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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

AND THE

UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURAL RESEARCH SERVICE

BELTSVILLE AGRICULTURAL RESEARCH CENTER

IN THE MATTER OF:

U.S. Department of Agriculture  
Agricultural Research Service  
Beltsville Agricultural  
Research Center  
Beltsville, Maryland 20705-2350

FEDERAL FACILITY AGREEMENT  
Under CERCLA Section 120

Administrative  
Docket Number:  
III-FCA-CERC-013

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IN THE MATTER OF:

U.S. Department of Agriculture	)	FEDERAL FACILITY AGREEMENT
Agricultural Research Service	)	Under CERCLA Section 120
Beltsville Agricultural	)	
Research Center	)	
Beltsville, Maryland 20705-2350	)	Administrative
	)	Docket Number:
	)	III-FCA-CERC-013

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

**I. JURISDICTION**

1.1 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 Remedial Investigations and Feasibility Studies (RIs and FSS) pursuant to Section 120(e)(1) of the Comprehensive Environmental Response, Compensation and Liability Act as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499 (hereinafter jointly referred to as CERCLA), 42 U.S.C. Section 9620(e)(1), and Sections 6001, 3008(h) and 3004(u) and (v) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA); (hereinafter jointly referred to as RCRA), and Executive Order 12580;

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

C. The U.S. Department of Agriculture (USDA), through the Administrator, Agricultural Research Service (ARS), in accordance

with Section 1-601 of Executive Order No. 12088 (See, 7 C.F.R. § 2.65(a)(49)), enters into those portions of this Agreement that relate to the RI/FS pursuant to CERCLA Section 120(e)(1), 42 U.S.C. Section 9620(e)(1), RCRA Sections 6001, 3008(h) and 3004(u) and (v), 42 U.S.C. Sections 6961, 6928(h), and 6924(u) and (v), Executive Order 12580, and the National Environmental Policy Act, 42 U.S.C. Section 4321 et seq.;

D. The USDA, through the Administrator, ARS, in accordance with Section 1-601 of Executive Order No. 12088 (See, 7 C.F.R. § 2.65(a)(49)), enters into those portions of this agreement that relate to interim remedial actions and final remedial actions pursuant to CERCLA Section 120(e)(2); 42 U.S.C. Section 9620(e)(2), RCRA Sections 6001, 3006, 3008(h) and 3004(u) and (v), 42 U.S.C. Sections 6961, 6926, 6928(h), and 6924(u) and (v), Executive Order 12580, and the National Environmental Policy Act, 42 U.S.C. Section 4321 et seq.;

## II. DEFINITIONS

2.1 Except as otherwise explicitly stated herein, the definitions provided in CERCLA, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. § 300 et seq., and RCRA, as applicable, shall control the meaning of terms used in this Agreement.

A. "Agreement" shall mean this document and shall include all appendices to this document. All such appendices are integral and enforceable parts of this Agreement.

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

C. "Areas of Concern" or "AOCs" shall mean those geographical areas listed in Appendix A and any additional areas identified in accordance with procedures set forth in Subsection 9.2 of this Agreement. When the Parties agree, AOCs may expand or contract in size as information becomes available indicating the extent of contamination and the geographic area necessary for study.

D. "BARC" shall mean that property presently and previously owned by the United States and controlled by USDA, through ARS, and known as the Beltsville Agricultural Research Center (BARC), located in Prince George's County, Maryland. This definition is for the purpose of describing a geographical area and not a governmental entity and includes all areas of tenant activity located on or at BARC.

E. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.

Section 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, (SARA) Public Law No. 99-499, and any amendments thereto.

F. "Community Relations" shall mean any program designed to inform and involve the public in the Superfund process and to respond to community concerns.

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

H. "Deadlines" shall mean time limitations for the completion of some discrete work task or other event under the terms of this Agreement. A final deadline, established pursuant to Section XI - SITE MANAGEMENT PLAN, shall become part of an enforceable schedule under this Agreement. Failure of USDA to meet an established final deadline shall subject USDA to the assessment of stipulated penalties.

I. "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.

J. "Early Action" shall mean a discrete remedial or removal action implemented prior to or in place of a long-term remedial action where prompt action is necessary and/or appropriate to prevent or minimize the release of hazardous substances, pollutants, and/or contaminants so that they do not migrate or endanger public health, welfare, or the environment. The term designates a response action that will be initiated quickly; it does not refer to the scope or duration of the response action. Early Actions are particularly appropriate where the size and complexity of the long-term remedial action would seriously delay implementation of independent parts of the action or where presumptive remedies are applicable. Early Actions will only proceed in accordance with applicable procedures in the NCP, and the Parties shall make every effort to expedite these procedures.

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

L. "Focused Feasibility Study" or "FFS" shall mean a comparison of a limited number of alternatives which concentrates on a particular contaminated media or a discrete portion of the Site which does not need added investigation in order to progress forward in the remedial process.

M. "Guidance" shall mean any requirements or policy directives published by EPA which are of general application to environmental matters and which are otherwise applicable to USDA's work under this Agreement.

N. "MDE" shall mean the Maryland Department of the Environment, its employees, agents, and authorized representatives.

O. "National Contingency Plan" or "NCP" shall mean the regulations contained in the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, and any amendment thereto.

P. "Operable Unit" or "OU" shall mean a discrete action that comprises an incremental step toward comprehensively addressing site problems. This discrete portion of a remedial response manages migration, or eliminates or mitigates a release, threat of release, or pathway of exposure related to the Site. Operable Units may address geographical portions of the Site, specific Site problems, or initial phases of an action, or may consist of any set of actions performed over time or any actions that are concurrent but located in different parts of the Site. Cleanup of the Site can be divided into a number of Operable Units, depending on the complexity of the problems associated with the Site. The term "Operable Unit" is not intended to refer to the term "operating unit" as used in RCRA. All Operable Units shall be addressed in accordance with the NCP and the requirements of CERCLA.

