

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III

AND THE

UNITED STATES COAST GUARD

IN THE MATTER OF:

Coast Guard Yard

Baltimore, Maryland

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FEDERAL FACILITY AGREEMENT

Under CERCLA Section 120

Administrative

Docket Number: CERC-03-2008-0097-FF

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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:

I. JURISDICTION

1. Each Party is entering into this Agreement pursuant to the following authorities:
 - A. The U.S. Environmental Protection Agency ("EPA") Region III enters into those portions of this Agreement that relate to the Remedial Investigation/Feasibility Study ("RI/FS") pursuant to Section 120(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9620(e)(1), and Executive Order 12580;
 - B. EPA Region III enters into those portions of this Agreement that relate to remedial actions pursuant to Section 120(e)(2) of CERCLA, 42 U.S.C. 9620(e)(2), and Executive Order 12580;

The Coast Guard enters into those portions of this Agreement that relate to the RI/FS pursuant to Section 120(e)(1) of CERCLA, 42 U.S.C. 9620(e)(1), Executive Order 12580, and the National Environmental Policy Act, 42 U.S.C. 4321; The Coast Guard enters into those portions of this Agreement that relate to interim remedial actions and final remedial actions pursuant to Section 120(e)(2) of CERCLA, 42 U.S.C. 9620(e)(2), Executive Order 12580, and 14 U.S.C. 690-693, the Coast Guard Environmental Compliance and Restoration Program.

II. DEFINITIONS

- 2.1 Except as noted below or otherwise explicitly stated, the definitions provided in CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") shall control the meaning of terms used in this Agreement.
 - A. "Area of Concern" shall mean an area where a hazardous substance has been deposited, stored, disposed, or placed, or has otherwise come to be located. Such areas may include multiple sources and may include the area between the sources. (See list of currently identified Areas of Concern in Appendix B.)
 - B. "Accelerated Operable Unit" or "AOU" shall mean a remedial action which prevents, controls, or responds to a release or threatened release of hazardous substances, pollutants, and contaminants where prompt action is necessary but a response under removal authorities is not appropriate or desirable. AOUs are remedial actions and require a Record of Decision ("ROD"). The purpose of an AOU is to allow the Parties to proceed with a remedial action for that operable unit prior to completion of the final ROD for the entire operable unit. AOUs are particularly appropriate where the

size and complexity of the remedial action would seriously delay implementation of independent parts of the action. AOU's will only proceed after complying with applicable procedures in the NCP, and the Parties shall make every effort to expedite these procedures. It is not intended that AOU's diminish the requirements for or delay the conduct of a comprehensive remedial action.

C. "Agreement" shall refer to this federal facility agreement, Docket Number CERC-03-2008-0097-FF, and shall include all Attachments and Appendices to this document. All such Attachments and Appendices are integral parts of this Agreement and shall be an enforceable part of this Agreement. Any Deliverable Documents submitted and approved under procedures set forth in this Agreement shall be deemed incorporated herein and enforceable hereunder.

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

E. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 et seq., and any amendments thereto.

F. "Coast Guard" shall mean the U. S. Coast Guard, its employees, members, successors, and authorized representatives, and assigns. The "Coast Guard" also includes the Department of Homeland Security to the extent necessary to effectuate the terms of the Agreement, in accordance with 14 USC 691 and 14 USC 693.

G. "Coast Guard Yard" or "YARD" shall mean the area occupying approximately 113 acres, located in Baltimore City, Anne Arundel County in the State of Maryland, including the areas identified in Appendix A and Appendix B, which is owned by the United States and operated under the jurisdiction, custody, and control of the Coast Guard.

H. "Community Relations" shall mean the program to inform and involve the public in the installation restoration and Superfund processes and to respond to community concerns.

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

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

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

L. The terms "documents" or "records" shall mean any documents, writings, correspondence, and all other tangible things on which information has been stored which relates to this Agreement or to any activities to be undertaken relating to this Agreement.

M. The terms "environmental medium" and "environmental media" shall mean any one or a combination of the air, surface water, soil, sediment, or groundwater at a site.

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

O "Feasibility Study" shall mean a study analyzing the various alternative remedies considered to address contamination at a site.

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

Q. The terms "Focused Feasibility Study" or "FFS" shall mean a comparison of alternatives which concentrates on a particular contaminated environmental medium or a discrete portion of the site which does not need added investigation in order to select a remedial action and progress forward in the remedial process.

R. "Guidance" shall mean any requirements or policy directives issued by EPA which are of general application to environmental matters and which are otherwise applicable to the Coast Guard's work under this Agreement.

S. The term "interim remedial action" shall mean all discrete remedial actions, including, but not limited to, accelerated operable units ("AOUs"), which are implemented prior to a final remedial action taken with regard to an area of concern ("AOC") or Site Screening Area ("SSA") or Operable Unit ("OU") for the purpose of preventing or minimizing the release of hazardous substances, pollutants, or contaminants.

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

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

V. "MDE" shall mean the Maryland Department of Environment, its employees, agents, and authorized representatives, successors and assigns, acting on behalf of the State of Maryland.

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

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

Y. The term "operable unit" or "OU" shall mean discrete environmental media or geographical portions of the Site so designated for the purpose of defining the focus of a response action to be taken at the Site. Remedial action at an OU manages migration or eliminates or mitigates a release, threat of release, or pathway of exposure related to the Site. The remediation of the Site can be divided into a number of OUs, depending on the complexity of the problems associated with the Site. All OUs shall be addressed in accordance with the NCP, EPA Guidance, and the requirements of CERCLA. The Coast Guard also refers to OUs as "sites."

Z. "Out Year Milestones" shall mean the Milestones chronologically beyond the Near Term Milestone period commencing with the years occurring after the planning year (FY+3 through Project End Date) until the completion of all remediation of the Site.

AA. "Parties" shall mean the Coast Guard and EPA.

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

CC. "Primary Documents" as used in this Agreement shall include those documents that are major, discrete portions of RI/FS or RD/RA activities. (See Section 9.3.A for a list of the Primary Documents.)

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

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

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

GG. "RCRA" shall mean the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984, Public Law No. 98-616, and any amendments thereto.

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

II. The term "remedial action" shall have the meaning as set forth in Section 101(24) of CERCLA, 42 U.S.C. 9601(24), including interim remedial actions and supplemental response actions.

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

KK. "Secondary Documents," as used in this Agreement, shall include those documents that are discrete portions of the Primary Documents and are typically input or feeder documents. (See Section 9.4.A for a list of the Secondary Documents.)

LL. "Site" shall include the Coast Guard Yard and any other areas in the vicinity of the YARD where a hazardous substance, pollutant, contaminant, hazardous waste, or hazardous constituent from the YARD has been deposited, stored, disposed of, placed, or has migrated or otherwise come to be located. This definition is not intended to include hazardous substances or wastes intentionally transported from the YARD for proposed disposal during waste management or environmental restoration activities. The Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. 9601(9).

MM. "Site Management Plan" or "SMP" shall mean a planning document, prepared specifically under Section X – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN, that contains a plan or Schedule which indicates the time and sequence of events. The SMP will be used as a management tool in planning, reviewing, and setting priorities for all response activities at the Site, and it shall be updated periodically as set forth herein.

NN. "Site-Screening Areas" or "SSAs" shall mean those discrete environmental media or geographical areas that are CERCLA Areas of Concern ("AOCs"). When the Parties agree, SSAs may expand or contract in size and/or number as information

becomes available over time indicating the extent of contamination and the geographical area needed to be studied.

OO. "Site-Screening Process" or "SSP" refers to the mechanism described in Subsection 8.3 of this Agreement for evaluating whether identified SSAs should proceed with an RI/FS. SSAs that require an RI/FS become designated as Operable Units ("OUs").

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

QQ. "Transmit" shall mean the following: any document or notice to be transmitted by a certain date will be considered transmitted in a timely manner if (1) it is provided to a carrier on a next day mail basis no later than the day before it is due to be delivered according to the requirements of this Agreement; (2) it is hand-delivered by the due date; (3) it is e-mailed in a PDF version with appropriate signatures by the due date; or (4) it is sent by certified mail, return receipt requested, no later than two days before it is due to be delivered according to the requirements of this Agreement. Any other means of transmission must arrive on the due date to be considered as timely delivered. Upon request of the EPA RPM, documents transmitted by e-mail shall also be mailed with the required number of copies by next day mail.

RR. "Work" shall mean all activities the Coast Guard is required to perform under this Agreement, except those required by Section XXIX - RECORD PRESERVATION.

SS. "Work Plan" shall mean a plan setting forth the procedures for investigating a site, and sampling and analyzing data, and the estimated timeframes for implementing the selected remedy at the site.

III. PARTIES BOUND

3.1 This Agreement shall apply to and be binding upon EPA and the Coast Guard. The Coast Guard agrees to include the notices required by Section 120(h) of CERCLA in any contract for the sale or transfer of real property affected by this Agreement. Transfer (whether sale or lease) of property affected by this Subsection shall not relieve the Coast Guard of its applicable obligations under this Agreement.

3.2 The Coast Guard shall notify EPA of the identity and assigned tasks of each contractor it selects to perform Work under this Agreement upon selection of the contractor. The Coast Guard shall provide copies of this Agreement to its contractors performing any Work called for by this Agreement. Each Party shall be responsible for ensuring that its contractors comply with the terms and conditions of this Agreement. Failure of a Party to provide proper direction to its contractors shall not be considered a

force majeure event or other good cause for an extension unless the Parties so agree or it is established pursuant to the Dispute Resolution provision.

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

IV. PURPOSE

4.1 The general purposes of this Agreement are to:

A. Ensure that the environmental impacts associated with past and present activities at the Site are thoroughly investigated and that appropriate remedial action is taken to protect the public health, welfare, and the environment;

B. Establish a procedural framework and Schedule for developing, implementing, and monitoring appropriate response actions at the Site in accordance with CERCLA, the NCP, Superfund Guidance and policy; and

C. Facilitate cooperation, exchange of information, and participation of the Parties in such actions.

4.2 Specifically, the purposes of this Agreement are to:

A. Establish requirements for the performance of Remedial Investigations ("RIs") to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release and threatened release of hazardous substances, pollutants or contaminants at the Site and to establish requirements for the performance of Feasibility Studies ("FSs") for designated OUs at the Site to identify, evaluate and select alternatives for the appropriate remedial action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants or contaminants at the Site in accordance with CERCLA and the NCP.

B. Identify the nature, objective and Schedule of response actions to be taken at the Site. Response actions at the Site shall attain that degree of cleanup of hazardous substances, pollutants or contaminants mandated by CERCLA and the NCP.

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

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

E. Ensure compliance through this Agreement with RCRA and other Federal and applicable state laws and regulations for matters covered herein.

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

G. Expeditiously complete the cleanup process to the extent consistent with protection of human health or welfare or the environment.

H. Provide, in accordance with CERCLA and the NCP, for MDE involvement in the selection of remedial actions to be undertaken at the Site, including the review of all applicable data as it becomes available, and the development of studies, reports, and action plans.

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

4.3 While the cleanup shall be done pursuant to CERCLA and the National Contingency Plan, in an effort to inform the public about its day-to-day purpose, the Coast Guard provides the following Mission Statement:

A. **VALUE:** We shall meet our customer's needs with the maximum value in product and service, on time and at a competitive price. We shall continually improve our total quality. We shall use innovative solutions to ensure we consistently provide value to the Coast Guard.

B. **WORKFORCE:** We will promote safety, trust, integrity, equality, recognition, and mutual respect. We shall continue to ensure a stable work environment for our employees by matching the skills and expertise of our workforce to the needs of the Coast Guard. We shall provide and efficiently manage the infrastructure to ensure our employees and tenants have the best possible tools and facilities.

C. **RELATIONSHIPS:** We shall establish effective partnerships with our internal and external suppliers, partners and customers that enable us to improve quality, lower costs and meet schedule. We shall effectively deliver and increase the core expertise valued by our support partners to serve the fleet.

