

all primary and secondary documents as specified in Section XVI
(Consultation with USEPA).

XVI.

CONSULTATION WITH USEPA*

Review and Comment Process for Draft and Final Documents

A. Applicability:

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

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

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

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

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

C. Primary Reports:

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

1. RI/FS Workplan(s), including Sampling and Analysis Plan and QAPjP
2. Remedial Investigation Report
3. Risk Assessment(s)
4. Feasibility Study Report(s)
5. Proposed Plan(s)
6. Record(s) of Decision
7. Remedial Design Workplan(s)
8. Pre-final/Final Remedial Design Report(s)
9. Remedial Action Workplan(s)
10. Project Closeout Report

2. Only the draft final reports for the primary documents identified above shall be subject to dispute resolution. The Army shall complete and transmit draft primary documents in accordance with the timetable and deadlines established in Part XIII of this agreement.

D. Secondary Documents:

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

1. Initial Remedial Action/Data Quality Objectives
2. Site Characterization Summary
3. Initial Screening of Alternatives
4. Detailed Analysis of Alternatives
5. Treatability Studies
6. Post-Screening Investigation Workplan
7. Preliminary Remedial Design Report(s)
8. Supplemental Workplan(s)
9. Supplemental Report(s)

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

E. Meetings of the Project Managers on Development of Reports:

The Project Managers shall meet approximately every 45 days, except as otherwise agreed by the Parties, to review and

discuss the progress of work being performed at the Site on the primary and secondary documents. Prior to preparing any draft report specified in Paragraphs C and D above, the Project Managers shall meet to discuss the report results in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft report.

F. Identification and Determination of Potential ARARs:

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

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

G. Review and Comment on Draft Reports:

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

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

written notice to the Army prior to the end of the 30-day period. On or before the close of the comment period, USEPA shall hand deliver or send, by next day mail or by certified mail, return receipt requested, their written comments to the Army. In appropriate circumstances, this time period may be further extended in accordance with Part XVII hereof.

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

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

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

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

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

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

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

I. Finalization of Reports:

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

J. Subsequent Modifications of Final Reports:

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

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

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

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

XVII.

EXTENSIONS*

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

1. The timetable and deadline or the schedule that is sought to be extended;
2. The length of the extension sought;
3. The good cause(s) for the extension; and,
4. Any related timetable and deadline or schedule that would be affected if the extension were granted.

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

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

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

D. Within seven days of receipt of a request for an extension of a timetable and deadline or a schedule, each receiving Party shall advise the requesting Party in writing of the receiving Party's position on the request. Any failure by a receiving Party to respond within the 7-day period shall be deemed to constitute concurrence with the request for extension. If a receiving Party does not concur in the requested extension,

it shall include in its statement of nonconcurrency an explanation of the basis for its position.

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

F. Within seven days of receipt of a statement of nonconcurrency with the requested extension, the requesting Party may invoke dispute resolution.

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

H. The Parties agree that a delay caused by a disagreement between NJDEP and USEPA regarding approval of a submittal for the closure of the Fort Dix Landfill shall constitute good cause for an extension pursuant to this Section.

XVIII.

DISPUTE RESOLUTION*

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

All Parties to this Agreement shall make reasonable efforts to informally resolve disputes at the Project Manager or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this Part shall be implemented to resolve a dispute.

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

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

C. The DRC will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (SES or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The USEPA representative on the DRC is the Emergency & Remedial Response Division Director of USEPA's Region II. The Army's designated member is the Garrison Commander, U.S. Army Training Center and Fort Dix, NJ. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Part XV (Notification).

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

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

E. The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The USEPA representative on the SEC is the Regional Administrator of USEPA's Region II. The Army's representative on the SEC is the Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (I, L & E). The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision. If unanimous resolution of the dispute is not reached within twenty-one (21) days, USEPA's Regional Administrator shall issue a written position on the dispute. The Army may, within fourteen (14) days of the Regional Administrator's issuance of USEPA's position, issue a written notice elevating the dispute to the Administrator of USEPA for resolution in accordance with all applicable laws and procedures. In the event that the Army elects not to elevate the dispute to the Administrator within the designated fourteen (14) day escalation period, the Army shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.

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

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

H. When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Emergency & Remedial Response Division Director for USEPA's Region II requests, in writing, that work related to the dispute be stopped because, in USEPA's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or

implementation process. To the extent possible, USEPA shall consult with the Army prior to initiating a work stoppage request. After stoppage of work, if the Army believes that the work stoppage is inappropriate or may have potential significant adverse impacts, the Army may meet with the Division Director to discuss the work stoppage. Following this meeting, and further consideration of the issues, the Division Director will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the Division Director may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the Army.