Q. "Parties" shall mean USDA and EPA.

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

S. "Record(s) of Decision" or "ROD(s)" shall be the public document(s) that select(s) and explain(s) which cleanup alternative(s) will be implemented at the Site, and includes the basis for the selection of such remedy(ies). The basis for any such remedy selection includes, but is not limited to, information and technical analyses generated during the RI/FS and consideration of public comments and community concerns. RODs shall be considered neither primary nor secondary documents and as such shall not be subject to dispute resolution.

T. "Schedule" shall mean the specific timetable associated with any work, task or other sequence of events required pursuant to this Agreement. A schedule may contain one or more final deadlines, which shall be subject to stipulated penalties. Any failure to meet a final deadline may result in the assessment of



stipulated penalties.

U. "Site" shall include BARC and any other areas, contiguous or non-contiguous, where a hazardous substance, hazardous waste, hazardous constituent, pollutant, or contaminant from BARC has been deposited, stored, disposed of, or placed, or has migrated or otherwise come to be located. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9). This definition is not intended to include hazardous substances or wastes intentionally and properly transported offsite BARC by motor vehicle.

V. "Site Management Plan" or "SMP" shall mean a planning document, prepared specifically under Section XI - SITE MANAGEMENT PLAN, that contains a timetable, plan, or schedule which indicates the time and sequence of events. The Site Management Plan will be used as a management tool in planning, reviewing and setting priorities for all response activities at the Site. Deadlines and target dates developed under the terms of this Agreement are listed in the SMP.

W. "Solid Waste Management Unit" or "SWMU", as defined pursuant to RCRA, shall mean any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid and/or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released.

X. "State" shall mean the State of Maryland and all agencies, departments and authorized representatives thereof, including MDE.

Y. "Submit" shall mean the following: timely transmission of any document or notice to be received by a certain date. A document or notice is properly submitted when transmitted in any one of the following respects: (1) the original is provided to the carrier on a next day mail basis no later than the day before it is due to be received; (2) the original is hand-delivered by the due date; (3) the original is sent by certified mail return receipt requested no later than two days before it is due to be received; or (4) a completed copy is sent and received by telefacsimile or by any other means pre-approved by the Parties on the due date, provided the original is subsequently received on or before the next business day.

Z. "Target Dates" shall mean proposed time limitations specifically established or provided for under the terms of this Agreement for Secondary Documents. A Target Date is not an event that is subject to the assessment of stipulated penalties.

AA. "To Be Considered" or "TBC" is any advisory, criteria, or guidance developed by EPA, other federal agency, or state that

may be useful in developing CERCLA remedies.

BB. "USDA" shall mean the U.S. Department of Agriculture, its employees, agents, and authorized representatives.

CC. "Work" shall mean all activities USDA is required to perform under this Agreement, except those required by Section XXVIII-RECORD PRESERVATION.

### III. PARTIES BOUND

3.1 This Agreement shall apply to and be binding upon EPA, USDA, and their employees, agents and authorized representatives. USDA agrees to include notice of this Agreement in any document transferring ownership to any subsequent owners and operators of any portion of BARC in accordance with Section 120(h) of CERCLA and 40 C.F.R. Sections 264.119 and 264.120 and shall notify EPA of any such changes or transfer at least ninety (90) days prior to such transfer. Transfer (sale or lease) of property affected by this paragraph shall not relieve USDA of its applicable obligations under this Agreement.

3.2 USDA shall notify EPA of the identity and assigned tasks of each of its contractors performing work under this Agreement upon their selection. USDA shall provide copies of this Agreement to all contractors performing any work called for by this Agreement and condition performance of all such contracts on compliance with this Agreement. Each Party shall be responsible for ensuring that its contractors comply with the terms and conditions of this Agreement.

3.3 Each Party, upon selection of a contractor and when practicable in advance of the contract performance, shall notify the other Party of the identity and of the assigned tasks of said contractor.

3.4 Each Party shall be responsible for ensuring that its contractors comply with the terms and conditions of this Agreement. Failure of USDA to provide proper direction to its contractors and any resultant noncompliance with this Agreement by a contractor shall not be considered a Force Majeure event.

### 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 the appropriate response actions taken as necessary to protect the public health, welfare and the

environment;

B. Establish a procedural framework and schedule for developing, implementing, and monitoring appropriate Response Actions at the Site in accordance with CERCLA, the NCP, CERCLA guidance and policy, RCRA, RCRA guidance and policy, and applicable federal and State law;

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

D. Ensure USDA's compliance with CERCLA and with RCRA corrective action requirements.

4.2 Specifically, the purposes of this Agreement are to:

A. Establish a process for investigating AOCs and establish requirements for the performance of RIs to determine fully the nature and extent of the threat to public health, welfare and/or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants on or from the Site and to establish requirements for the performance of FSS for the Site to identify, evaluate, and select alternatives for the appropriate remedial action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants or contaminants on or from the Site in accordance with CERCLA, the NCP, and applicable State law;

B. Identify response actions which are appropriate at the Site. To the extent practicable, response actions shall be identified and proposed to the other Party as early as possible prior to formal proposal pursuant to CERCLA, applicable State law, and this Agreement;

C. Identify the nature, objectives 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, the NCP, RCRA, applicable Records of Decision, this Agreement, and applicable State law;

D. Implement the selected response action(s) at the Site in accordance with CERCLA, the NCP, RCRA and applicable State law and meet the requirements of Section 120(e)(2) of CERCLA, 42 U.S.C. Section 9620(e)(2), for an Interagency Agreement (IAG) between the Parties;

E. Assure compliance, through this Agreement, with RCRA and other federal and State hazardous waste laws and regulations for matters covered herein;

F. Coordinate response actions at the Site with the ongoing operations at BARC;

G. Expedite the cleanup process to the extent consistent with protection of public health, welfare and the environment;

H. Provide for MDE involvement in the initiation, development, selection and enforcement of response actions to be undertaken at the Site, including the review of all applicable data as it becomes available and the development of studies, reports, action plans and other deliverables; and identify and integrate ARARs into the response action process in accordance with CERCLA Section 121, 42 U.S.C. Section 9621; and

I. Provide for operation and maintenance (O&M) of any response action(s) selected and implemented pursuant to this Agreement.