D. **COMMUNITY:** We shall positively represent the Coast Guard as responsible neighbors within the local community and by demonstrating leadership in all areas of the marine repair industry, including environmental management. Through our environmental stewardship, we shall leverage improvement in all of our business processes.

V. SCOPE OF AGREEMENT

5.1 This Agreement is entered into by the Parties to enable the Coast Guard to meet the provisions of CERCLA.

5.2 This Agreement is intended to cover the investigation, development, selection, and implementation of response actions for releases or threatened releases of hazardous substances, contaminants, hazardous wastes, hazardous constituents, or pollutants at or from the Site. This Agreement covers all phases of remediation for these releases, bringing together into one agreement the requirements for remediation as well as the system the Parties will use to determine and accomplish remediation, ensuring the necessary and proper level of participation by each Party. To accomplish remediation of undiscovered releases, the Parties will establish Schedules and Deadlines in the SMP, as necessary, and as information becomes available amend this Agreement, to the extent required.

5.3 This Agreement is not intended to limit any requirements under RCRA or any other law or regulation to obtain permits, and it is not intended to affect any permitted or regulated activities at the Site not occurring in conjunction with CERCLA removal actions or remedial actions pursuant to this Agreement.

5.4 The scope of this Agreement extends to the entire Site. The Site cannot be removed from the NPL unless it is determined, in accordance with CERCLA, the NCP, and this Agreement, that the Coast Guard has implemented all appropriate response actions and the Site no longer poses a threat to human health or the environment. All response actions at the Site shall occur at identified OUs, AOCs, or SSAs, as identified pursuant to this Agreement.

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

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

VI. FINDINGS OF FACT

6.1 For purposes of this Agreement, the following constitutes a summary of the findings upon which this Agreement is based. Nothing contained in this Agreement shall constitute an admission of any liability by the Coast Guard for any matters contained herein nor shall anything in this Agreement constitute an admission by the Coast Guard with respect to any finding of fact or any legal determination noted herein.

(a) The current mission of the YARD is to provide core industrial support for the Coast Guard. This includes full-service repair, overhaul, and modification of ships, manufacture of articles not available from commercial suppliers, overhaul and installation of electronics and ordnance equipment, and maintenance of aids to navigation, such as buoys. The YARD was established in 1899 as a Coast Guard training academy and boat repair facility. The United States Coast Guard is the current owner and operator of the Site. The YARD consists of approximately 113 acres. All of the CERCLA sites on the YARD are located within Anne Arundel County. Arundel Cove, a tributary of Curtis Creek, divides the YARD into two distinct areas. All of the CERCLA sites are located on the west side of Arundel Cove.

(b) The YARD was issued the EPA Identification Number MD4 690 307 844.

(c) The YARD is classified under the Resource Conservation and Recovery Act (RCRA) as a large quantity (greater than 1,000 kg/month) hazardous waste generator. The facility can only store hazardous waste on site for up to 90 days.

(d) The YARD was listed on the Federal Agency Hazardous Waste Compliance Docket in early 1988 which was established pursuant to CERCLA Section 120(c).

(e) The Coast Guard performed an initial Preliminary Assessment (PA) of the YARD in 1988. A second PA and PA-Level Hazard Ranking System (HRS) Score was prepared in April 1993. The PA identified 13 areas as potential sources of contamination, and a PA-Level HRS Score of 25 was established. On January 22, 1998, the Coast Guard submitted to EPA supplemental information to the 1993 PA. The supplemental information identified four of the 13 sites as petroleum-release sites that are exempt from CERCLA.

(f) The nine remaining areas of potential contamination were addressed in the Site Inspection (SI) conducted at the Site from November to December 1999. Four of these areas (areas 5, 6, 11 and 13) are not evaluated in the HRS scoring because available data indicate there is no significant chemical contamination associated with these sources. Five of the nine areas of potential contamination, identified as areas 1, 4, 7, 8 and 9, are included as sources in the HRS scoring. In June 2000 an overall HRS pre-score of 50.21 was issued.

(g) The Coast Guard voluntarily conducted investigations at several of the PA-identified areas of potential contamination. Results of these investigations were presented in the following documents; "Coast Guard Research & Development Center Site Studies – Final Report" March 1989-June 1990, and the supplemental information to the PA presented as an attachment with correspondence to the EPA, January 22, 1998.

(h) A preliminary risk-based assessment using historical sampling data from Site

1, Site 4, and Site 7 was completed in 1998.

(i) The Coast Guard and the Maryland Department of the Environment (MDE) signed a Memorandum of Agreement (MOA) in March 2002 defining the responsibilities of each agency.

(j) The YARD was proposed for placement on the National Priorities list (NPL) in the Federal Register September 13, 2001 Volume 66, Number 178, Pages 47612-47618. The facility was listed on the NPL on September 5, 2002.

(k) The following is a brief description of the Sites that have been identified where hazardous substances are located:

Site 1, Dry Dock Sediments, is located within Curtis Creek and comprises the bottom sediments around the YARD's active shipyard. Based on historic waste disposal activities, waste material generated during shipbuilding and refurbishing activities (i.e., spent abrasive blast grit, paint dust, broken equipment, and debris) entered Curtis Creek, specifically in the areas of the piers and dry docks. Analytical data obtained during previous investigations has indicated impacts to both the surface waters and sediment of Curtis Creek.

Site 4, Salvage Lot is located in the northwestern section of the YARD along the facility's northwestern boundary. Site 7 (the Former Burn Pit) is located immediately west of the Site 4 whereas Sites 5-Creosote Stained Soils, 6-Cosmoline Discharge Area, and 11-Spent Abrasive Blast Grit are located immediately south and southeast of Sites 4 and 7.

The Salvage Lot is primarily unpaved and appears to have undergone limited improvement since its initial construction in the early 1940s; however, site maintenance including site grading and weed control is performed. Currently the Salvage Lot is used only for the collection and storage of scrap metal and lead-acid batteries; however, prior to the late 1990s the lot was also used for the storage of waste lube oil and transformers. Numerous stains beneath the lube oil drums were reported during previous site investigation visits and several spills (transformer oil, lead-acid battery fluids, and waste lube oil) have been documented within the Salvage Lot. Existing analytical data indicates localized polychlorinated biphenyl (PCB), lead, and polynuclear aromatic hydrocarbon (PAH) contaminants have impacted the Salvage Lot.

Site 5, Creosote Stained Soils, includes two potentially creosote-impacted areas identified from historical aerial photographs along the facility's western bulkhead. A portion of Site 5 is encompassed within the boundaries of Site 6-Cosmoline Discharge Area, and Sites 5 and 6 are also

entirely encompassed within the boundaries of Site 11-Spent Abrasive Blast Grit Area.

Based on historical information obtained during previous investigations, minimal creosote treatment, if any, occurred at the YARD. Analytical data obtained during previous investigations indicates minor impact to the soils within Site 5.

Site 6, Cosmoline Discharge Area, is located in the western portion of the YARD between Buildings 36 and the Paint Shop Complex. As stated above, Site 6 includes a portion of Site 5-the Creosote Stained Soils, and is entirely located within the area boundaries of Site 11-Spent Abrasive Blast Grit Area.

Site 6 encompasses the Aids to Navigation (ATON) storage area. The ATON storage area appears to have been used for buoy storage since the early 1940s. The interior and most likely the exterior shells of the stored buoys have been treated with cosmoline. Cosmoline is a corrosion-inhibiting material used to coat metal parts for long-term storage. According to facility personnel, the stored buoys are rinsed down, allowing the rinse water and cosmoline to discharge to the site soils. Analytical data obtained during previous investigations indicates minimal impact to Site 6 soils.

Site 7, Former Burn Pit, is located in the northwestern section of the YARD. Site 7 was a burn pit active at the facility from the mid-1940s through possibly the 1960s. It was reportedly used for the disposal and intermittent incineration of liquids, solid waste, oil, batteries, scrap metal, and asbestos-containing materials. Further development of the area was initiated in the late 1960s, and in the mid-1980s, Buildings 30 and 37 were constructed. During the construction of Buildings 30 and 37 petroleum-impacted soil was encountered, excavated, and removed. In addition, free-phase hydrocarbons are present in one on-site monitoring well and within a storm drain that bisects the site and discharges to Curtis Creek. Oil impacts to the creek are mitigated by sorbent booms maintained inside the storm drain and at the storm drain outfall. The sorbent booms are checked periodically and replaced every two to three months, as necessary.

The Site Inspection indicated the presence of metals, semivolatile organic compounds (SVOCs), and PCBs exceeding Region III risk-based concentrations (RBCs) in surface and subsurface soils.

Site 8, Former Incinerator, is located in the northeastern corner of the YARD immediately north of Buildings 25 and 26 and directly south of the facility's northern property boundary. The incinerator was constructed in the 1930s to 1940s and used to burn wood, paper, and cardboard. The incinerator

was demolished in 1996. No information regarding the operating procedures for the incinerator or ultimate disposition of the generated ash has been determined from available facility documents. Analytical data collected during the previous investigations indicate the underlying and downgradient soils have been impacted due to historic activities. One dioxin compound, arsenic, and localized PAH compounds were identified in excess of Region III RBCs.

Site 9, Reported Bilge Spoils Area, encompasses Lot 23, and is located in the northeastern portion of the YARD along Arundel Cove. Based on available information, Site 9 was historically (from at least the 1940s through the 1950s and possibly into the 1960s) an all-purpose storage and work area, and was also used as a dump, scrap metal yard, and possible bilge dump area. The site may have also received ash generated from the former incinerator. Site 9 has been used as a vehicle parking lot since the 1970s.

Bilge spoils, reportedly discharged to the site, consisted of water that occasionally had an oily sheen, produced from the application of heavy grease to a boat's bilge interior as a rust inhibitor. According to a 1943 YARD facility map and facility personnel, Site 9 was also used for the storage and painting of buoys. Impacted soils have been identified within the confines of Site 9.

Site 11, Spent Abrasive Blast Grit Area, encompasses about a 4-acre portion of the YARD impacted from historical outdoor paint removal activities conducted at and around the Paint Shop Complex located in the western portion of the facility. As stated above, Site 11 encompasses both Sites 5-the Creosote Discharge Area and 6-Cosmoline Discharge Area.

The Paint Shop Complex (Buildings 32, 34, and 90) was constructed in the late 1950s to early 1960s. After the construction of the Paint Shop Complex, open-air blast grit activities were conducted for the removal of rust and paint from docked ships and ship parts. "Black Beauty," a coal slag, was the abrasive grit material used by the facility. Through a review of available aerial photographs and visual observations taken during several site visits, spent abrasive blast grit has been observed in site soils around the ATON storage YARD and Paint Shop Complex. According to a facility representative, historic maintenance activities conducted within Site 11 included periodic area wash downs (using fire hoses), for the removal of accumulated spent abrasive grit. During these wash downs, the wastewater and spent grit were allowed to discharge to Curtis Creek. After 1992, all open air blast grit activities ceased and containment devices and vacuum trucks were used for grit and paint dust containment and collection. Based on existing analytical data, negligible impacts to the site soils have occurred.

Site 13, Alanite Acid Tanks, includes the area around two 800-gallon steel underground storage tanks (USTs) located along the southern edge of Building 78, the Fabrication Shop. Both USTs were used for the storage of wastewater generated during a hydrofluoric acid metal parts cleaning process. Neither the startup date nor age of the two USTs is known. However, both tanks, originally installed within their own concrete vaults, were abandoned-in-place in November 1992. Prior to abandonment, both tanks were high pressure washed and all liquid and sludge within the tanks were removed. Each tank was then backfilled with compacted mason sand. No information as to the condition of the tanks and the surrounding soil was obtained from facility records, however, the Coast Guard has no knowledge of any leaks from these tanks. The only contaminant identified in soils at the site is arsenic, which is related to site activities.