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

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

K. In the event a dispute arises between the provisions of this Agreement and the provisions of the ACO, the Parties shall attempt to resolve the dispute to allow for compliance with both this Agreement and the ACO to the extent possible and so long as the terms of the ACO are consistent with CERCLA and the NCP.

XIX.

FORCE MAJEURE*

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

XX.

ENFORCEABILITY*

A. The Parties agree that:

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

(2) all timetables or deadlines associated with the RI/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;

(3) 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,

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

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

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

XXI.

STIPULATED PENALTIES*

A. In the event that the Army fails to submit a primary document (i.e., Scope of Work, RI/FS Workplan, Risk Assessment, RI Report, Initial Screening of Alternatives, FS Report, Proposed Plan, Record of Decision, Remedial Design, Remedial Action Work Plan) to USEPA pursuant to the appropriate timetable or deadline in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement which relates to an interim or final Remedial Action, USEPA may assess a stipulated penalty against the Army. A stipulated penalty may be assessed in an amount not to exceed \$5,000 for the first week (or part thereof), and \$10,000 for each additional week (or part thereof) for which a failure set forth in this Paragraph occurs.

B. Upon determining that the Army has failed in a manner set forth in Paragraph A, USEPA shall so notify the Army in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the Army shall have fifteen (15) days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. The Army shall not be liable for the stipulated penalty assessed by USEPA if the failure is determined, through the dispute resolution process, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.

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

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

D. Stipulated penalties assessed pursuant to this Part

shall be payable to the Hazardous Substances Response Trust Fund only in the manner and to the extent expressly provided for in Acts authorizing funds for, and appropriations to, the DOD.

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

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

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

XXII.

SITE ACCESS

A. Subject to the conditions set forth in this Part, the Army will allow the USEPA, and/or its authorized representatives, to enter the Site at all reasonable times for purposes related to activities conducted pursuant to this Agreement, including among other things:

(1) inspecting records, operating logs, contracts and other documents relevant to implementation of this Agreement;

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

(3) conducting such tests as the Project Managers deem necessary;

(4) verifying the data submitted to the USEPA by the Army; and/or,

(5) observing the performance of any or all sampling, testing, response action, removals, Remedial Actions, pilot studies and/or any other actions taken at the U.S. Army Training Center and Fort Dix pursuant to the terms of this Agreement.

B. USEPA will give the Army reasonable notice prior to entering U.S. Army Training Center and Fort Dix. The Army shall honor all reasonable requests for access upon presentation of proper credentials and compliance with this Part. Access shall conform with Army security and safety regulations, all applicable health and safety plans and be exercised so as to minimize interference with any military activities on the installation.

C. The Army shall use its best effort to gain access to all areas, including all areas located within the boundaries of the U.S. Army Training Center and Fort Dix and all real property and structures occupied by non-government entities, for the purposes of performing all activities and implementing all other measures required by this Agreement.

D. The Army shall use its best efforts to gain access to all areas located outside the legal boundaries of U.S. Army Training Center and Fort Dix onto which access is needed to perform all activities under this Agreement, including obtaining access for the Army and for USEPA onto all real property and structures which are not owned by the United States or the Army.

E. "Best efforts" for the purposes of paragraphs C and D shall include identifying and locating the owner(s) and lessees of areas, offering consideration to the owner(s) and/or lessees

for access to areas, making attempts to obtain access agreements from the owners and/or lessees of all areas onto which access is needed under this Agreement and asserting all authority which the Army possesses under Section 104(e) of CERCLA, 42 U.S.C. §9601 et seq., and any other federal laws or regulations. In the event that the Army is unable to obtain such access agreements, the Army shall promptly notify USEPA.

F. The Army shall ensure that all response measures, ground water rehabilitation measures and Remedial Actions of any kind which are undertaken pursuant to this Agreement on Army owned or controlled areas, 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.

G. With respect to non-Army property upon which monitoring wells, pumping wells, or other response actions are to be located, the access agreements shall also provide that no conveyance of title, easement, or other interest in the property shall be consummated for the duration of the access agreement without provisions for the continued right of entry.

H. The Army shall ensure that the USEPA and its authorized representatives shall be allowed to enter and move about all areas where any activities are to be or are being performed under this Agreement. The Army shall provide an escort whenever USEPA requires access to restricted areas of Fort Dix for purposes consistent with the provisions of this Agreement. USEPA shall provide reasonable notice to the Army Project Manager to request any necessary escorts. USEPA shall not use any camera, sound recording or other electronic recording device at Fort Dix without permission of the Army Project Manager. The Army shall not unreasonably withhold such permission. When permission must be withheld, the Army shall be responsible for alternate arrangements for any work utilizing a camera, sound recording or other electronic device, if feasible. The Army shall provide, within 48 hours of withholding permission, written explanation of the reasons why such permission was withheld and why alternative arrangements are not feasible.