## V. FINDINGS OF FACT

5.1 For purposes of this Agreement, the following constitutes a summary of the facts relied upon by the Parties to establish their jurisdiction and authority to enter into this Agreement. None of the facts related herein shall be considered admissions to any person related or unrelated to this Agreement for purposes other than determining the basis of the Agreement or establishing the jurisdiction and authority of the Parties to enter into this Agreement.

A. Operations at BARC began in 1910 when a 475-acre farm was purchased by the United States, through USDA, in order to conduct research on animal husbandry, dairying, and animal diseases. Additional land was purchased over the next few years to expand the research facility. Since the 1930's, research at BARC was expanded to include a wide variety of crop research, including plant breeding, production management, and weed and insect control methods. BARC currently consists of large agricultural plots, buildings to support farming operations, research laboratories and administrative offices. There are over 600 buildings on the premises, including laboratories, shops, greenhouses, barns, office buildings, and a limited number of residential dwellings.

B. The Site consists of over 6,500 acres of land located in the northern tip of Prince George's County, Maryland and principally bounded by Interstate 95 to the west, Interstate 495 and Glenn Dale Road to the south, Telegraph Road to the east and Odell and Sellman Roads to the north. The Site is transected approximately north to south by U.S. Route 1, the CSX Railroad and the Baltimore-Washington Parkway (See Appendix "B").

C. The operations at BARC, both currently and historically, involved research with commercially available herbicides, insecticides and fungicides. This research included application of these chemicals to agricultural plots occupying large portions of BARC. Individual laboratories at BARC also experimented with new formulations and performed tests involving existing chemicals, varying the application rates suggested by the manufacturers. Research laboratories were equipped with numerous types of chemicals, solvents and cleaners typical of laboratory research facilities.

D. BARC is currently a RCRA hazardous waste generator. Hazardous wastes and low-level radioactive wastes are generated by the laboratories and associated research projects. In addition, BARC generates other chemical wastes, including manure, waste bedding and animal carcasses, during routine agricultural operations. BARC also generates municipal-type waste in the form of paper, wood, scrap metal, paints, cleaners, construction debris and vegetative cuttings.

E. Pursuant to a contract with USDA, Apex Environmental, Inc. performed an Environmental Site Assessment (ESA) for the Biodegradable Landfill at the Site. In its December 10, 1990 ESA report, Apex Environmental, Inc. set forth its finding that hazardous substances had been released from the Biodegradable Landfill to ground water, adjacent wetlands, and Indian Creek (see summary of results for the Biodegradable Landfill (#6) below). The levels of contaminants exceeded those considered safe for aquatic life.

F. A Preliminary Assessment (PA) and a Site Investigation (SI) were conducted for USDA by Apex Environmental, Inc. in October, 1990. The subsequent Preliminary Assessment/Site Investigation (PA/SI) report, dated May 24, 1991, addressed 16 Areas of Concern (AOCs) at the Site. The results of the PA/SI, as set forth in the May 24, 1991 report, indicated that the Site may present a significant threat to human health and the environment.

G. A summary of the findings set forth in the 1991 PA/SI report is presented below for the 16 AOCs.

- Experimental Wood Treatment Area (#1)

Soil samples contained antimony, arsenic, chromium, copper, nickel and zinc.

- South Farm Dump (#2)

Soil samples contained chromium, copper, lead, mercury, nickel and zinc. Also, acetone,

dichlorodiphenyldichloroethane ("DDD"), dichlorodiphenylethane ("DDE") and dichlorodiphenyltrichloroethane ("DDT") were detected.

- North Farm Dump (#3)

Soil samples contained arsenic, chromium, DDD, DDE, DDT, toluene and xylenes.

- B033 Washdown Area (#4)

Soil samples contained arsenic, copper, lead, mercury, nickel, zinc, DDE and DDT.

- Herbicide Washdown Area (#5)

Soil samples contained nickel, atrazine and simazine.

- Biodegradable Landfill (#6)

Soil samples contained arsenic, barium, beryllium, copper, lead, magnesium, manganese, mercury, zinc and asbestos. Also numerous PAHs, xylenes, DDT and dieldrin were detected in the landfill. Soil samples collected from outside the landfill area contained PCBs, 1,1,1-trichloroethane and trichloroethene as well as lead and nickel. Aqueous stream samples in Indian Creek, east of the landfill, indicated that releases of 1,1,1-trichloroethane from the landfill had occurred. Stream sediment samples indicated that releases of barium and mercury had occurred. Ground water samples indicated releases of DDD, DDE, DDT, 1,1,1-trichloroethane, trichloroethene, antimony, arsenic, barium, chromium, copper, lead, manganese, nickel and zinc.

- South Dairy Road Spill (#7)

Soil samples contained atrazine, propazine and simazine.

- APU Dump (#8)

Soil samples contained DDE, DDT, xylenes, beryllium, lead and zinc.

- Dump Off Odell Road (#9)

Soil samples contained DDE, DDT, toluene, xylenes,

arsenic, chromium, lead, mercury and zinc.

- B301 Washdown Area (#10)

DDE and beryllium were detected during the SI. Analytical data obtained independently by USDA indicated the presence of other pesticides in the dry-well.

- Dump East of B409 (#11)

Soil samples contained cyanide, DDD, DDE, DDT, xylenes, mercury, nickel and zinc. Sediment samples from the nearby stream indicated that releases of xylenes, nickel and zinc had occurred from this location.