(l) Following limited background sampling taken for the 1999 SI, a more extensive field investigation followed in November and December 2003 to establish complete background data sets for the surface soils, subsurface soils, sediment and surface water.

(m) A Master Work Plan for Environmental Investigations, Master Field Sampling Plan, Master Quality Assurance Plan, and a Master Health and Safety Plan were prepared for the YARD in July 2004. The Master Work Plan was finalized following incorporation of review comments from the EPA and MDE on July 26, 2004

(n) RI Work Plans were completed for Sites 4, and 7 in July 2004.

(o) In cooperation with EPA and MDE, the Coast Guard remedied all contamination due to transformers that formerly contained PCBs.

(p) On January 12, 2005 the Agency for Toxic Substances and Disease Registry (ATSDR) stated that the result of the public health assessment for the YARD site in Baltimore was that it did not pose a public health hazard. The ATSDR reported that exposure to contamination in on-site surface soil, surface water and sediment is not at levels that might cause adverse health effects.

Fish and crabs at the site also do not pose a public health hazard if they are consumed consistent with recommendations in fish advisories issued by the MDE. The advisories cover the entire Patapsco River basin, which includes the site. ATSDR recommends that recreational fishermen follow all MDE fish consumption advisories.

(q) A final RI Work Plan was completed for Site 1 in January 2006.

(r) A final RI report for Sites 4 and 7 was completed in October 2006.

(s) A final RI report and Proposed Remedial Action Plan for Site 1 were completed in 2007.

(t) An Engineering Evaluation/Cost Analysis and Removal Action Work Plan were prepared for Site 4 in 2007.

VII. EPA DETERMINATIONS

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

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

B. The YARD is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. 9601(9), and 10 U.S.C. 2701 et seq.

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

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

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

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

G. This Agreement provides for the Parties to expeditiously complete all necessary response actions.

VIII. WORK TO BE PERFORMED

8.1 A. The Parties recognize that background information exists and must be reviewed prior to developing future Work Plans. It is the intent of the Parties to this Agreement that Work done and data generated prior to the Effective Date of this Agreement be retained and utilized as elements of RI/FSs to the maximum extent feasible.

B. Either Party may propose that a portion of the Site or a discrete environmental medium be designated as a distinct OU. If the Parties agree, it is not necessary to complete the SSP prior to designating an OU. This proposal must be in writing to the other Party and must stipulate the reasons for such a proposal. The proposal shall be discussed by the Project Managers within thirty (30) days of receipt of the written notice. Dispute Resolution may be invoked by either Party if there is a dispute as to the proposal of a specific OU. If Dispute Resolution is not invoked by the Parties within thirty (30) days after the Project Managers' discussion concerning a proposed OU or if the need for an OU is established through Dispute Resolution, the proposed OU shall be designated as an OU as that term is defined in Section II - DEFINITIONS, of this Agreement.

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

D. The Coast Guard shall develop, implement, and report upon the SSAs as identified in the SMP in order to satisfy its obligations under CERCLA. The SSP, outlined in Subsection 8.3 of this Agreement, is intended to provide a simplified investigative method whereby identified CERCLA AOCs can be evaluated to determine whether RIs are required for these areas. Additional SSP investigations may be initiated at areas later identified by the Parties. The SSP investigation(s) shall be conducted in accordance with an SSP Work Plan as agreed to by the Parties.

E. SSP Report(s) shall be subject to the review and comment procedures described in Section IX - CONSULTATION. The SSP investigation(s) shall be conducted in accordance with the requirements set forth in Subsection 8.3 and the Deadlines established therein and set forth in Section X - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN.

Remedial Investigations for Previously Identified Operable Units ("OUs")

8.2 A. The Coast Guard shall conduct RIs and FSs for the OUs identified in Appendix A to this Agreement.

B. In the SMP, the Coast Guard shall include a Deadline for submittal of each RI Work Plan for those OUs listed in Appendix A. Each RI Work Plan shall contain a proposed Deadline for the submittal of each RI Report and each FS Report. The Schedule and Deadlines included in the Final RI Report shall be incorporated into the SMP in accordance with Section X - DEADLINES AND CONTENTS OF SITE

MANAGEMENT PLAN of this Agreement. The development of the FS(s) will proceed in accordance with Subsection 8.5 of this Agreement.

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

Site-Screening Areas

8.3 A. Determination of Site-Screening Areas When a Party to this Agreement determines that an area of the Site which has not previously been identified as an area which may pose a threat or potential threat to public health, welfare, or the environment, does pose such a threat or potential threat, such Party shall notify in writing the other Party of such determination. The existence of a "potential threat" does not necessarily represent an imminent danger or threat of danger; however, it signifies that, given the existing set of circumstances, such a threat could ensue. Notification of the other Party under this Subsection shall, at a minimum, include identifying the location of the proposed SSA at the Site and the reason(s) the Party believes the proposed SSA poses a threat or potential threat to public health, welfare, or the environment. The Parties shall have forty-five (45) days from the date of receipt of notification to discuss the proposal and to agree whether the proposed SSA shall be addressed as an SSA under this Agreement. If an agreement as to whether to address the proposed SSA under the Agreement cannot be reached within forty-five (45) days from the date of receipt of notification, either Party can initiate the dispute resolution process pursuant to Subsection 19.4 of this Agreement. If dispute resolution is not invoked within forty-five (45) days from the date of receipt of notification or if an SSA is established through the dispute resolution process, the proposed SSA will be addressed as an SSA in accordance with this Section.

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

C. The Coast Guard shall submit to EPA SSP Work Plan(s) which shall outline the activities necessary to determine if there have been releases of hazardous substances, pollutants, contaminants, hazardous wastes, or hazardous constituents to

the environment at or from previously unidentified SSAs. The scope of the SSPs shall be determined by the Parties. The SSP Work Plan(s) shall include a proposed Deadline(s) for the submittal of an SSP Report(s). The Schedule and Deadlines included in the final SSP Work Plan will be incorporated into the SMP in accordance with Section X - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement.

- (1) In planning SSPs, the Coast Guard shall consider current CERCLA Guidance to determine if there have been releases of hazardous substances, pollutants, contaminants, hazardous wastes, or hazardous constituents to the environment at or from the SSAs. Upon conclusion of an SSP, the Coast Guard shall submit to EPA a draft SSP Report which shall provide the basis for a determination that either: (1) an RI/FS shall be performed on the area addressed by the SSP or, (2) the area does not pose a threat, or potential threat to public health, welfare, or the environment and, therefore, the area should be removed from further study under this Agreement.
- (2) Unless otherwise agreed to by the Parties, within sixty (60) days of receipt of the final SSP Report(s), the Parties shall determine which (if any) of the SSAs established pursuant to Subsection 8.3 will require an RI/FS.
- (3) For those SSAs which the Parties agree do not warrant an RI/FS, the Coast Guard shall prepare, with EPA assistance, a brief decision document reflecting that agreement and the basis for that determination. This agreement must be signed by each Project Manager.
- (4) The Parties may designate OUs for those SSAs that are to proceed with an RI/FS. If the Parties cannot agree on whether an SSA(s) shall proceed to a RI/FS, dispute resolution may be invoked in accordance with Section XIX - DISPUTE RESOLUTION. If an RI/FS is required, the Coast Guard shall, within the next draft Amended SMP, propose to EPA a Deadline for the submission of the RI/FS Work Plan for each OU. The Schedule and Deadlines included in the final RI/FS Work Plan(s) will be incorporated into the next update of the SMP and will be the enforceable Schedule for the submittal of the draft RI/FS.

Remedial Investigation and Feasibility Study

8.4 The Coast Guard agrees it shall develop, implement, and report upon an RI for areas identified in Subsections 8.2 and 8.3. RIs shall be conducted in accordance with the requirements and Schedules set forth in the approved RI/FS Work Plan and SMP. RIs shall meet the purposes set forth in Section IV - PURPOSE, of this Agreement. A Baseline Risk Assessment shall be a component of each RI. Final Site clean-up level criteria will only be determined following completion of the Baseline Risk Assessment.

8.5 The Coast Guard agrees it shall develop, implement and report upon an FS for areas subject to an RI which require remedial action. Each FS shall be conducted in accordance with the requirements and Schedules set forth in the approved RI/FS Work Plan and SMP. Each FS shall meet the purposes set forth in Section IV - PURPOSE of this Agreement.

Procedures for Interim Remedial Actions

8.6 A. The Coast Guard shall implement those interim remedial actions necessary to prevent, minimize, or eliminate risks to human health and the environment caused by the release of hazardous substances, pollutants, or contaminants. An interim remedial action is a remedial action which is identified, proposed, and implemented prior to a final remedial action for an OU. An interim remedial action shall attain ARARs to the extent required by CERCLA or the NCP and be consistent with and contribute to the efficient performance of a final remedial action(s) taken at an area or OU. An interim remedial action must be protective of human health and the environment, and comply with CERCLA, the NCP, and state laws to the extent that they are legally applicable, or relevant and appropriate requirements in accordance with Section 121 of CERCLA and this Agreement.

B. When a Party to this Agreement determines that an interim remedial action is necessary for an OU at the Site, such Party shall notify, in writing, the other Party of the proposal. The proposal notification to the other Party under this Subsection shall at a minimum include the location of such OU on the Site and the reason(s) the Party believes an interim remedial action is required.

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

C. After the determination is made by agreement of the Parties, or as a result of Dispute Resolution, that an interim remedial action is required under this Agreement, the Coast Guard shall, in the next draft Amended SMP, submit to EPA proposed Deadlines for the submission of Work Plan(s) for the performance of an FFS for the identified area(s). The Deadlines will be finalized in accordance with Section X. Each FFS Work Plan shall contain a proposed Deadline for the submittal of the FFS. The Schedule and Deadlines included in the approved, final FFS Work Plan will immediately be incorporated in the SMP. The FFS shall include a limited number of proposed interim remedial action alternatives. To the extent possible, the FFS shall provide an assessment of the degree to which these alternatives were analyzed during their development and screening. The Coast Guard shall develop, implement, and report

upon each FFS in accordance with the requirements set forth in the final FFS Work Plan. The Coast Guard shall follow the steps outlined in Subsections 8.7B through 8.14 below.

Records of Decision and Plans for Remedial Action

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

B. Within sixty (60) days after finalization of an RI/FS or FFS, the Coast Guard shall submit a draft Proposed Plan to EPA and MDE for review and comment as described in Section IX - CONSULTATION, of this Agreement. Within fourteen (14) days after receiving both EPA acceptance and MDE comments on the Proposed Plan, the Coast Guard shall publish its Proposed Plan for thirty (30) days of public review and comment. During the public comment period, the Coast Guard shall make the Administrative Record available to the public and distribute the Proposed Plan.

The Coast Guard shall hold a public information meeting during the public comment period to discuss the preferred alternative for each remedial action. Copies of all written and oral public comments received will be provided by each Party to the other Party. Public review and comment shall be conducted in accordance with Section 117(a) of CERCLA, 42 U.S.C. 9617(a), the NCP, and applicable EPA Guidance.

C. Following public comment, the Coast Guard, in consultation with EPA and MDE, will determine if the Proposed Plan should be modified based on the comments received. These modifications will be made by the Coast Guard, and the modified documents will be provided to EPA and MDE for review, and EPA will review and comment. The Parties may recommend that additional public comment be solicited if modifications to the Proposed Plan substantially change the remedy originally proposed to the public. The determination concerning whether a Proposed Plan should be modified or whether additional public comment is necessary is subject to the dispute resolution provisions of this Agreement, Section XIX - DISPUTE RESOLUTION.

D. The Coast Guard shall submit its draft ROD to EPA and MDE within thirty (30) days following the close of the public comment period for the Proposed Plan, including any extensions of that period. The draft ROD shall be developed in accordance with all applicable EPA guidance, including the EPA Land Use Control Checklist. The draft ROD will include a Responsiveness Summary. Pursuant to Section 120(e)(4)(A) of CERCLA, 42 U.S.C. 9620(e)(4)(A), EPA and the Coast Guard shall make the final selection of the remedial action(s).