I. The Army shall provide the USEPA with at least ninety (90) days prior notice of any conveyance of title to or any transfer of an interest in real property which may affect this Agreement or any activities to be taken pursuant to it. The Army shall ensure that all activities or remedial measures to be undertaken pursuant to this Agreement will not be impeded or impaired by any transfer of title or any transfer of any other interest in real property relating to the U.S. Army Training Center and Fort Dix or any structures located thereon.

J. USEPA and the Army recognize that access to certain areas of the Site may be restricted based upon National Security

concerns if so stipulated in an executive order issued by the President pursuant to Section 120(j)(1) of CERCLA, 42 U.S.C. §9620(j)(1).

XXIII.

DATA AND DOCUMENT AVAILABILITY

A. The Parties shall make available to each other quality assured results of sampling, tests, or other data generated by any Party, or on their behalf, with respect to the implementation of this Agreement as soon as it becomes available, but not later than sixty (60) days after their collection or performance. If quality assurance is not completed within sixty (60) days, raw data or results shall be submitted within the sixty (60) day period and quality assured data or results shall be submitted as soon as they become available. If 60 days is inadequate, this deadline can be extended for a period of time necessary for the data to become available, by agreement of both parties.

B. At the request of USEPA, the Army shall allow, to the extent practicable, split or duplicate samples to be taken by USEPA or their authorized representatives of any samples collected by the Army pursuant to the implementation of this Agreement. The Army shall endeavor to notify USEPA not less than ten (10) business days in advance of any scheduled sample collection activity. If it is not possible to provide ten (10) business days prior notification, the Army shall notify USEPA as soon as possible after becoming aware that samples will be collected.

XXIV.

QUALITY ASSURANCE

A. The Army shall use quality assurance, quality control, and chain of custody procedures throughout all field investigation, sample collection and laboratory analysis activities. The Army shall develop an Operable Unit or element specific Quality Assurance Project Plan (QAPjP), as necessary, for review and comment by USEPA. The QAPjP shall be prepared in accordance with applicable USEPA guidance.

B. In order to prove quality assurance and maintain quality control regarding all samples collected pursuant to this Agreement, the Army shall submit all protocols to be used for sampling and analysis to USEPA for review and comment as to substantive equivalency with established USEPA protocols and pursuant to Part XVI. The Army shall also ensure that any laboratory used for analysis is a participant in a quality assurance/quality control program that is consistent with USEPA guidance.

C. The Army shall also ensure that appropriate USEPA personnel or their authorized representatives will be allowed access to any laboratory used by the Army in implementing this Agreement. Such access shall be for the purpose of validating sample analyses, protocols and procedures required by the RI and QAPjP.

XXV.

Permits

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

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

C. When the Army proposes a response action to be conducted entirely on Fort Dix, which in the absence of Section 121(e)(1) of CERCLA and the NCP would require a Federal or State permit, and for which the Army does not seek a permit, the Army shall include in the submittal to the Parties:

- (1) Identification of each permit which would otherwise be required;
- (2) Identification of the standards, requirements, criteria, or limitations which would have had to have been met to obtain each such permit; and,
- (3) Explanation of how the response action proposed will meet the standards, requirements, criteria or limitations identified in (2) immediately above.

D. Section B above is not intended to relieve the Army from the requirement(s) of obtaining a permit or other authorization whenever it proposes a response action involving the shipment or movement off Fort Dix of a hazardous substance, or undertakes any activities not directly related to response actions pursuant to the terms of this Agreement.

E. The Army shall notify USEPA in writing of any permits required for any activities it plans to undertake outside Fort Dix as soon as it becomes aware of the requirement. The Army shall apply for all such permits and provide USEPA copies of all such permits.

F. During any appeal by any Party of any permit required to implement this Agreement or during review of any proposed modification(s), the Army shall continue to implement those portions of this Agreement which can be reasonably implemented

independent of final resolution of the permit issue(s) under appeal. However, as to work which cannot be so implemented, any corresponding timetable, deadlines, and schedule will be subject to Part XVII (Extensions) of this Agreement.

XXVI.