- Chemical Disposal Pits (#12)

Soil samples contained DDD, DDE, DDT, toluene, arsenic, beryllium, chromium, copper, lead, mercury, nickel, silver and zinc. Downgradient ground water samples contained chloroform, 1,2-dichloroethane, DDD, and DDT.

- Hayden Farm Spill (#13)

Soil samples contained simazine and toxaphene.

- Airport Mixing Pad (#14)

Soil samples collected at the source and along drainage channels from the site contained dieldrin, DDD, DDE, DDT, zinc and nickel.

- Test Droplet Area (#15)

Soil samples contained DDD, DDE and DDT, nickel and zinc.

- Chemical Burial At Airport (#16)

Soil samples contained toluene and xylenes.

All of the contaminants listed above, in each of the identified areas, are hazardous substances as defined in §101(14) of CERCLA, 42 U.S.C. §9601(14).

H. Based upon the findings of the PA/SI and the ESA, the Site was evaluated using EPA's Hazard Ranking System (HRS) and proposed for inclusion on the National Priorities List (NPL) on May 10, 1993. On May 31, 1994, the Site was finalized on the

NPL.

I. In 1993, EPA's Environmental Photographic Interpretation Center (EPIC) conducted a review of historical site data and an analysis of historical aerial photographs. EPIC identified a total of ninety-two (92) AOCs at the Site (which included the sixteen (16) AOCs described in subparagraph G, above) that EPA determined required further study and investigation.

J. Since the 1993 EPIC report, and prior to NPL listing, the USDA identified two (2) additional AOCs on the main complex that would require further study and investigation.

K. Appendix A contains a list of all ninety-four (94) AOCs.

L. Under contract with ARS, ENTECH, Inc. is currently conducting an additional review of historical site data, analysis of aerial photographs, and a detailed field reconnaissance. This study is ongoing and will provide additional data on the 94 identified AOCs and may identify additional AOCs. This work is being conducted pursuant to EPA review, comment, and approval authority.

## VI. DETERMINATIONS

6.1 The following constitutes a summary of the determinations relied upon by the Parties to establish their 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 USDA is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21) and is the owner and operator of BARC, as defined in Sections 101(20) and 107(a)(1) of CERCLA, 42 U.S.C. Section 9601(20) and 9607(a)(1). USDA is charged with fulfilling the obligations of the owner/operator under CERCLA.

B. BARC is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).

C. There has been a release or a substantial threat of a release of hazardous substances, pollutants, contaminants, hazardous wastes or constituents at or from BARC.

D. The actions provided for in this Agreement are consistent with the NCP.



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

F. This Agreement provides for the expeditious completion of all necessary response actions.

## VII. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

7.1 The Parties intend to integrate USDA's CERCLA response obligations and any RCRA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes or constituents, pollutants or contaminants into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will achieve compliance with CERCLA, 42 U.S.C. Section 9601 et seq.; satisfy the corrective action requirements of Section 3004(u) and (v) of RCRA, 42 U.S.C. Section 6924(u) and (v), for a RCRA permit, and RCRA Section 3008(h), 42 U.S.C. Section 6928(h), for interim status facilities; and meet or exceed all applicable or relevant and appropriate federal and State laws and regulations, to the extent required by Section 121 of CERCLA, 42 U.S.C. Section 9621 and applicable State law.

7.2 Based upon the foregoing, the Parties intend that any remedial action selected, implemented and completed under this Agreement will be protective of human health and the environment such that remediation of a release performed in accordance with this Agreement shall obviate the need for further corrective action under RCRA (i.e., no further corrective action shall be required) for those releases. The Parties agree that with respect to releases or threatened releases of hazardous waste and constituents, hazardous substances, pollutants or contaminants covered by this Agreement, RCRA shall be considered an applicable or relevant and appropriate requirement ("ARAR") pursuant to Section 121 of CERCLA, 42 U.S.C. Section 9621. Releases of hazardous substances, hazardous constituents or other hazardous waste activities not addressed by this Agreement shall remain subject to all applicable State and federal environmental requirements.

7.3 The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA, and the NCP. The Parties further recognize that on-going hazardous waste management activities at BARC and/or the Site may require the issuance of permits under federal and State laws. This Agreement does not affect the requirements, if any, to obtain such permits. However, if a permit is issued to USDA for ongoing hazardous waste management activities at BARC and/or the Site, EPA shall reference and incorporate any appropriate provisions of this Agreement,

including appropriate schedules, and the provision for appropriate extension of such schedules into such permit. With respect to those portions of this Agreement incorporated by reference into permits, the Parties intend that judicial review of the incorporated portions shall, to the extent review is authorized by law, only be reviewed under the provisions of CERCLA.

#### VIII. SCOPE OF AGREEMENT

8.1 This Agreement is intended to cover the investigation, development, selection, and implementation of response actions for all 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 and ensuring the necessary and proper level of participation by each Party. Although all such releases at the Site have not been fully characterized, the Agreement establishes the system for addressing releases. To accomplish the remediation of all affected areas endangering the public's health, welfare and/or the environment, the Parties will establish schedules, deadlines and target dates as necessary and as information becomes available and, if required, amend this Agreement as needed.

8.2 This Agreement is intended to address and satisfy USDA's corrective action obligations which relate to the release(s) of hazardous wastes, hazardous constituents, pollutants, or contaminants at or from all identified study areas including those which can be classified as SWMUs and Study Areas under future Corrective Action Permits. This Agreement is not intended to limit any requirements under RCRA or any other law or regulation to obtain permits, and is not intended to affect the treatment, storage, or disposal by USDA of hazardous waste. This Agreement is not intended to encompass response to spills of hazardous substances from ongoing operations unless those spills occur in conjunction with CERCLA removal actions or remedial actions pursuant to this Agreement.