E. At a minimum, EPA and the Coast Guard shall have thirty (30) days to select a remedy following the Coast Guard's submission of a draft ROD. The parties shall consult with MDE.

F. In accordance with Section 121(f)(3)(A) of CERCLA, 42 U.S.C. 9621(f)(3)(A), at least thirty (30) days prior to the publication of a selected remedial action, if the selected remedy does not attain a legally applicable or relevant and appropriate standard, requirement, criteria or limitation, the Coast Guard shall provide MDE with an opportunity to concur or not concur in the selection of such remedy.

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

H. Notice of each ROD shall be published by the Party preparing it and shall be made available to the public prior to commencement of the remedial action, in accordance with Section 117(b) of CERCLA, 42 U.S.C. 9617(b). Each ROD shall include a statement that MDE has concurred or not concurred with the selection of the remedy.

Remedial Design and Remedial Action

8.8 A. The SMP shall include a Target Date for submission of a preliminary/conceptual Remedial Design ("RD") document which would comprise a design report for approximately thirty (30) percent; a Target Date for submission of a ninety (90) percent or pre-final RD; and a Deadline for the final RD (including a land use control component where such controls are employed as part of the remedy), all of which shall be prepared in accordance with this Agreement and applicable Guidance issued by EPA.

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

C. Each RA Work Plan shall, at a minimum, include the following documents: a Schedule for the completion of the remedial action; a Health and Safety Plan; a Sampling and Analysis Plan; a Quality Assurance Project Plan; Remedial Action Specifications; an Erosion Control and Sedimentation Plan; a Decontamination Plan; a Remedial Action Contingency Plan; and an Operation and Maintenance Plan, as necessary. The Schedule contained in each final RA Work Plan will be immediately incorporated in the SMP.

D. After the final design document is approved, pursuant to Section IX - CONSULTATION, the Coast Guard shall begin implementation of the remedial action in

accordance with the final RD and the RA Work Plan. The remedial action shall be completed in accordance with the approved final RD and RA Work Plan and all applicable EPA Guidance.

Finalization of Remedial Actions

8.9 A. The Coast Guard shall submit to EPA a Remedial Action Completion Report ("RACR") in accordance with the Schedule in the SMP following the completion of the remedial action for each OU. The RACR shall document the implementation of the relevant remedial action and that performance standards specified in the ROD have been met. For each long-term remedial action, an interim RACR shall be prepared when the physical construction of the remedy is complete and it is operating as designed. Any such interim RACR shall be amended and finalized when the long-term performance standards specified in the ROD are achieved.

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

Accelerated Operable Unit

8.10 Accelerated Operable Units ("AOU"), as defined in Section II - DEFINITIONS, shall follow a streamlined remedial process as set forth below. Either Party may propose in writing that an OU be conducted as an AOU. The Party proposing an AOU shall be responsible for drafting an AOU proposal which shall clearly define the purpose, scope, and goals of the AOU. The Coast Guard shall evaluate all proposed AOU.

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

A. Within fifteen (15) days after the determination that an AOU is required under this Agreement, the Coast Guard shall submit to EPA proposed Deadlines for the submission of Work Plan(s) for the performance of an AOU FFS for the identified AOU(s). Each AOU FFS Work Plan shall contain a proposed Deadline for submittal of the AOU FFS and Proposed Plan. The Schedule and Deadlines included in the final AOU FFS Work Plan will be incorporated in the next draft Amended SMP. The Coast Guard shall develop, implement and report upon each AOU FFS in accordance with the requirements set forth in the final AOU FFS Work Plan. The Coast Guard shall follow the steps outlined in Subsections 8.7B through 8.9.

Supplemental Response Action

8.11 The Parties recognize that subsequent to finalization of a ROD, a need may arise for one or more supplemental response actions to remedy continuing or additional releases or threats of releases of hazardous substances, pollutants, or contaminants at or from the Site. If such release or threat of release may present an immediate threat to public health or welfare or the environment, it shall be addressed pursuant to Section XVII - REMOVALS AND EMERGENCY ACTIONS. If such release or threat of release does not present an immediate threat to public health or welfare or the environment, it shall be addressed as a remedial action pursuant to Subsections 8.12 through 8.15.

8.12 A supplemental response action shall be undertaken only when:

A. A determination is made that:

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

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

B. Either of the following conditions is met for any determination made pursuant to Subsection 8.12.A., above:

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

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

8.13 If, subsequent to ROD signature, either Party concludes that a supplemental response action is necessary, based on the criteria set forth in Subsection 8.12, such Party shall promptly notify the other of its conclusion in writing. The notification shall specify the nature of the modification needed and the new information on which it is based. The Project Managers shall confer and attempt to reach consensus on the need for such an action within a fourteen (14) day period after receipt of the written notification. If the Project Managers have failed to reach consensus, either Party may

notify the other Party in writing within ten (10) days after the initial fourteen (14) day period that it intends to invoke dispute resolution. If notification of intent to invoke dispute resolution has not been provided within ten (10) days, then no action will occur. If the Project Managers are still unable to reach consensus within fourteen (14) days of the notice invoking dispute resolution, the question of the need for the supplemental response action shall be resolved through dispute resolution.

8.14 If the Project Managers agree, or if it is determined through dispute resolution, that a supplemental response action is needed based on the criteria set forth in Subsection 8.12, the Coast Guard shall propose a Deadline(s) for submittal of the Supplemental Work Plan(s) and a Schedule for performance of the Work thereunder to EPA in the next draft Amended SMP.

8.15 After finalization of a Supplemental Work Plan, the Coast Guard shall conduct a Supplemental Response Action RI/FS. Following finalization of the Supplemental Response Action RI/FS, the procedures described in Sections 8.7 through 8.9 shall be followed.

Construction Completion/Site Completion/EPA Certification

8.16 EPA and the Coast Guard have committed to streamlining procedures and documentation for post-ROD activities.

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

Remedial Action/Site Completion

8.18 A. When the Coast Guard determines that all remedial actions at all OUs have been completed, it shall document this event by amending the last RACR to become the Final RACR and submit it to EPA for review. The information provided therein shall document compliance with statutory requirements and provide a consolidated record of all remedial activities for all OUs implemented at the Site. In order for the Site to be eligible for completion, the following criteria must be met:

1. Performance standards specified in the related RODs have been met, and all cleanup actions and other measures identified in the RODs have been successfully implemented;
2. All remedial actions are protective of human health and the environment; and

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

B. Information provided shall summarize work at the entire Site (i.e., all related OUs). As outlined in Section 8.9 of this Agreement, the RACR for each OU, including any AOU and the final OU, is required to document that Work was performed according to design specifications. Information included in the final RACR for the purpose of demonstrating that a remedial action is complete shall include a discussion regarding the status of or accommodation for any operation and maintenance requirements and/or land use restrictions at the Site.

C. Information provided which purports to demonstrate that all remedial action at the Site is complete shall be signed by the Coast Guard's signatory authority or designee, certifying that remedial activities have been completed in full satisfaction of the requirements of this Agreement, and it shall include a request for EPA certification of remedial action completion at the Site. Within ninety (90) days of EPA's receipt of the Coast Guard's request for certification of Site completion, EPA shall:

1. Certify that all response actions have been completed at the Site in accordance with CERCLA, the NCP, and this Agreement, based on conditions known at the time of certification; or
2. Deny the Coast Guard's request for certification of Site completion, stating the basis of its denial and detailing what additional Work is necessary for remedy completion and certification.

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

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

IX. CONSULTATION

In order to maximize resources, the EPA, MDE, and Coast Guard have established a team relationship to accomplish the goal of protecting human health and the environment. The YARD Partnering Team is committed to working together in a spirit of integrity, mutual trust, responsibility, understanding, cooperation, and open communication.

Toward that end, EPA and the Coast Guard agree to strive toward the following goals:

- To accelerate the environmental cleanup where possible;
- To participate in the Citizens Advisory Group (CAG) on environmental matters affecting the property.

Review and Comment Process for Draft and Final Documents

9.1 Applicability:

The provisions of this Section establish the procedures that shall be used by the Parties to provide each other with appropriate notice, review, comment, and response to comments regarding RI/FS and RD/RA documents, specified herein as either Primary or Secondary Documents. The Coast Guard will normally be responsible for issuing Primary and Secondary Documents to EPA and, as applicable, MDE. As of the Effective Date of this Agreement, all draft and final reports for any deliverable document identified herein shall be prepared, distributed, and subject to dispute in accordance with Sections 9.2 through 9.10 below.

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

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

A. Primary Documents include those documents that are major, discrete portions of RI/FS or RD/RA activities. Primary Documents are initially issued by the Coast Guard in draft subject to review and comment by EPA (and, as applicable, MDE). Following receipt of comments on a particular draft Primary Document, the Coast Guard shall respond to any comments received and issue a draft final Primary Document subject to dispute resolution. The draft final Primary Document will become the final Primary Document thirty (30) days after issuance if dispute resolution is not invoked or as modified by decision of the dispute resolution process.

B. Secondary Documents include those documents that are discrete portions

of the Primary Documents and are typically input or feeder documents. Secondary Documents are issued by the Coast Guard in draft subject to review and comment by EPA (and, as applicable, MDE). Although the Coast Guard shall respond to any comments received, the draft Secondary Documents may be finalized in the context of the corresponding draft final Primary Documents. A Secondary Document may be disputed at the time the corresponding draft final Primary Document is issued.

9.3 Primary Documents:

A. All Primary Documents shall be prepared in accordance with the NCP and applicable EPA Guidance. The Coast Guard shall complete and transmit drafts of the following Primary Documents to EPA and MDE for comment in accordance with the provisions of this Section:

- (1) RI/FS and FFS Work Plans (including Baseline Risk Assessment for human health and the environment);
- (2) Remedial Investigation Reports (including Baseline Risk Assessments for human health and the environment);
- (3) FS and FFS Reports;
- (4) Proposed Plans;
- (5) Records of Decision;
- (6) Final Remedial Designs (including a land use control component where such controls are employed as part of the remedy);
- (7) Remedial Action Work Plans;
- (8) RACRs, which include any interim RACR and the Final RACR;
- (9) Site Management Plan; and
- (10) Community Relations Plan.

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

9.4 Secondary Documents:

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

- (1) Health and Safety Plans;
- (2) Non-Time Critical Removal Action Plans (40 C.F.R. 300.415(b)(4)(ii));
- (3) Pilot/Treatability Study Work Plans;
- (4) Pilot/Treatability Study Reports;
- (5) Engineering Evaluation/Cost Analysis Report;
- (6) Well Closure Methods and Procedures;
- (7) Preliminary/Conceptual Designs, or Equivalents;
- (8) Pre-final Remedial Designs; and
- (9) Removal Action Memoranda.

B. Although EPA may comment on the draft Secondary Documents listed above, such documents shall not be subject to dispute resolution except as provided by Subsection 9.2 hereof. Target Dates shall be established for the completion and transmission of draft Secondary Documents pursuant to Section X - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement.

9.5 Meetings of the Project Managers on Development of Documents:

The Project Managers shall meet approximately every sixty (60) days and confer by telephone every thirty (30) days, except as otherwise agreed by the Parties, to review and discuss the development of Primary and Secondary Documents. Prior to preparing any draft document specified in Subsections 9.3 and 9.4 above, the Project Managers shall meet to discuss the document in an effort to reach a common understanding, to the maximum extent practicable, with respect to the content of draft documents.

9.6 Identification and Determination of Potential ARARs:

A. For those Primary Documents or Secondary Documents that consist of or include ARAR determinations, the Project Managers shall meet prior to the issuance of a draft report to identify and propose, to the best of their ability, all potential ARARs pertinent to the document being addressed. Draft ARAR determinations shall be prepared by the Coast Guard in accordance with Section 121(d)(2) of CERCLA, 42 U.S.C. 9621(d)(2), the NCP, and pertinent Guidance issued by EPA that is not inconsistent with CERCLA and the NCP.