REPORTING

The U.S. Army agrees it shall submit to the USEPA quarterly written progress reports which describe the actions which the Army has taken during the previous quarter to implement the requirements of this Agreement, including a description of all actions scheduled for completion during that time period that were not completed, a statement indicating why such actions were not completed and an anticipated completion date for all such activities. These reports shall also describe the activities scheduled to be taken during the upcoming quarter. Progress reports shall be submitted on the tenth day of each quarter. The progress reports shall include a detailed statement of the manner and extent to which the requirements and time schedules set out in the Attachments to this Agreement are being met. In addition, the progress reports shall identify any anticipated delays in meeting time schedules, the reason(s) for the delay and actions taken to prevent or mitigate the delay.

In addition, Minutes of each Technical Review Committee (TRC) meeting shall be sent by the Army to TRC members within 20 days following the meeting.

XXVII.

FIVE YEAR REVIEW

A. Consistent with Section 121(c) of CERCLA, and in accordance with this Agreement, the Army agrees that USEPA will review the Remedial Action taken on the Site no less often than three years after the initiation of the final Remedial Action and every five years thereafter, to assure that human health and the environment are being protected by the Remedial Action being implemented if the selected Remedial Action(s) result(s) in any hazardous substance, pollutants or contaminants remaining at the Site.

B. If upon such review it is the judgment of USEPA that additional action or modification of the Remedial Action is appropriate in accordance with Section 104 or 106 of CERCLA, the USEPA shall require the Army to implement such additional or modified action in accordance with Section XVI.J of this Agreement. Any dispute by the Army of the determination by USEPA under this part shall be resolved under Part XVIII of this Agreement.

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

XXVIII.

RETENTION OF RECORDS

A. Each Party to this Agreement shall preserve for a minimum of ten (10) years after termination of this Agreement all of its records and documents in its possession or in the possession of its divisions, employees, agents, accountants, contractors or attorneys which relate in any way to the presence of hazardous substances, pollutants and contaminants at the Facility or to the implementation of this Agreement, despite any document retention policy to the contrary. After this ten year period, each Party shall notify the other Party at least 90 days prior to destruction or disposal of any such documents or records. Upon request by the non-destroying Party the Party proposing destruction or disposal shall make available such records or documents to the non-destroying Party at any time during the performance of the work under this Agreement and up to 10 years after the termination of this Agreement. Either Party to this Agreement shall allow the other Party to make copies of any or all records relating to the Agreement upon request.

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

XXIX.

RESERVATION OF RIGHTS

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

B. This Agreement shall not affect any claim for natural resource damage assessments or for damages to natural resources.

XXX.

PUBLIC PARTICIPATION

A. The Parties agree that this Agreement and any subsequent proposed Remedial Action alternative and subsequent plan for Remedial Action at the Site arising out of this Agreement shall comply with the administrative record and public participation requirements of CERCLA (including Sections 113 and 117), the NCP, EPA guidances and regulations on public participation and administrative records, and all applicable State laws.

B. The Army shall develop and implement a Community Relations Plan (CRP) which responds to the need for an interactive relationship with all interested community elements, both on Fort Dix and off, regarding activities and elements of work undertaken by the Army. The Army agrees to develop and implement the CRP in a manner consistent with Section 117 of CERCLA, the NCP, EPA guidelines set forth in EPA's Community Relations handbook, and any modifications thereto. The CRP is subject to the review and comment process set forth in Part XVI of this Agreement.

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

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

E. EPA agrees it shall fund and administer the Technical Assistance Grants (TAGs) in accordance with Section 117(e) of CERCLA and regulations issued thereunder.

F. The Army agrees it shall establish and maintain an administrative record at or near Fort Dix in accordance with Section 113(k) of CERCLA. The administrative record shall be established and maintained in accordance with current and future USEPA policy and guidelines. A copy of each document placed in the administrative record will be provided to USEPA as it is generated. The Army shall establish an index of documents in the Administrative Record, will update the index on at least a quarterly basis, and will provide USEPA copies of each index as so generated. The Army shall submit to USEPA, upon written request, any document listed on an index of documents that is not contained in the files of USEPA.

G. The Army agrees it shall follow the public participation requirements of CERCLA Section 113(k) and comply with any guidance and/or regulations promulgated by USEPA with respect to such Section.