8.3 The scope of this Agreement extends to the entire Site at a minimum, as heretofore identified and described in the Federal Register proposing the Site for inclusion on the National Priorities List (NPL). The Site cannot be removed from the NPL unless it is determined, in accordance with CERCLA/SARA, the NCP, and this Agreement, that USDA 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 in discrete locations called Areas of Concern (AOC), or Operable Units (OU) identified at the Site pursuant to this

Agreement.

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

8.5 The Parties agree to use their best efforts to expedite the initiation of response actions at the Site through the use of Early Actions as explained in Subsection 9.7, 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.

#### IX. WORK TO BE PERFORMED

9.1 A. The Parties recognize that background information describing site conditions and contamination exists, additional information must be obtained, and all information must be reviewed prior to developing the Work Plans required by this Agreement. USDA need not halt currently ongoing work but may be obligated to modify or supplement work previously done in order to meet the requirements of this Agreement. It is the intent of the Parties that work done and data generated by USDA prior to the Effective Date of this Agreement be retained and utilized, as appropriate, during any AOC investigation and any related Remedial Investigation (RI) as feasible and in identification of ARARS and applicable agency guidance.

B. Either Party may propose that a portion of the Site be designated as a distinct OU. This proposal must be in writing to the other Party, and must stipulate the reasons for such a proposal. Dispute Resolution may be invoked if the Parties are not in agreement on the proposal of a specific OU. If Dispute Resolution is not invoked within thirty (30) days of the receipt of such a proposal by a Party or if the need for an OU is established through Dispute Resolution, the portion of the Site proposed shall be an OU as that term is defined in Section II - DEFINITIONS, of this Agreement and used throughout this Agreement.

C. Either Party may propose that an established OU be expanded, contracted, or otherwise modified. The proposal must be in writing to the other Party, and must state the reasons for the proposed 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 a Party, or if the need for modifying an OU is established through Dispute Resolution, the OU, as defined in Section II - DEFINITIONS, shall

be modified.

D. The USDA shall evaluate, investigate and report upon the Areas of Concern (AOCs) as defined herein. The investigatory process, outlined in Subsection 9.2 of this Agreement, is intended to provide a simplified investigative method whereby AOCs can be evaluated to determine whether Remedial Investigations are required for these areas. Additional AOC investigations may be initiated at areas later identified by the Parties. The AOC investigation(s) shall be conducted in accordance with an AOC Work Plan as agreed to by the Parties.

E. The AOC investigation(s) shall be conducted in accordance with the requirements set forth in Subsection 9.2 of this Agreement and the deadlines established therein and set forth in Section XI - SITE MANAGEMENT PLAN. AOC Report(s) shall be subject to the review and comment procedures described in Section X - CONSULTATION.

F. USDA shall use methods to expedite cleanup whenever practicable. However, the Parties must ensure that the response actions chosen to expedite cleanup, to the extent practicable, shall contribute to the efficient performance of any anticipated long-term remedial action with respect to the release concerned. Procedures to accelerate cleanup are further defined in this Agreement in Subsection 9.7 - Early Actions.

#### Areas of Concern

9.2 A. Appendix A contains a list of ninety-four (94) Areas of Concern which the Parties agree may pose a threat, or potential threat to human health and the environment. Appendix A shall also be expanded to include any other area at the Site which is established as an AOC after the effective date of this Agreement pursuant to the procedures described in Subsection 9.2.B herein. In the first draft Site Management Plan, USDA shall submit to EPA proposed deadlines for the submission of Work Plan(s) for the AOCs, in accordance with Subsection 11.1 of this Agreement. USDA shall submit to the EPA AOC 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 from the AOCs. The scope of the AOC Work Plan(s), including the number of AOCs to be addressed by each AOC Work Plan, shall be determined by the Parties. The AOC Work Plan(s) shall include a proposed deadline for the submittal of an AOC Report(s) and shall be subject to review and comment procedures described in Section X - CONSULTATION. The schedule and deadlines included in the final AOC Work Plan will be incorporated into the Site Management Plan in accordance with Section XI - SITE MANAGEMENT PLAN of this Agreement.

(1) Upon completion of the work described in each final AOC Work Plan, USDA shall submit to the EPA a draft AOC Report which shall provide the basis for a determination that either: (1) an RI/FS be performed on the area(s) addressed by the AOC Work Plan; or (2) the area(s) does not pose a threat, or potential threat to public health, welfare, or the environment and therefore the area(s) should be removed from further study under this Agreement.

(2) Unless otherwise agreed to by the Parties, the Parties shall determine which (if any) of the AOCs listed in Appendix B or established pursuant to Subsection 9.2 will require an RI/FS within sixty (60) days of receipt by EPA of the final AOC Report(s).

(3) For those AOCs which the Parties agree do not warrant an RI/FS, the USDA shall prepare a brief AOC Close-Out Report. AOC Close-Out Reports are considered as Primary Documents and shall be subject to review and comment procedures described in Section X - CONSULTATION.

(4) The Parties may designate OUs for those AOCs that are to proceed with an RI/FS. If the Parties cannot agree on the determination of whether an AOC(s) shall proceed to an RI/FS, dispute resolution may be invoked in accordance with Section XVIII - DISPUTE RESOLUTION. If an RI/FS is required, USDA shall, within the next draft Amended Site Management Plan, 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 Site Management Plan and will be the enforceable schedule for the submittal of the draft RI/FS.

B. After the effective date of this Agreement, when a Party determines that an area of the Site not previously identified as an AOC in Appendix A hereto may pose a threat, or potential threat, to public health, welfare, or the environment, such Party shall notify in writing the other Party of such determination. Notification of the other Party under this Subsection shall at a minimum include the location of such area on the Site and the reason(s) the Party believes such an area poses a threat, or potential threat, to public health, welfare, or the environment. The Parties shall have thirty (30) days from the date of receipt of notification to discuss the proposal and to reach an agreement regarding whether such area shall be addressed under this Agreement as an AOC. If an agreement on whether to address such an area under the Agreement cannot be reached within thirty (30) days from the date of receipt of notification, either Party can initiate the dispute resolution process pursuant to Subsection 18.4 of this Agreement. If dispute resolution is not invoked within thirty (30) days from the date

of receipt of notification or if an AOC is established through the dispute resolution process, the proposed AOC will be addressed as an AOC in accordance with this section.