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

9.7 Review and Comment on Draft Documents:

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

B. Unless the Parties mutually agree to another time period, all draft documents, except the SMP, the pre-final RD and the final RD shall be subject to a sixty (60) day period for review and comment. The SMP shall be reviewed and commented on in accordance with Section XI or as agreed to by the Parties. The Parties recognize that time periods for EPA review and comment on the draft RD and Remedial Action Work Plans may need to be expedited in order for the Coast Guard to satisfy the requirement of Section 120(e)(2) of CERCLA, 42 U.S.C. 9620(e)(2). The pre-final RD shall be subject to a forty-five (45) day period for review and comment. The final RD will be subject to a fourteen (14) day period for review and comment by EPA.

In the event that the final RD differs substantially from the pre-final RD, EPA may extend the fourteen (14) day review and comment period for an additional fourteen (14) days by providing written notice to the Coast Guard. Review of any document by EPA may concern all aspects of the document (including completeness) and should include, but not be limited to, a technical evaluation of any aspect of the document and whether the document is consistent with CERCLA, the NCP, and any pertinent policy or Guidance issued by EPA. EPA shall provide comments to the Coast Guard with adequate specificity so that the Coast Guard may respond to the comment and, if appropriate, make changes to the draft document. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon

request of the Coast Guard, EPA shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy reports, EPA may extend the sixty (60) day comment period for an additional twenty (20) days by written notice to the Coast Guard prior to the end of the sixty (60) day period. On or before the close of any comment period, EPA shall transmit by next day mail their written comments to the Coast Guard.

C. The review period for a document shall not begin until the submission date specified in the SMP.

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

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

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

G. Following the close of any comment period for a draft document, the Coast Guard shall give full consideration to all written comments on the draft document submitted during the comment period. Within thirty (30) days of the close of the comment period on a draft Secondary Document, the Coast Guard shall transmit to EPA its written response to comments received within the comment period. Within thirty (30) days of the close of the comment period on a draft Primary Document, the Coast Guard shall transmit to EPA and, as applicable, MDE a draft final Primary Document that shall include the Coast Guard's response to all written comments received within the comment period. While the resulting draft final document shall be the responsibility of the Coast Guard, it shall be the product of consensus to the maximum extent possible.

H. The Coast Guard may extend the thirty (30) day period for either responding to comments on a draft document or for issuing the draft final Primary Document for an additional twenty (20) days by providing timely notice to EPA and, as applicable, MDE. In appropriate circumstances, this time period may be further extended in accordance with Section XII - EXTENSIONS, hereof.

9.8 Availability of Dispute Resolution on draft final Primary Documents:

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

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

9.9 Finalization of Documents:

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

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

9.10 Subsequent Modification of Final Document:

Following finalization of any Primary Document pursuant to Subsection 9.9 above, either Party to this Agreement may seek to modify a document, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in Subsections A. and B. below.

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

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

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

(2) The requested modification could be of significant assistance in evaluating impacts on the public health or the environment in evaluating

the selection of remedial alternatives or in protecting human health and the environment.

C. Nothing in this Subsection shall alter EPA's ability to request the performance of additional Work which was not contemplated by this Agreement. The Coast Guard's obligation to perform such Work must be established by either a modification of a report or document, through a supplemental response action pursuant to Subsection 8.12-8.15, or by amendment to this Agreement.

X. DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN

10.1 The Coast Guard shall submit to EPA the draft SMP within 45 days of the effective date of this Agreement. The SMP and each annual Amendment to the SMP shall be Primary Documents. Milestones established in an SMP or established in an Amendment to an SMP remain unchanged unless otherwise agreed to by the Parties or unless directed to be changed pursuant to the agreed dispute resolution process set out in subsections 11.5 or 11.6. In addition, if an activity is fully funded in the current FY, Milestones associated with the performance of Work and submittal of Primary Documents associated with such activity (even if they extend beyond the current FY) shall be enforceable.

10.2 The SMP includes proposed actions for CERCLA responses and it outlines all response activities and associated documentation to be undertaken at the Site. The SMP incorporates all existing Milestones contained in approved Work Plans, and all Milestones approved in future Work Plans immediately become incorporated into the SMP.

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

10.4 The SMP and its annual Amendments include:

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

B. A listing of all currently identified AOCs, SSAs, OUs (including AOU), interim remedial actions, Supplemental Response Actions, and Critical and Non-Time Critical Removal Actions covered or identified pursuant to this Agreement;

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

1. Identification of any Primary Actions;
2. All Deadlines;
3. All Near Term Milestones;
4. All Out Year Milestones;
5. All Target dates;
6. Schedule for initiation of RDs, interim remedial actions, non-time critical removal actions, AOU, and any initiation of other planned response action(s) covered by this Agreement; and,
7. All Project End Dates.

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

10.6 The Milestones established in accordance with this Section and Section XI - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN remain the same unless otherwise agreed by the Parties, or unless changed in accordance with the dispute resolution procedures set out in Subsections 11.5 and 11.6. The Parties recognize that possible bases for requests for changes or extensions of the Milestones include but are not limited to (i) the identification of significant new Site conditions at this installation; (ii) reprioritization of activities under this Agreement caused by changing priorities or conditions elsewhere at other Coast Guard facilities; (iii) reprioritization of activities under this Agreement caused by budget adjustments (e.g., rescissions, inflation adjustments, and reduced Congressional appropriations); (iv) an event of force majeure; (v) a delay caused by another party's failure to meet any requirement of this Agreement; (vi) a delay caused by the good faith invocation of dispute resolution or the initiation of judicial action; (vii) a delay caused, or which is likely to be caused, by the grant of an extension in regard to another Deadline or Schedule; and (viii) any other event or series of events mutually agreed to by the Parties as constituting good cause.

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

XI. BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN

11.1 The Coast Guard, as a Federal agency, is subject to fiscal controls. The Parties agree that each Party should consider the factors listed in Subsection 10.3, including

Federal fiscal constraints as well as each of the other factors, in their priority-setting decisions. Initial efforts to close any gap between cleanup needs and funding availability shall be focused on the identification and implementation of cost savings.

11.2 In order to promote effective involvement by the Parties in the budget process, the Parties will meet at the Project Manager level for the purpose of (1) developing a list of requirements/Work to be performed at the Site for inclusion in the Coast Guard budget process; and, (2) development of the Coast Guard Yard's submission to Coast Guard Headquarters, based on budget priorities for the year currently under consideration. Unless both parties agree a meeting is not necessary, the budget consultation must occur at least ten (10) days prior to the Coast Guard Yard's initial budget submission to headquarters. In the event that the Project Managers cannot agree on funding levels required to perform all Work outlined in the SMP, the Parties agree to make reasonable efforts to informally resolve these disagreements, either at the immediate or secondary supervisor level. This would also include discussions, as necessary, with Coast Guard Headquarters. If the Parties cannot concur on a resolution, the Coast Guard will forward through Coast Guard Headquarters its budget request while expressly representing EPA's views and disagreement and also inform Coast Guard Headquarters of the possibility of future enforcement action should the funding requested not be sufficient to perform the Work subject to disagreement. In addition, if the Coast Guard's budget submission to Coast Guard Headquarters relating to the terms and conditions of this Agreement does not include sufficient funds to complete all Work in the existing SMP, such budget submission shall include supplemental reports that fully disclose and identify the Work required by the existing SMP but which are not included in the budget request.

Coast Guard Budget for Clean Up Activities

11.3 The Coast Guard shall forward EPA documentation of the budget requests (and any supplemental reports) for the Site, as submitted by the Coast Guard Yard to Coast Guard Headquarters within fourteen (14) days after the submittal of such documentation. The Coast Guard Yard is the only Coast Guard facility listed on the NPL. The Coast Guard shall submit an annual budget request which shall be for two years. These two year requests shall be submitted to Coast Guard Headquarters by June 30 of each year. The Coast Guard Yard shall provide final approved budget information to the EPA within 14 days of receipt from Coast Guard Headquarters.

Amended SMP

11.4 The Coast Guard shall submit to EPA a draft Amendment to the SMP no later than the first of February each year. When formulating the draft Amendment to the SMP, the Coast Guard shall consider funding circumstances (including OMB targets/guidance) and "risk plus other factors" outlined in Subsection 10.3 to evaluate whether the previously agreed upon Milestones should change. Prior to proposing changes to Milestones in its annual Amendment to the SMP, the Coast Guard will first offer to meet

with EPA to discuss the proposed changes. The Parties will attempt to agree on Milestones before the Coast Guard submits its annual Amendment on or before June 15, but failure to agree on such proposed changes does not modify the June 15 due date, unless agreed by all the Parties. Any proposed extensions or other changes to Milestones must be explained in a cover letter to the draft Amendment to the SMP. The draft Amendment to the SMP should reflect any agreements made by the Parties during the budget process outlined in this Section. Resolution of any disagreement over adjustment of Milestones pursuant to this subsection shall be resolved pursuant to Subsection 11.5.

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

A. If the Coast Guard proposes, in the draft final Amendment to the SMP, modifications of Milestones to which EPA has not agreed, those proposed modifications shall be treated as a request by the Coast Guard for an extension. Milestones may be extended during the SMP review process by following Subsections 11.4 through 11.7. All other extensions will be governed by Section XII - EXTENSIONS. The time period for EPA to respond to the request for extension will begin on the date EPA receives the draft final Amendment to the SMP, and EPA shall advise the Coast Guard in writing of its position on the request within thirty (30) days. If EPA approves of the Coast Guard's draft final Amendment, the document shall then await finalization in accordance with Subsections 11.5.D. and 11.6. If EPA denies the request for extension, the Coast Guard may amend the SMP in conformance with EPA comments or seek and obtain a determination through the dispute resolution process established in Section XIX - DISPUTE RESOLUTION within twenty-one (21) days of receipt of notice of denial. Within twenty-one (21) days of the conclusion of the dispute resolution process, the Coast Guard shall revise and reissue, as necessary, the draft final Amendment to the SMP. If EPA initiates a formal request for a modification to the SMP to which the Coast Guard does not agree, EPA may initiate dispute resolution as provided in Section XIX - DISPUTE RESOLUTION with respect to such proposed modification. In resolving a dispute, the person or persons resolving the dispute shall give full consideration to the

bases for changes or extensions of the Milestones referred to in Subsection 10.6 asserted to be present and the facts and arguments of each of the Parties.

B. Notwithstanding Subsection 11.5 A., if the Coast Guard proposes modifications in the draft final Amendment to the SMP to Project End Dates which are intended to reflect the time needed for implementing a remedy selected in a Record of Decision but to which EPA has not agreed, those proposed modifications shall not be treated as a request by the Coast Guard for an extension but, consistent with Section XIX - DISPUTE RESOLUTION, EPA may initiate dispute resolution with respect to such Project End Date.

C. In any dispute under this Section, the time periods for the standard dispute resolution process contained in Subsections 19.2, 19.5, and 19.6 of Section XIX - DISPUTE RESOLUTION, shall be reduced by half in regard to such dispute, unless the Parties agree to dispute directly to the Senior Executive Committee ("SEC") level.

D. The Coast Guard shall finalize the draft final Amendment as a final Amendment to the SMP consistent with the mutual consent of the Parties, or in the absence of mutual consent, in accordance with the final decision of the dispute resolution process. The draft final Amendment to the SMP shall not become final until twenty-one (21) days after the Coast Guard receives official notification of Congress' authorization and appropriation of funds if funding is sufficient to complete Work in the draft final SMP or, in the event of a funding shortfall, following the procedures in Subsection 11.6. However, upon approval of the draft final Amendment or conclusion of the dispute resolution process, the Parties shall implement the SMP while awaiting official notification of Congress' authorization and appropriation.