TECHNICAL REVIEW COMMITTEE

A. The Army shall continue to lead the Technical Review Committee (TRC). The purpose of the TRC is to afford a forum of cooperation between the Army and concerned local officials and citizens and provide a meaningful opportunity for members of the TRC to become informed and to express their opinion about the technical aspects of the RI/FS and RD/RA. The TRC consists of representatives from the Army, USEPA, NJDEP, the Pinelands Commission, the U.S. Fish and Wildlife Service and concerned local citizens. The committee shall meet quarterly, unless it is agreed by mutual consent of the Parties to postpone or cancel the meeting, at Fort Dix to review progress of the RI/FS and RD/RA. Copies of all draft technical submissions shall be distributed for review and comment prior to the preparation of the final report. However, all Primary and Secondary documents, as defined and submitted pursuant to Part XVI of this Agreement, are subject to the deadlines (Part XIII) and dispute resolution process (Part XVIII) set forth in this Agreement. Minutes of the TRC meeting shall be written by the Army and distributed to the members of the TRC and the Parties to this Agreement and become part of the Administrative Record. The minutes shall be defined and submitted pursuant to the Part XXVI (Reporting) of this Agreement.

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

XXXII.

PUBLIC COMMENT

A. Within fifteen (15) days of the date of the acceptance of this Agreement, USEPA shall announce the availability of the Agreement to the public for review and comment. USEPA shall accept comments from the public for a period of forty-five (45) days after such announcement. At the end of the comment period, USEPA shall promptly provide copies of all comments received to the Army.

B. Upon receipt of such comments, each Party shall review them and determine either that:

1. The Agreement should be made effective in its present form, in which case the Parties shall notify each other in writing, or

2. modification of the Agreement is necessary.

C. Any Party that determines modification of the Agreement is necessary shall provide written request for modification to the other Party. This request shall be made within twenty (20) days of the date that the requesting Party received copies of the public comments. The request for modification shall include:

1. A statement of the basis for determining that modification is necessary, and

2. proposed revisions to the Agreement addressing the modification.

D. If the Parties decide that the Agreement shall be made effective without any modifications, or if no request for modification is made within the time period specified in paragraph C above, USEPA shall transmit a copy of the signed Agreement to the Army and shall notify the Army in writing that the Agreement is effective. The effective date of the Agreement shall be the date of that letter from USEPA to the Army.

E. If any Party requests modification of the Agreement as provided above, the Parties shall meet to discuss the proposed modification. If the Parties agree that modifications are needed and agree upon the modifications and amend the Agreement by mutual consent, USEPA will determine whether the modified Agreement requires additional public notice and comment pursuant to any provision of CERCLA. If USEPA determines that no additional notice and comment are required, USEPA shall transmit a copy of the modified Agreement to the Army and shall notify the Army in writing that the modified Agreement is effective. The effective date of the Agreement shall be the date of that letter

from USEPA to the Army. If the Parties amend the Agreement and if USEPA concludes that such modifications require that the public receive additional opportunity for notice and comment, such additional notice and comment will be provided consistent with the provisions stated in Paragraph A above. If the Parties agree, after such additional notice and comment has been provided, that the Agreement does not require any further modification, USEPA shall send a copy of the mutually agreed upon Agreement to the Army and shall notify the Army that the Agreement is effective. The effective date of the Agreement shall be the date of that letter from USEPA to the Army.

F. If the Parties are unable to agree upon such modifications, any Party reserves the right to withdraw from negotiation of this Agreement. Before any Party exercises its right to withdraw from negotiation of this Agreement, it shall make its SEC representative available to meet with the other Party's SEC representative to discuss the withdrawal.

XXXIII.

AMENDMENT OF AGREEMENT

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

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

C. The effective date of all modifications to this Agreement shall be the date on which each modification is mailed to the Army, unless otherwise explicitly stated in any modification.

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

XXXIV.

OTHER PROVISIONS

A. Nothing contained in this Agreement is intended to mean that the Army is the only potentially responsible party with respect to the release and/or threatened release(s) of hazardous substances at the U.S. Army Training Center and Fort Dix.

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

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

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

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

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

XXXV.

FUNDING*

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

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

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

If appropriated funds are not available to fulfill the Army's obligations under this Agreement, USEPA reserves the right to initiate an action against any other person, or to take any response action, which would be appropriate absent this Agreement.

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

XXXVI.

NOTICE OF COMPLETION

A. The provisions of this Agreement shall be deemed satisfied and terminated upon receipt by the Army of written notice from USEPA that the Army has demonstrated, to the satisfaction of USEPA, that all the terms, requirements, approvals, obligations, and actions of this Agreement have been completed. No party shall unreasonably withhold or delay termination of this Agreement.

B. If USEPA determines that all terms of this Agreement have not been satisfied, USEPA will respond to the Army in writing as to the reasons why that notice of completion has not been provided. The Army may invoke Dispute Resolution for 60 days following the Army's receipt of USEPA's written denial of completion.

XXXVII.

EXEMPTIONS

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

XXXVIII.

RECOVERY OF EXPENSES

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

XXXIX.