C. Any area at the Site which is established as an AOC after the Effective Date of this Agreement pursuant to the procedures described in this Section shall be added to the list of AOCs found in Appendix A as an additional AOC to be investigated and possibly remediated pursuant to the requirements of this Agreement. For any AOCs established pursuant to this Section after the Effective Date of this Agreement, the USDA shall, in the next draft Amended Site Management Plan, propose Deadlines for the submittal of an AOC Work Plan(s). Final deadline(s) shall be approved and adopted in the Site Management Plan in accordance with the procedures described in Section XI - SITE MANAGEMENT PLAN.

#### Remedial Investigation and Feasibility Study

9.3 A. USDA shall develop and submit to EPA for approval an RI/FS Work Plan for each OU as designated by the Parties and shall submit each Work Plan in accordance with the schedule established in the Site Management Plan as described in Section XI - SITE MANAGEMENT PLAN. The RI/FS Work Plans shall be Primary Documents and shall be completed as described above and subject to review and comment procedures described in Section X - CONSULTATION, of this Agreement.

B. For each OU at the Site, USDA agrees it shall develop, implement and report upon a Remedial Investigation (RI) for areas identified in Subsection 9.2. RIs shall be conducted in accordance with the requirements and schedules set forth in the approved RI/FS Work Plan and Site Management Plan. 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 levels will only be determined following completion of the Baseline Risk Assessment.

C. USDA agrees it shall develop, implement and report upon a Feasibility Study (FS) for areas subject to an RI. The FS shall be conducted concurrent with the RI and shall be completed in accordance with the requirements and schedules set forth in the approved RI/FS Work Plan and Site Management Plan. The FS shall meet the purposes set forth in Section IV-PURPOSE, of this Agreement.

#### Remedial Action Selection

9.4 A. Within thirty (30) days after the finalization of the RI/FS (or of the Focused Feasibility Study (FFS), as described in Subsection 9.8) for each OU, USDA shall submit a draft Proposed Plan to EPA for review and comment as described in Section X -

CONSULTATION. Within fourteen (14) days after receiving EPA's acceptance on the Proposed Plan, USDA shall publish a notice of availability and a brief analysis of its Proposed Plan in a major local newspaper of general circulation. USDA shall allow for forty-five (45) days of public review and comment. The public comment period shall begin fourteen (14) days after publication of the proposed plan. During the public comment period, USDA shall make the administrative record available to the public and distribute the Proposed Plan as necessary. USDA will hold a public meeting during the public comment period to discuss the alternatives, including the preferred alternative for each OU. The date and time of the public meeting also shall be announced in a major local newspaper of general circulation. Copies of all written and a summary of oral public comments received within the comment period will be provided to the Parties. Public review and comment shall be conducted in accordance with Section 117(a) of CERCLA, 42 U.S.C. Section 9617(a), and applicable EPA guidance. A Responsiveness Summary will be added by USDA to each ROD, addressing the comments/issues raised during the public comment period.

B. Following public comment, USDA, in consultation with EPA, will determine if the Proposed Plan should be modified based on the comments received. These modifications will be made by USDA and the modified documents will be reviewed by EPA. 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.

C. USDA shall submit its draft ROD to EPA for approval within thirty (30) days following the close of the public comment period, including any extensions, on the Proposed Plan. The draft ROD will include a Responsiveness Summary in accordance with applicable EPA Guidance. Pursuant to CERCLA Section 120(e)(4)(A), 42 U.S.C. Section 9620(e)(4)(A), the EPA and USDA, shall make the final selection of the remedial action(s) for each OU. At a minimum, EPA and USDA shall have thirty (30) days to reach agreement on the selection of a remedy following USDA's submission of a draft ROD. If the EPA and USDA are unable to reach agreement on the selection of the remedy, the EPA Regional Administrator shall select the remedy in accordance with all applicable laws and procedures. EPA shall then prepare and issue the final ROD. EPA shall comply with the public participation requirements of the NCP. RODs shall not be subject to dispute resolution under this Agreement.

D. Notice of the final 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. Section 9617(b).

#### Remedial Design and Remedial Action

9.5 A. The Site Management Plan shall include a target date for submission of a preliminary/conceptual Remedial Design and a thirty (30), sixty (60) and ninety (90) percent design report, which documents shall be prepared in accordance with this Agreement and applicable guidance issued by EPA. The Remedial Design 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 ROD.

B. USDA shall submit a draft RD/RA Work Plan for each OU as a Primary Document to EPA for approval, in accordance with Section X - CONSULTATION. The review and finalization of the RD/RA Work Plan shall proceed in accordance with Section X. The RD/RA Work Plan shall at a minimum contain a proposed schedule for the completion of the Remedial Design and the Remedial Action, a Health and Safety Plan, a Sampling and Analysis Plan, and a Quality Assurance Project Plan. The RD/RA Work Plan also shall: (1) provide the appropriate plans and specifications describing the intended remedial construction; (2) contain an enforceable schedule for the completion of the Remedial Action; and, (3) incorporate target dates and deadlines pursuant to Section XI - SITE MANAGEMENT PLAN. The schedule and deadlines included in the final RD/RA Work Plan will be incorporated into the Site Management Plan in accordance with Section XI - SITE MANAGEMENT PLAN, of this Agreement.

C. USDA shall develop and submit to EPA a draft conceptual design document and a thirty (30), sixty (60) and ninety (90) percent design report in accordance with this Agreement (Section XI) and applicable guidance issued by EPA. These documents are Secondary Documents and will be reviewed in accordance with Section X - CONSULTATION.