Resolving Appropriations Shortfalls

11.6 After authorization and appropriation of funds by Congress and within twenty-one (21) days after the Coast Guard has received official notification from DHS of the Coast Guard's allocation based on the current year's Environmental Restoration, Coast Guard Account, the Coast Guard shall determine if planned Work (as outlined in the draft final Amendment to the SMP) can be accomplished with the allocated funds and reports as follows: (a) if the allocated funds are sufficient to complete all planned Work for that fiscal year and there are no changes required to the draft final Amendment to the SMP, the Coast Guard shall immediately forward a letter to the EPA indicating that the draft final Amendment to the SMP has become the final Amendment to the SMP; or (b) if the Coast Guard determines within the twenty-one (21) day period specified above that the allocated funds are not sufficient to accomplish the planned Work for the Site (i.e. there is an appropriations shortfall), the Coast Guard shall immediately notify EPA. The Project Managers shall meet within thirty (30) days to determine if planned Work (as outlined in the draft final Amendment to the SMP) can be accomplished through: (i) re-scoping or rescheduling activities in a manner that does not cause previously agreed upon Near Term Milestones and Out Year Milestones to be missed; or (ii) developing

and implementing new cost-saving measures. If, during this thirty (30) day discussion period, the Parties determine that re-scoping or implementing cost-saving measures are not sufficient to offset the appropriations shortfall such that Near Term Milestones, Out Year Milestones, and Project End Dates must be modified, the Parties shall discuss these changes and develop modified Milestones. Such modifications shall be based on the "Risk Plus Other Factors" prioritization process discussed in Subsection 11.3 and shall be specifically identified by the Coast Guard. The Coast Guard shall submit a new draft final Amendment to the SMP to the other Parties within thirty (30) days of the end of the thirty (30) day discussion period. In preparing the revised draft final Amendment to the SMP, the Coast Guard shall give full consideration to EPA input during the thirty (30) day discussion period. If EPA concurs with the modifications made to the draft final Amendment to the SMP, EPA shall notify the Coast Guard, and the revised draft final Amendment shall become the final Amendment. In the case of modifications of Milestones because of appropriations shortfalls, those proposed modifications shall, for purposes of dispute resolution, be treated as a request by the Coast Guard for an extension, which request is treated as having been made on the date that EPA receives the new draft final SMP or draft final Amendment to the SMP. EPA shall advise the Coast Guard in writing of its position on the request within twenty-one (21) days. The Coast Guard may seek and obtain a determination through the dispute resolution process established in Section XIX - DISPUTE RESOLUTION. The Coast Guard may invoke dispute resolution within fourteen (14) days of receipt of a statement of non-concurrence with the requested extension. In any dispute concerning modifications under this Section, the Parties will submit the dispute directly to the SEC level, unless the Parties agree to utilize the standard dispute resolution process, in which case the time periods for the dispute resolution process contained in Subsections 19.2, 19.5, and 19.6 of Section XIX - DISPUTE RESOLUTION shall be reduced by half in regard to such dispute. Within twenty-one (21) days after the conclusion of the dispute resolution process, the Coast Guard shall revise and reissue, as necessary, the final Amendment to the SMP. Upon agreement to the reprioritization of Work, the Coast Guard agrees that the Work subordinated shall be funded within five (5) fiscal years from the fiscal year of reprioritization.

11.7 It is understood by the Parties that the Coast Guard will work with representatives of EPA to reach consensus on the reprioritization of work made necessary by any annual appropriations shortfalls or other circumstances as described in Section 11.6.

Public Participation

11.8 In addition to any other provision for public participation contained in this Agreement, the development of the SMP, including its annual Amendments, shall include participation by members of the public interested in this action. The Coast Guard must ensure that the opportunity for such public participation is timely; but this Subsection 11.8 shall not be subject to Section XX - STIPULATED PENALTIES.

A. The Parties will meet, after seeking the views of the general public, and determine the most effective means to provide for participation by members of the public interested in this action in the budget process and the development of the SMP and its annual Amendments. The “members of the public interested in this action” may be represented by the Community Advisory Group (“CAG”), or by other appropriate means.

B. The Coast Guard shall provide timely notification under Section 11.6, regarding allocation of Environmental Restoration, Coast Guard Account to the members of the public interested in this action.

C. The Coast Guard shall provide opportunity for discussion under Sections 11.2, 11.5, 11.6, and 11.7 to the members of the public interested in this action.

D. The Coast Guard shall ensure that public participation provided for in this Subsection 11.8 complies with Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

XII. EXTENSIONS

12.1 A Deadline or Schedule shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension as described in Subsection 12.2, below. Any request for extension by the Coast Guard shall be submitted in writing and shall specify:

- A. The Deadline or Schedule that is sought to be extended;
- B. The length of the extension sought;
- C. The good cause(s) for the extension; and
- D. Any related Deadline or Schedule that would be affected if the extension were granted.

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

- A. An event of Force Majeure, as defined in Section XXI;
- B. A delay caused by another Party's failure to meet any requirement of this Agreement;
- C. A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;
- D. A delay caused, or which is likely to be caused, by the grant of an extension in regard to another Deadline or Schedule; and

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

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

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

12.5 If there is agreement between the Parties that the requested extension is warranted, the requesting Party shall extend the affected 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 Deadline or Schedule shall not be extended except in accordance with a determination resulting from the dispute resolution process.

12.6 Within seven (7) days of receipt of a statement of non-concurrence with the requested extension, the requesting Party may invoke dispute resolution.

12.7 A written, timely, and good faith request by the Coast Guard for an extension shall toll any assessment of stipulated penalties or application for judicial enforcement of the affected 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 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 Deadline or Schedule as most recently extended.

XIII. PROJECT MANAGERS

13.1 On or before the Effective Date of this Agreement, EPA and the Coast Guard shall each designate a Project Manager and notify the other Party of the name and address of their Project Manager. A contact person at MDE is identified below in Subsection 13.9.C for notifications to the State of Maryland. The Project Managers shall be responsible for assuring proper implementation of all Work performed under the terms of the Agreement. To the maximum extent practicable, communications among the Coast Guard, EPA, and as applicable MDE on all documents, including reports, comments, and other correspondence concerning the activities performed pursuant to this Agreement, shall be directed through the Project Managers and the identified MDE contact. The Parties may

designate an Alternate Project Manager to exercise the authority of the Project Manager in his or her absence.

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

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

These status reports shall include, when applicable:

- (1) Identification of all data received and not previously provided by the Coast Guard during the reporting period consistent with the limitations of Subsection 31.1;
- (2) All activities completed pursuant to this Agreement since the last Project Manager meeting as well as such actions and plans which are scheduled for the upcoming ninety (90) days; and
- (3) A description of any delays, the reasons for such delays, anticipated delays, concerns over possible Schedule implementation, or problems that arise in the execution of a Work Plan during the quarter, and any steps that were or will be taken to alleviate the delays or problems.

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

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

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

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

13.6 Modifications of Work not provided for in Subsections 13.4 and 13.5 of this Section also must be approved by the Parties' Project Managers to be effective. If agreement cannot be reached on the proposed modification to Work, dispute resolution as set forth in Section XIX - DISPUTE RESOLUTION shall be used. Within five (5) business days following a modification made pursuant to this Section, the Project Manager who requested the modification shall prepare a memorandum detailing the modification and the reasons therefore and shall provide or mail a copy of the memorandum to the other Project Manager for signature and return.

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

13.8 The Parties shall transmit Primary and Secondary Documents and all notices required herein by next day mail, hand delivery, e-mail, or certified letter to the persons specified in Subsection 13.9 below by the Deadline established under Section X - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN. The Coast Guard shall provide EPA with seven (7) copies of each Primary and Secondary Document. The Coast Guard shall provide the MDE contact, as applicable, with five (5) copies of each Primary and Secondary Document.

13.9 Notice to the individual Parties and MDE shall be provided under this Agreement to the following addresses:

A. For the Coast Guard:

Attn: Environmental Engineer
Coast Guard Yard
MS #10
2401 Hawkins Point Rd.
Baltimore, MD 21226

B. For EPA: EPA Region III:

Remedial Project Manager (3HS11)
Coast Guard Yard
U.S. E.P.A. Region III
1650 Arch Street
Philadelphia, PA 19103

C. For MDE:

Chief, Federal Facilities Division
Hazardous Waste Program
1800 Washington Blvd.
Baltimore, MD 21230

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

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

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

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

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

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

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

13.13 If any event occurs or has occurred that may delay or prevent the performance of any obligation under this Agreement, whether or not caused by a Force Majeure event,

either Party shall notify by telephone the other Party's Project Manager within two (2) business days of when the Party first became aware that the event might cause a delay. If the Party intends to seek an extension of a Deadline or Schedule because of the event, the procedures of Section XII - EXTENSIONS shall apply.

XIV. EXEMPTIONS

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

XV. ACCESS

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

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

15.2 The rights granted in Subsection 15.1 and 15.4 to EPA regarding access shall be subject to regulations and statutes, including Coast Guard Yard security regulations, as may be necessary to protect national security information ("classified information") as defined in Executive Order 12958, as amended, and comply with the YARD's health and safety requirements. Such requirements shall not be applied so as to unreasonably hinder EPA from carrying out its responsibilities and authority pursuant to this Agreement.

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

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

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

15.6 The Coast Guard shall ensure that all response measures, ground water rehabilitation measures, and remedial actions of any kind which are undertaken pursuant to this Agreement on any areas which (a) are presently owned by the United States and which are occupied by the Coast Guard or leased by the Coast Guard to any other entity or (b) are in any manner under the control of the Coast Guard or any lessees or agents of the Coast Guard, 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.

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

XVI. PERMITS

16.1 The Coast Guard shall be responsible for obtaining all Federal, state and local permits which are necessary for the performance of all Work under this Agreement.

16.2 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, portions of the response actions which are called for by this Agreement and conducted entirely on the Site and which are selected and carried out in accordance with CERCLA are exempt from the requirement to obtain Federal, State, or local permits. All activities must, however, comply with all the applicable or relevant and appropriate Federal and State substantive standards, requirements, criteria, or limitations which would have been included in any such permit.

16.3 When the Coast Guard proposes a response action other than an emergency removal action to be conducted entirely onsite which in the absence of Section 121(e)(1)

of CERCLA, 42 U.S.C. 9621(e)(1), and the NCP would require a Federal, State or local permit, the Coast Guard shall include in its Draft ROD or removal memorandum:

- A. Identification of each permit that would otherwise be required;
- B. Identification of the standards, requirements, criteria, or limitations which would have had to have been met to obtain each such permit; and
- C. An explanation of how the response action proposed will meet the standards, requirements, criteria, or limitations identified immediately above.

16.4 Subsection 16.2 above is not intended to relieve the Coast Guard from the requirement(s) of obtaining a permit whenever it proposes a response action involving the shipment or movement of a hazardous substance, pollutant, or contaminant or hazardous waste off the Site or in any other circumstances where the exemption provided for at Section 121(e)(1) of CERCLA, 42 U.S.C. 9621(e), does not apply.

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

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

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

16.7 EPA shall review the Coast Guard's proposed modifications to this Agreement in accordance with Section XXXVI - AMENDMENT OF AGREEMENT of this Agreement. If the Coast Guard submits proposed modifications prior to a final determination of any appeal taken on a permit needed to implement this Agreement, EPA may elect to delay review of the proposed modifications until after such final determination is entered.

16.8 During any appeal by any Party of any permit required to implement this Agreement or during review of any proposed modification to the permit, the Coast Guard shall continue to implement those portions of this Agreement which can be reasonably

implemented independent of final resolution of any permit issue under appeal. However, as to Work that cannot be so implemented, any corresponding Deadline or Schedule shall be subject to Section XII - EXTENSIONS, of this Agreement.