CONVEYANCE OF TITLE

No conveyance of title, easement, or other interest in the Army property on which the response action is installed or implemented pursuant to this Agreement, shall be consummated by the Army without provision for continued maintenance of any such system or other response action as provided in CERCLA §120, 42 U.S.C. §9620. In addition, the Army shall include notice of this Agreement in any document transferring ownership or operation of the Site to any subsequent owner and/or operator of any portion of the Site. At least 90 days prior to any conveyance, the Army shall notify USEPA of any such sale or transfer and the provisions made for the continued operation and maintenance of any response action or system installed or implemented pursuant to this Agreement.

CREATION OF DANGER

A. In the event that USEPA determines that activities conducted pursuant to this Agreement, or any other circumstances or activities are creating an imminent and substantial endangerment to the health or welfare of the people on the Site or in the surrounding area or to the environment, the USEPA may direct the Army to stop further implementation of work under this Agreement for such period of time as necessary to abate such endangerment. Upon such notification from USEPA, the Army will take immediate action to notify all affected parties, including State and local health officials, and in the case of contamination originating on the Site or which is the result of activities in connection with the Site, will expeditiously take appropriate measures to protect the public health or welfare or the environment affected. If directed by USEPA to undertake such action, the Army shall immediately comply without regard to the invocation of Dispute Resolution hereunder.

B. If USEPA directs the Army to stop work pursuant to this provision it shall, as expeditiously as possible, provide the Army a written statement of its basis for directing the work stoppage. The Army shall have three business days from receipt of this written statement to request a review of the work stoppage. This request shall include the Army's basis for recommending that the work stoppage cease and any alternative measures, if appropriate, to abate or mitigate the danger. Upon receipt of an Army request for review, the USEPA, Region II Emergency and Remedial Response Division Director shall determine in writing whether continued work stoppage is necessary in as expeditious a manner as possible. This decision may immediately be submitted to the SEC for further resolution.

C. Any such work stoppages may be a basis for modifying the schedule of activities affected by the work stoppage.

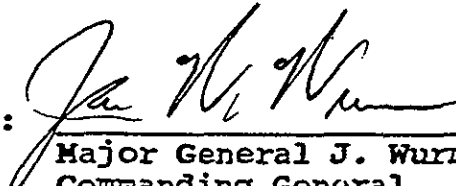
XLI.

EFFECTIVE DATE


This Agreement is effective upon issuance of a notice to the Parties by USEPA in accordance with Part XXXII of this Agreement.

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

It Is So Agreed:

By: 
Major General J. Wurman
Commanding General
U.S. Army Training Center & Fort Dix

19 June 91
Date

By: 
Lewis D. Walker
Deputy Assist Secretary of the Army
Environment, Safety & Occupational Health