D. Following receipt of EPA's comments on the ninety (90) percent design document, USDA shall prepare a final Remedial Design. The final design document shall be a Primary Document and will be reviewed in accordance to Section X - CONSULTATION.

E. After approval of the final Remedial Design, pursuant to Section X - CONSULTATION, USDA shall begin performance of the Remedial Action. The Remedial Action shall be performed and completed in accordance with the final Remedial Action Work Plan, the final Remedial Design, and the schedules therein.

#### Finalization of Remedial Actions

9.6 USDA agrees that it shall submit to EPA a Remedial Action



Report in accordance with the schedule in the approved Site Management Plan and in accordance with Subsection 9.11, following the completion of the Remedial Action(s) for each OU. The Remedial Action Report shall describe the Remedial Action(s) taken and shall detail, and provide an explanation for, any activities that were not conducted in accordance with the final RD and/or RA Work Plan(s). In addition, after the completion of the Remedial Action(s) for each OU, USDA shall submit a draft Long-Term Remedial Action Monitoring Plan (if necessary), and a draft Operation and Maintenance Plan to EPA for review in accordance with the schedule provided in the Site Management Plan. Both the Long-Term Remedial Action Monitoring Plan(s) and the Operation and Maintenance Plan(s) finalized under this Agreement shall contain schedules for completion of the work described therein, and these schedules, upon EPA approval, shall be incorporated into and become an enforceable part of the Site Management Plan.

#### Early Actions

9.7 A. Early Actions (EA), as defined in Section II - DEFINITIONS, will follow a streamlined process and may be addressed under removal or remedial authority as agreed upon by the Parties to this Agreement.

B. When a Party to this Agreement believes that an EA is appropriate to expedite cleanup or is necessary to prevent, minimize or eliminate risks to human health and the environment caused by the release or threatened release of hazardous substances, pollutants, or contaminants, such Party shall notify, in writing, the other Party, of such determination. The Notification to the other Party under this Subsection shall at a minimum include the location of the area where the Party believes an EA is appropriate or necessary, the reasons in support thereof, whether Presumptive Remedies are being proposed, and under what authority an EA can be conducted. In the event that the EA is proposed under removal authority, the Party shall include in the Notification the rationale for determining that a removal action is appropriate pursuant to Section 104 of CERCLA, 42 U.S.C. Section 9604. Either Party may propose an EA for the OU(s) or AOC(s) most suitable for an EA. Within thirty (30) days of receipt of the notification, either Party may request a meeting of the Parties to assist in expediting the decision regarding whether to proceed with an EA. If a dispute(s) arises over whether to initiate an EA under this Agreement, which 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 for resolution pursuant to Section XVIII - DISPUTE RESOLUTION of this Agreement.

### Procedures for Early Remedial Actions

9.8 A. Early Remedial Actions (ERA) are interim or final remedial actions taken to protect human health and the environment from a specific threat and can incorporate the use of Presumptive Remedies.

B. USDA shall implement those ERAs necessary to prevent, minimize, or eliminate risks to human health and the environment caused by the release or threatened release of hazardous substances, pollutants, or contaminants. An ERA is identified, proposed, and implemented prior to or in place of a long-term Remedial Action. An ERA shall attain ARARs to the extent required by CERCLA and the NCP and be consistent with and contribute to the efficient performance of long-term Remedial Action(s) taken at an area or OU. An ERA must be protective of human health and the environment, and comply with CERCLA, the NCP, and State requirements to the extent that they are legally applicable, or relevant and appropriate requirements in accordance with Section 121 of CERCLA, and this Agreement.

C. After the determination that an ERA is necessary at any Site areas, USDA shall, in the next draft Amended Site Management Plan, submit to EPA proposed Deadlines for the submission of Work Plan(s) for the performance of a Focused Feasibility Study (FFS) for the identified area(s). The deadlines will be finalized in accordance with Section XI-SITE MANAGEMENT PLAN. Each FFS Work Plan shall contain a proposed deadline for the submittal of the FFS Report. The schedule and deadlines included in the approved, final FFS Work Plan will immediately be incorporated in the Site Management Plan. The FFS shall include a limited number of proposed ERA 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. USDA shall develop, implement and report upon each FFS in an FFS Report in accordance with the requirements set forth in the approved final FFS Work Plan. Each FFS Work Plan and FFS Report shall be subject to review and comment as described in Section X - CONSULTATION.

D. Within thirty (30) days of EPA approval of a final FFS Report, USDA shall prepare and submit a Proposed Plan for the ERA. USDA shall make the Proposed Plan for the ERA available for public review and comment in accordance with Subsection 9.4A. As required, USDA shall follow the steps outlined in Subsections 9.4 through 9.6.

### Early Actions under Removal Authority

9.9 A. Early Actions under removal authority can be in the form of Emergency Removals, Time-Critical Removals, and Non-Time-Critical Removals. Nothing in this Agreement shall alter USDA's

or EPA's authority with respect to removal actions conducted pursuant to Section 104 of CERCLA, 42 U.S.C. Section 9604.

B. If during the course of 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 USDA undertake actions to abate the danger and threat which may be posed by such actual or threatened release. All removal actions conducted on the Site shall be conducted in a manner consistent with this Agreement and the NCP and 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 actions by USDA shall be submitted to the 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 or threatened release of hazardous substances, pollutants, or contaminants at or from the Site;
- (c) Documentation that the action is consistent with the NCP 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) In the case of a non-time critical removal, preparation of an Engineering Evaluation/Cost Analysis (EE/CA), containing a screening and evaluation of several action alternatives which address the actual or threatened release at or from the Site, which screening shall be based on criteria as provided in CERCLA and the NCP, such as cost, feasibility, and effectiveness, to evaluate the alternative actions; and
- (e) A work plan and schedule for the proposed action.