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

XVII. REMOVAL AND EMERGENCY ACTIONS

17.1 The Coast Guard shall provide EPA and MDE with timely notice of any proposed removal action.

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

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

- A. Documentation of the actual or threatened release at or from the Site;
- B. Documentation that the actions posed will abate the danger and threat which may be posed by release of hazardous substances, pollutants, or contaminants at or from the Site;
- C. Documentation that the action is consistent with the NCP, applicable State regulations, and, to the extent practicable, contributes to the efficient performance of any long-term remedial action with respect to the release or threatened release concerned;
- D. An Engineering Evaluation/Cost Analysis ("EE/CA"), or its equivalent which contains an analysis of removal alternatives to abate the condition. The screening of alternatives shall be based on criteria as provided in CERCLA and the NCP, such as cost, feasibility, and effectiveness; and

E. A non-time critical removal action plan and Target Date for the proposed action.

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

17.4 The opportunity for review and comment for proposed removal actions, as stated in Subsection 17.3 above, may not apply if the action is in the nature of an emergency removal taken because a release or threatened release may present an imminent and substantial endangerment to human health or the environment. The Coast Guard may determine that review and comment, as stated in Subsection 17.3 above, is impractical. However, in the case of an emergency removal action, the Coast Guard shall provide EPA with oral notice as soon as possible and written notice within forty-eight (48) hours after the Coast Guard determines that an emergency removal is necessary. Within seven (7) days after initiating an emergency removal action, the Coast Guard shall provide EPA with the written basis (factual, technical, and scientific) for such action and any available documents supporting such action. Upon completion of an emergency removal action, the Coast Guard shall state whether, and to what extent, the emergency removal action varied from the description of the action in the written notice provided pursuant to this Section. Within thirty (30) days of completion of an emergency response action, the Coast Guard will furnish EPA with an Action Memorandum addressing the information provided in the oral notification and explaining whether and to what extent the action varied from the description previously provided, and providing any other information required by CERCLA, the NCP, and EPA Guidance for such actions. Such actions may be conducted at anytime, either before or after the issuance of a ROD.

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

17.6 All activities pursuant to this Agreement will be performed in accordance with the Health and Safety Plan and will be conducted so as to minimize the threat to the surrounding public.

XVIII. PERIODIC REVIEW

18.1 Consistent with Section 121(c) of CERCLA, 42 U.S.C. 9621(c), and in accordance with this Agreement, if the selected remedial action for any OU results in any hazardous substance, pollutants, or contaminants remaining at the Site, the Parties shall review the remedial action for each such OU at least every five (5) years after the initiation of such

remedial action to assure that human health and the environment are being protected. As part of this review, the Coast Guard shall report the findings of the review to EPA and MDE upon its completion. This report is the Periodic Review Assessment Report.

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

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

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

18.5 EPA reserves the right to exercise any available authority to seek the performance of additional Work that arises from a periodic review, pursuant to applicable law.

18.6 The assessment and selection of any additional response actions determined necessary as a result of a periodic review shall be in accordance with Subsections 8.7 to 8.9. Except for emergency response actions, which shall be governed by Section XVII - REMOVAL AND EMERGENCY ACTIONS, such remedial actions shall be implemented as supplemental response actions in accordance with Subsections 8.12 and 8.15.

18.7 When the final ROD for an OU contains the requirement for the development and implementation of a long-term monitoring plan because the selected remedial action results in any hazardous substance, pollutants or contaminants remaining at the Site, the long-term monitoring plan shall be submitted in accordance with Section IX- CONSULTATION.

XIX. DISPUTE RESOLUTION

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

19.2 Within thirty (30) days after (a) the period established for review of a draft final Primary Document pursuant to Section IX- CONSULTATION of this Agreement which generates a dispute, or (b) any action which leads to or generates a dispute, the disputing Party shall submit to the other Party a written statement of dispute setting forth

the nature of the dispute, the Work affected by the dispute, the disputing Party's position with respect to the dispute, and the information the disputing Party is relying upon to support its position.

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

19.4 A Dispute Resolution Committee (DRC) will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (SES or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The EPA representative on the DRC is the Director of the Hazardous Site Cleanup Division of EPA Region III. The Coast Guard's designated member is a Coast Guard SES or equivalent. Written notice of any delegation of authority from the Party's designated representative on the DRC shall be provided to the other Party pursuant to the procedures of Section XIII - PROJECT MANAGERS.

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

19.6 The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The EPA representative on the SEC shall be the Regional Administrator of EPA Region III, or his or her delegatee. The Coast Guard representative on the SEC is the Assistant Commandant for Engineering and Logistics of the Coast Guard or his or her delegatee. In the event of a delegation, the positions presented by the delegatees shall represent the positions of the Regional Administrator of EPA Region III and the Assistant Commandant for Engineering and Logistics of the Coast Guard. Any documents issued by the SEC or its members pertaining to a dispute shall be issued by the Regional Administrator of EPA Region III and the Assistant Commandant for Engineering and Logistics of the Coast Guard. Notice of any delegation of authority from a Party's designated representative on the SEC shall be provided to the other Party in writing before the delegation takes effect. The SEC members shall, as appropriate, confer, meet, and exert their best efforts to resolve the dispute and issue a unanimous written decision signed by the Parties. If resolution of the dispute is not reached within twenty-one (21) days, the EPA Regional Administrator shall issue a written position on the dispute. The Commandant of the Coast Guard may, within twenty-one (21) days of the Regional Administrator's issuance of the EPA position,

issue a written notice elevating the dispute to the EPA Administrator for resolution in accordance with all applicable laws and procedures. In the event that the Coast Guard elects not to elevate the dispute to the Administrator within the designated twenty-one (21) day escalation period, the decision of the EPA Regional Administrator shall become final and the Work shall proceed in accordance with the Regional Administrator's written position with respect to the dispute.

19.7 Upon escalation of a dispute to the Administrator of EPA pursuant to Subsection 19.6 above, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the EPA Administrator shall meet and confer with the Commandant of the Coast Guard to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the Parties with a written final decision setting forth resolution of the dispute. The duties of the Administrator pursuant to this Subsection may be delegated only to the EPA Assistant Administrator for Enforcement and Compliance Assurance. The duties of the Commandant of the Coast Guard pursuant to this Subsection may be delegated only to a Coast Guard official designated by the Commandant.

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

19.9 When dispute resolution is in progress, Work affected by the dispute will immediately be discontinued if the Director of the Hazardous Site Cleanup Division for EPA Region III requests, in writing, that Work related to the dispute be stopped because, in EPA's opinion, such Work is inadequate or defective and that 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, if EPA seeks a Work stoppage it will consult with the Coast Guard and, as applicable, MDE prior to initiating a Work stoppage request. After stoppage of Work, if the Coast Guard believes that the Work stoppage is inappropriate or may have potential significant adverse impacts, it may meet with EPA and, as applicable MDE, to discuss the Work stoppage. Following this meeting, and further consideration of the issues, the Director of the Hazardous Site Cleanup Division will issue, in writing, a final decision with respect to the Work stoppage. The final written decision of the Director of the Hazardous Site Cleanup Division 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 either Party.

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

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

XX. STIPULATED PENALTIES

20.1 In the event that the Coast Guard fails to submit a Primary Document, as listed in Section IX- CONSULTATION to EPA pursuant to the appropriate Deadline or Schedule established in accordance with the SMP or the requirements of this Agreement, or fails to comply with a term or condition of this Agreement which relates to an interim or final remedial action, EPA may assess a stipulated penalty against the Coast Guard. A stipulated penalty may be assessed in an amount not to exceed \$5,000 for the first week (or part thereof), and \$10,000 for each additional week (or part thereof) for which a failure set forth in this Subsection occurs.

20.2 Upon determining that the Coast Guard has failed in a manner set forth in Subsection 20.1, EPA shall so notify the Coast Guard in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the Coast Guard 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 Coast Guard shall not be liable for the stipulated penalty assessed by EPA if the failure is determined, through the dispute resolution process, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.

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

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

20.4 In the event that stipulated penalties become payable by the Coast Guard under this Agreement, the Coast Guard will seek Congressional approval and authorization to pay such penalties to the federal Hazardous Substances Superfund. Any requirement for the payment of stipulated penalties under this Agreement shall be subject to the

availability of funds, and no provision herein shall be interpreted to require the obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. 1341.

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

20.6 This Section shall not affect the Coast Guard's ability to obtain an extension of a Deadline or Schedule pursuant to Section XII - EXTENSIONS.

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

XXI. FORCE MAJEURE

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

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

A Force Majeure shall also include any strike or other labor dispute, whether or not within control of the Parties affected thereby. Force Majeure shall not include increased costs

or expenses of response actions, whether or not anticipated at the time such Response Actions were initiated.

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

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

XXII. ENFORCEABILITY

22.1 The Parties agree that:

A. Upon the Effective Date of this Agreement, any standard, regulation, condition, requirement, or order which has become effective under CERCLA and is incorporated into this Agreement is enforceable by any person pursuant to Section 310 of CERCLA, and any violation of such standard, regulation, condition, requirement, or order will be subject to civil penalties under Sections 310(c) and 109 of CERCLA, 42 U.S.C. 9659(c) and 9609.

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

C. All terms and conditions of this Agreement which relate to interim or final remedial actions, including corresponding 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, 42 U.S.C. 9659(c) and 9609; and

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

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

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

The Coast Guard does not waive any rights it may have under Section 120 of CERCLA, 42 U.S.C. 9620, and Executive Order 12580.

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

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

XXIII. OTHER CLAIMS

23.1 Nothing in this Agreement shall restrict the Parties from taking any action under CERCLA or other environmental statutes for any matter not specifically part of the Work performed under CERCLA which is the subject matter of this Agreement.

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

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

23.4 EPA shall not be held as a party to any contract entered into by the Coast Guard to implement the requirements of this Agreement.

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

23.6 This Agreement does not bar any claim for:

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

B. liability for disposal of any hazardous substances or waste material taken from the YARD.

XXIV. RESERVATION OF RIGHTS

24.1 Notwithstanding anything in this Agreement, EPA may initiate any administrative, legal, or equitable remedies available to it, including requiring additional response actions by the Coast Guard in the event that (a) conditions previously unknown or undetected by EPA arise or are discovered at the Site, (b) EPA receives additional information concerning the premises not previously available to it when it reached this Agreement, (c) the implementation of the requirements of this Agreement are no longer protective of public health and the environment, (d) EPA discovers the presence of conditions at the Site which may constitute an imminent and substantial danger to the public health, welfare, or the environment, (e) the Coast Guard fails to meet any of its obligations under this Agreement, (f) the Coast Guard fails or refuses to comply with any applicable requirement of CERCLA or other environmental regulations; or (g) the Coast Guard, its officers, employees, contractors, or agents falsify information, reports, or data, or make a false representation or statement in a record, report, or document relating to the release of hazardous materials at the Site, and this information affects the determination of whether a remedial action is protective of human health and/or the environment. For purposes of this Subsection, conditions at the Site and information known to EPA shall include only those conditions and information known as of the date of the relevant response action decision document.

24.2 The Parties agree to exhaust their rights under Section XIX – DISPUTE RESOLUTION, prior to exercising any rights to judicial review that they may have.

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

XXV. PROPERTY TRANSFER

25.1 No change or transfer of any interest in the YARD or any part thereof shall in any way alter the status or responsibility of the Parties under this Agreement. The Coast Guard agrees to give EPA sixty (60) days notice prior to the sale or transfer by the United States of America of any title, easement, or other interest in the real property

affected by this Agreement. The Coast Guard agrees to comply with Section 120(h) of CERCLA, 42 U.S.C. 9620(h), including the Community Environmental Response Facilitation Act and any additional amendments thereof, and with 40 C.F.R. Part 373, as applicable.

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

XXVI. FUNDING

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

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

26.3 Any requirement for the payment or obligation of funds by the Coast Guard established by the terms of this Agreement, including stipulated penalties, 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 extended.

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

26.5 Funds authorized and appropriated annually by Congress under the Coast Guard Environmental Compliance and Restoration Program appropriation in the Department of Homeland Security Appropriations Act will be the source of funds for activities required by this Agreement, in accordance with 14 USC 692. However, should the Coast Guard appropriation be inadequate in any year to meet the total Coast Guard's implementation requirements under this Agreement, the Coast Guard shall, after consulting with EPA and discussing the inadequacy with the members of the CAG, in accordance with Section XI - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN, prioritize and allocate that year's appropriation.