5/29/91
Date

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

7/19/91
Date

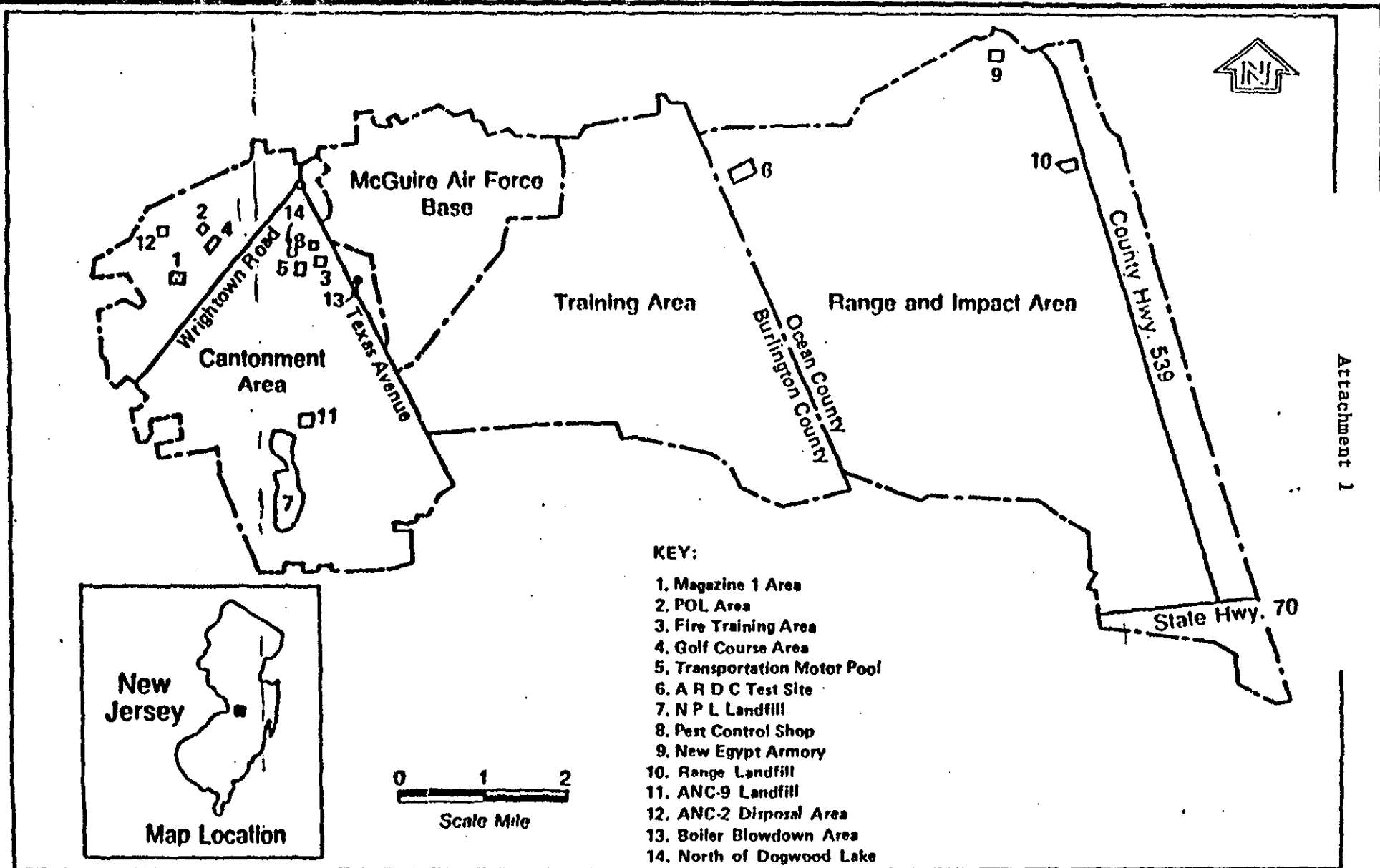


FIGURE 2 - 1
FORT DIX RI
SITE LOCATIONS MAP



DEPARTMENT OF THE ARMY
HEADQUARTERS, US ARMY TRAINING CENTER AND FORT DIX

FORT DIX, NEW JERSEY

08640-5501

OCT 17 1991

USEPA, REGION II

91 OCT 18 AM 10:04

AIR & WASTE
MGT. DIV.



Environmental Division

United States Environmental Protection Agency
Region II
Emergency and Remedial Response Division
Jacob K. Javits Building
New York, New York, 10278

Dear Ms. Callahan:

In accordance with Section XIII of the U.S. Army Training Center and Fort Dix Interagency Agreement (IAG) concerning the Fort Dix Landfill, we are submitting the attached schedule of deliverables specified in the IAG. This information was provided by the U.S. Army Toxic and Materials Agency (USATHAMA). For your information, I am also enclosing a work schedule provided by the Baltimore District, Corps of Engineers.

Copies of this correspondence and the IAG will be placed on file at the information repositories (Mount Holly Branch of the Burlington County Public Library, and Fort Dix Environmental Division) maintained for this site.

Please contact Mr. Joseph R. Haug (telephone 609-562-3191) of my Environmental Division for further communications on this matter. Hopefully, we will develop an efficient and effective execution of this project.

Sincerely,

Donnie L. Henley
Lieutenant Colonel, Engineer
Director of Engineering and Housing

Enclosures

1. USATHAMA Oct 8, 91 Letter of Schedule
2. Baltimore District Schedule

Copies Furnished:

Secretary L. D. Walker, U.S. Army
Major General J. P. Herrling, Fort Dix
L. Barb, U.S. Army
D. Feldner, Fort Dix
J. McKenna, USATHAMA
E. Kauffman, USATHAMA
A. D. Guta, Baltimore District COE
L. Miller, NJDEPE
H. Shah, NJDEPE

NOV 23 PM 2:42

NOV 23 1991

REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
US ARMY TOXIC AND HAZARDOUS MATERIALS AGENCY
ABERDEEN PROVING GROUND, MARYLAND 21010-5401



CETHA-IR-A (50-6c)

8 OCT 1991

MEMORANDUM FOR Commander, U.S. Army Training Center and Fort
Dix, ATTN: ATZD-EHN (Mr. Haug), Fort Dix, NJ
08640-5601

SUBJECT: Schedule for Primary and Secondary Documents as
Contained in the Fort Dix Interagency Agreement (IAG)

1. Enclosed for review and distribution to the U.S. Environmental Protection Agency (EPA), Region II, is the subject schedule. Note that the IAG requires that EPA receive this schedule no later than 18 Oct 91.
2. There are no stand alone secondary documents to be delivered in the current scope of work and level of effort from our on-going contract effort. Note that the subject schedule reflects the current scope and level of effort in that the secondary documents are to be submitted as part of the primary documents, thus, the Target Completion Schedule for the Secondary Documents coincides with the schedule for the pertinent primary documents. It should be further noted that the secondary documents will not provide any additional information over what is contained in the primary documents.
3. The point of contact for this Agency is Mr. James J. McKenna, DSN 584-1506 or commercial (301) 671-1506.