XXVII. RECOVERY OF EPA EXPENSES

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

XXVIII. QUALITY ASSURANCE

28.1 The Coast Guard shall use quality assurance, quality control, and chain of custody procedures throughout all field investigation, sample collection and laboratory analysis activities. The Coast Guard shall develop a Quality Assurance Project Plan(s) ("QAPPs") which shall be prepared in accordance with this Agreement, the "Uniform Federal Policy for Quality Assurance Project Plans" (March 2005), and EPA guidance, including, without limitation, "EPA Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-009), and "EPA Requirements for Quality Assurance Project Plans (QA/G-5)" (EPA 240/B-01/003, March 2001 or subsequently issued guidance). EPA shall provide subsequently issued guidance to the Coast Guard as soon as it is issued. Once approved by EPA, the QAPPs shall be incorporated into and become enforceable under this Agreement. The QAPPs shall be used as a component of each SSP, RI, FS, RD, and RA Work Plan(s). These Work Plans will be reviewed as Primary Documents pursuant to Section IX- CONSULTATION, of this Agreement.

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

28.3 The Coast Guard shall ensure that lab audits are conducted as appropriate and are made available to EPA upon request. The Coast Guard shall ensure that EPA and its authorized representatives shall have access to all laboratories performing analyses on behalf of the YARD pursuant to this Agreement.

XXIX. RECORD PRESERVATION

29.1 Despite any document retention policy to the contrary, EPA and the Coast Guard shall preserve, during the pendency of this Agreement and for a minimum of ten (10) years after its termination or for a minimum of ten (10) years after implementation of any additional action taken pursuant to Section XVIII - PERIODIC REVIEW, all records and documents in their possession which relate to response actions taken pursuant to this Agreement. After the ten (10) year period, each Party shall notify the other Party at least forty-five (45) days prior to the proposed destruction or disposal of any such documents or records. Upon the request by any Party, the requested Party shall make available

such records or copies of any such records unless withholding is authorized and determined appropriate by law. The Party withholding such records shall identify any documents withheld and the legal basis for withholding such records. No records withheld shall be destroyed until forty-five (45) days after the final decision by the highest court or administrative body requested to review the matter.

29.2 All such records and documents shall be preserved for a period of ten (10) years following the termination of any judicial action regarding Work performed under CERCLA that is the subject of this Agreement.

XXX. SAMPLING AND DATA/DOCUMENT AVAILABILITY

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

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

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

XXXI. PROTECTED INFORMATION

31.1 The Coast Guard shall not withhold any physical, sampling, monitoring, or analytical data.

31.2 National Security Information:

A. Any dispute concerning EPA access to national security information ("classified information"), as defined in Executive Order 12958, as amended, shall be resolved in accordance with Executive Order 12958, as amended, and other applicable law, including the opportunity to demonstrate that EPA representatives have proper clearances and a need to know, appeal to the Information Security Oversight Office, and final appeal to the National Security Council.

B. Upon receipt from EPA of a request to meet with the classifying officer regarding access to classified information, the Coast Guard shall, within ten (10) calendar days of such request, notify EPA of the identity of the classifying officer and the level of classification of the information sought. If the document was classified by the

Coast Guard, the classifying officer and the representative of EPA shall meet within twenty-one (21) calendar days following receipt of the request. The purpose of the meeting shall be to seek a means to accommodate EPA's request for access to information without compromising national security or violating security regulations. If no resolution is reached at the meeting, the Coast Guard shall notify EPA of the classifying officer's decision within fourteen (14) calendar days following the meeting. Failure to render a timely decision shall be construed as a denial. Failure to respond is subject to dispute resolution under this Agreement.

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

XXXII. COMMUNITY RELATIONS

32.1 The Coast Guard will develop a Community Relations Plan. This plan will respond to the need for an interactive relationship with all interested community elements, both on and off the YARD, regarding environmental activities conducted pursuant to this Agreement by the Coast Guard. Any revision or amendment to the Community Relations Plan shall be submitted to EPA for review and comment.

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

32.3 The Parties agree to comply with all relevant EPA policy and guidance on community relations programs and the public participation requirements of CERCLA, the NCP, and other applicable, relevant and appropriate requirements, laws and regulations. The EPA shall provide such EPA policy and guidance to the Coast Guard.

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

32.5 The Coast Guard has established and is maintaining an administrative record at or near the YARD available to the public, and another copy at a central location, in accordance with Section 113(k) of CERCLA, 42 U.S.C. 9613(k), Subpart I of the NCP, and applicable Guidance issued by EPA. The administrative record developed by the Coast Guard shall be periodically updated by the Coast Guard, but no less than semi-

annually, and the Coast Guard shall provide EPA a copy of the Index of any documents added to any administrative record for any action taken pertaining to Areas of Concern at the Facility, and upon request provide any supporting document identified therein. The Coast Guard will provide to EPA on request any document in the administrative record.

32.6 Pursuant to 14 USC 690-693, and Section XXXIV- COMMUNITY ADVISORY GROUP (CAG) of this Agreement, the Coast Guard has established a Community Advisory Group (CAG) for the YARD. The purpose of the CAG is to afford a forum for cooperation between the Parties, local community representatives, and natural resource trustees on actions and proposed actions at the Site.

XXXIII. PUBLIC COMMENT ON THIS AGREEMENT

33.1 Within fifteen (15) days after the execution of this Agreement (the date by which the Parties have signed the Agreement), EPA shall announce the availability of this Agreement to the public for their review and comment, including publication in at least two (2) major local newspapers of general circulation. Such public notices shall include information advising the public as to the availability and location of the administrative record discussed in Subsection 32.5. EPA shall accept comments from the public for forty-five (45) days after such announcement. Within twenty-one (21) days of completion of the public comment period, EPA shall transmit copies of all comments received within the comment period to the Coast Guard. Within thirty (30) days after the transmittal, the Parties shall review the comments and shall decide that either:

- A. The Agreement shall be made effective without any modifications; or
- B. The Agreement shall be modified prior to being made effective.

33.2 If the Parties agree that the Agreement shall be made effective without any modifications, and if the Parties agree on the Responsiveness Summary, EPA shall transmit a copy of the signed Agreement to the Coast Guard. The Effective Date of the Agreement shall be the date of receipt by the Coast Guard of the signed Agreement from EPA.

33.3 If the Parties agree that modifications are needed and agree upon the modifications and amend the Agreement by mutual consent within sixty (60) days after the expiration of the public comment period, EPA, in consultation with the Coast Guard, will determine whether the modified Agreement requires additional public notice and comment pursuant to any provision of CERCLA. If EPA determines that no additional notice and comment are required and the Parties agree on the Responsiveness Summary, EPA shall transmit a copy of the modified Agreement to the Coast Guard and shall notify it in writing that the modified Agreement is effective as of the date of the notification. If the Parties amend the Agreement within the sixty (60) days and EPA determines that additional notice and comment are required, such additional notice and comment shall be provided consistent with the provisions stated in Subsection 33.1

above. If the Parties agree, after such additional notice and comment has been provided, that the modified Agreement does not require any further modification and if the Parties agree on the Responsiveness Summary, EPA shall send a copy of the mutually agreed upon modified Agreement to the Coast Guard and shall notify it that the modified Agreement is effective. In either case, the Effective Date of the modified Agreement shall be receipt by the Coast Guard from EPA of notification that the modified Agreement is effective.

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

33.5 If, after expiration of the times provided in Subsection 33.4, the Parties have not reached agreement on:

- A. Whether modifications to the Agreement are needed; or
- B. What modifications to the Agreement should be made; or
- C. Any language, any provisions, any Deadlines, any Work to be performed, any content of the Agreement or any Appendices to the Agreement; or
- D. Whether additional public notice and comments are required; or
- E. The contents of the responsiveness summary,

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

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

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

XXXIV. COMMUNITY ADVISORY GROUP (CAG)

34.1 There shall be a Community Advisory Group, co-chaired by the Coast Guard and EPA, consisting of the following members:

- A. A Coast Guard Yard representative,
- B. An EPA representative,
- C. An MDE representative,
- D. The Coast Guard Project Manager, and

The CAG would greatly benefit from the participation of representatives from Curtis Bay Improvement Association, Point Pleasant Community Association, Northern Anne Arundel County Chamber of Commerce, Anne Arundel County Department of Health, Anne Arundel County Department of Inspections and Permits, Anne Arundel County Council, Anne Arundel County Association of Realtors, Chesapeake Bay Foundation, Chesapeake Bay Program, Cianbro Corporation, Tri-Star Freight Systems, Inc., U.S. Department of Transportation, Agency for Toxic Substances & Disease, Solly Elementary School, George Fox Middle School, Northeast High School, MDE Dept of Health and Human Services and the U.S. Department of Health and Human Services. Representatives from these organizations are encouraged to join the CAG.

34.2 The co-chairs shall schedule semi-annual meetings of the CAG unless the Parties agree to meet on another schedule. If possible, meetings shall be held in conjunction with the meetings of the Project Managers. Meetings of the CAG shall be for the purpose of reviewing progress under the Agreement and for the following purposes:

- A. To facilitate early and continued flow of information between the community, and the Coast Guard Yard and the environmental regulatory agencies in relation to restoration actions taken by the Coast Guard under the Coast Guard Environmental Compliance and Restoration Program;
- B. To provide an opportunity for CAG members and the public to review and comment on actions and proposed actions taken by the Coast Guard Yard under the Coast Guard Environmental Compliance and Restoration Program; and,
- C. To facilitate regulatory and public participation consistent with applicable laws.

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

XXXV. EFFECTIVE DATE

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

XXXVI. AMENDMENT OF AGREEMENT

36.1 Except as provided in Section XIII - PROJECT MANAGERS, this Agreement can be amended or modified solely upon written consent of the Parties. Such amendments or modifications shall be in writing and shall become effective on the third business day following the date on which EPA signs the amendments or modifications. The Parties may agree on a different Effective Date. As the last signing Party, EPA will provide notice to the Coast Guard signatory pursuant to Section XIII – PROJECT MANAGERS of the Effective Date.

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

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

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

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

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

XXXVII. SEVERABILITY

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

XXXVIII. TERMINATION AND SATISFACTION

38.1 The provisions of this Agreement shall be deemed satisfied when EPA agrees that the Coast Guard has completed its obligations under the terms of this Agreement. Following EPA Certification of all the response actions at the Site pursuant to Subsection 8.18.A. of Section VIII - WORK TO BE PERFORMED, either Party may propose in writing the termination of this Agreement upon a showing that the requirements of this Agreement have been satisfied. The obligations and objectives of this Agreement shall be deemed satisfied and terminated upon receipt by the Coast Guard of written notice from EPA that the Coast Guard has demonstrated that all the requirements of this Agreement have been satisfied. A Party opposing termination of this Agreement shall provide a written statement of the basis for its denial and describe the actions necessary to grant a termination notice to the proposing Party within ninety (90) days of receipt of the proposal.

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

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

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

AUTHORIZED SIGNATURES

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

IT IS SO AGREED:

By



VADM Clifford I. Pearson, U.S. Coast Guard
Chief of Staff, U.S. Coast Guard

27 AUG 2008

Date

By



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

Date SEP 11 2008

Appendix A
Identified Operable Units

Site 1, Dry Dock Sediments

Site 4, Salvage Lot

Site 7, Former Burn Pit

Site 8, Former Incinerator

Site 9, Reported Bilge Spoils Area

Appendix B

Identified Areas of Concern

Site 5, Creosote Stained Soils

Site 6, Cosmoline Discharge Area

Site 11, Spent Abrasive Blast Grit Area

Site 13, Alanite Acid Tanks

Appendix C

Map of Identified Operable Units and Identified Areas of Concern