FOR THE COMMANDER:

ROBERT J. YORK
Chief
Installation Restoration Division

Encl

EXC1

FORT DIX
Schedule for Primary Documents
Contained In
Section XIII A of the IAG

1. RI/FS Work Plan, including Sampling and Analysis Plan and QAPP, submitted May 23, 1990.
2. RI Report, submitted January 19, 1990; revised report is to be submitted February 1992.
3. Risk Assessment(s), incorporated with the RI Report submitted January 19, 1990; any revised RA is to be incorporated with the RI Report to be submitted in February 1992.
4. FS Report(s), eight months after the RI Report is approved.
5. Proposed Plan(s), four months after the FS Report is approved.
6. Record(s) of Decision, four months after the Proposed Plan is approved.

Target Completion Schedule
for Secondary Documents
Contained In
Section XIII C of the IAG

1. Initial Remedial Action/Data Quality Objectives, submitted as part of Primary Document No. 1 above.
 2. Site Characterization Summary, submitted as part of the Fort Dix Final Preliminary Assessment/Site Investigation, January 1989 and as part of the RI Report, January 19, 1990.
 3. Initial Screening of Alternatives.*
 4. Detailed Analysis of Alternatives.*
 5. Treatability Studies.*
 6. Post-Screening Investigation Work Plan.*
 7. Preliminary Remedial Design Report(s).**
 8. Supplemental Work Plan(s).**
 9. Supplemental Reports(s).**
- * To be submitted with the FS Report
- ** To be submitted with the Remedial Design Work Plan and Pre-Final/Final Remedial Design Report respectively which follow the issuance of the Record of Decision. Note that the Supplemental Work Plan(s) and Report(s) may not be necessary.

9. SCHEDULES:

<u>MILESTONE</u>	<u>ORIGINAL</u>	<u>CURRENT</u>	<u>ACTUAL</u>
ROD signed by EPA	7/01/91	9/24/91	9/24/91
Draft Work Plans	7/01/91	7/01/91	6/28/91
CEMRK assigns IDTC To CENAB	7/31/91	8/28/91	8/28/91
Approval of Work Plans	9/30/91	11/30/91	
Surveying & Mapping:			
-Landfill Area	9/30/91	9/30/91	
-Surrounding Area	2/28/92	2/28/92	
Phase I 50% Design by A-E	2/28/92	2/28/92	
Phase I 100% Design by A-E	6/22/92	6/22/92	
Approval of Phase I Final Design	7/15/92	7/15/92	
Phase I Advertisement	7/30/92	7/30/92	
Phase I Bid Opening	9/01/92	9/01/92	
Phase I Construction Award	9/15/92	9/15/92	
Phase II 35% Design by A-E	2/28/92	2/28/92	
Phase II 65% Design by A-E	7/30/92	7/30/92	
Phase II 100% Design by A-E	1/15/93	1/15/93	
Approval of Phase II Design	3/01/93	3/01/93	
Phase II Advertisement	3/15/93	3/15/93	
Phase II Bid Opening	4/15/93	4/15/93	
Phase II Construction Award	4/30/93	4/30/93	



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DEPARTMENT OF THE ARMY
US ARMY TOXIC AND HAZARDOUS MATERIALS AGENCY
ABERDEEN PROVING GROUND, MARYLAND 21010-5401



CETHA-IR-A (50-6c)

8 OCT 1991

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FOR THE COMMANDER:

ROBERT J. YORK
Chief
Installation Restoration Division

Encl

EXCCL

FORT DIX
Schedule for Primary Documents
Contained In
Section XIII A of the IAG

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5. Proposed Plan(s), four months after the FS Report is approved.
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Target Completion Schedule
for Secondary Documents
Contained In
Section XIII C of the IAG

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 2. Site Characterization Summary, submitted as part of the Fort Dix Final Preliminary Assessment/Site Investigation, January 1989 and as part of the RI Report, January 19, 1990.
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- 9.6

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