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

C. If an imminent health hazard exists or is threatened (e.g., a drinking water well containing any contaminant at concentrations greater than any federal or Maryland drinking water action level), or if an activity conducted pursuant to this Agreement that is creating a danger to the public health or welfare or the environment is discovered by either Party during the efforts covered by this Agreement, the discovering Party will notify the other Party, and USDA will take immediate action to promptly notify all appropriate State and local agencies,

potentially affected persons and officials in accordance with 10 U.S.C. 2705(a). USDA will expeditiously take appropriate measures to protect all persons affected.

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

E. For emergency removal actions, EPA will be the lead agency and at its discretion will either perform the necessary action(s), or direct and provide oversight of another party performing the action(s). Such actions may be conducted at any time, either before or after the issuance of a ROD.

#### Supplemental Response Action

9.10 A. 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. A supplemental response action can be in the form of either a long-term remedial action pursuant to Subsections 9.3 through 9.6, or as an Early Action pursuant to Subsections 9.7 through 9.9. A supplemental response action can be taken regardless of whether the determination of the need for such supplemental response action is based on a Periodic Review conducted pursuant to Section XVII - PERIODIC REVIEW, or on some other source of information.

B. A supplemental response action shall be undertaken only when 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,

(3) Either of the following conditions is met for any determination made pursuant to Subsections (1) and (2) above:

(a) 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

(b) 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.

C. If, subsequent to the finalization of the ROD, either Party concludes that a supplemental response action is necessary, based on the criteria set forth in Subsection 9.10B, such Party shall promptly notify the other Party of its conclusion in writing. The notification shall specify the nature of the proposed supplemental response action and the new information on which it is based. The Project Managers shall confer and attempt to reach consensus on the need for and nature of such an action within thirty (30) days of receipt of such notice. If within that thirty (30) day period, the Project Managers have failed to reach consensus, either Party may notify the other Party in writing within ten (10) days thereafter that it intends to invoke dispute resolution. If the Project Managers are still unable to reach consensus within fourteen (14) days of the issuance of such notice, the question of the need for the supplemental response action shall be resolved through dispute resolution.

D. 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 9.10B, USDA shall propose, for EPA approval, a deadline for submittal of the Supplemental Work Plan(s) and a schedule for performance of the work thereunder to the EPA in the next draft Amended Site Management Plan.

E. After EPA approval on a Supplemental Work Plan, USDA shall conduct a supplemental response action in accordance with procedures set forth in this Agreement.

#### EPA Certification

9.11 A. When USDA determines that the final remedial action(s) for a given OU has been completed in accordance with the requirements of this Agreement, it shall so advise EPA in writing, and shall schedule and conduct a close-out inspection to be attended by USDA and EPA. Within thirty (30) days of each close-out inspection, USDA will submit to EPA a Remedial Action Report. The Remedial Action Report shall certify that all remedial actions taken at a given OU have been completed in full satisfaction of the requirements of this Agreement; shall request EPA certification of the completion of all remedial actions at

the given OU; and, shall be signed by the Area Director, Beltsville Area, Agricultural Research Service, or his/her designee. The Remedial Action Report shall contain a brief summary of the OU, the remedial action(s) undertaken for this OU, performance standards and construction quality control, and any noteworthy observations made during the close-out inspection. Within ninety (90) days of EPA's receipt of USDA's request for certification, EPA will advise USDA in writing that:

(a) EPA certifies that the remedial action(s) has been completed in accordance with CERCLA, the NCP, and this Agreement, based on conditions known at the time of certification; or

(b) EPA denies USDA's request for certification, stating in full the basis of its denial, and detailing the supplemental response actions needed for remedial action completion and certification.

B. If EPA denies USDA's request for certification that all remedial actions at a given OU have been completed in accordance with this Agreement or requests additional work be performed to satisfy the requirements for certification, USDA may invoke Section XVIII - DISPUTE RESOLUTION, within twenty (20) days of receipt of EPA's written denial to review EPA's determination on certification or additional work needed. If EPA's denial of certification is upheld in dispute resolution, USDA will perform the requested supplemental response actions in accordance with the schedule specified by EPA;

C. In the event that a supplemental response action is determined to be necessary, USDA shall, within thirty (30) days after USDA's receipt of the written description of the supplemental response actions required, submit to EPA a Work Plan which contains a schedule for completion of the supplemental response actions. This schedule will be incorporated into the Site Management Plan. After performing such supplemental response actions, USDA may resubmit a request for certification to EPA. EPA shall then grant or deny certification pursuant to the process set forth in this Section.

## X. CONSULTATION

### Review and Comment Process for Draft and Final Comments

#### 10.1 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 documents specified herein as either primary or

secondary documents. In accordance with CERCLA Section 120, 42 U.S.C. Section 9620, and 10 U.S.C. Section 2705, USDA will normally be responsible for issuing primary and secondary documents to EPA. 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 subsections 10.2 through 10.10 below. The designation of a document as "draft" or "final" is solely for purposes of consultation with EPA 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 statutes or regulations pursuant thereto.

#### 10.2 General Process for Document Review:

A. Primary documents include those documents that are major, discrete portions of AOC, RI/FS or RD/RA activities. Primary Documents are those reports specified in Subsection 10.3A below and initially shall be prepared by USDA in draft form and submitted to EPA for review and comment. Following receipt of comments on a particular draft Primary Document, the Parties shall confer to discuss the issues and comments and to informally resolve any disputed issues. Following this informal dispute resolution period, USDA will respond to the comments received (discussed) and issue to EPA a draft final Primary Document which is then subject to formal dispute resolution. USDA shall submit a final Primary Document thirty (30) days after either issuance of the draft final document or within thirty-five (35) days of a decision pursuant to the Dispute Resolution process. The draft final Primary Document will become the final Primary Document either 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 USDA in draft subject to review and comment by EPA. Although USDA will respond to 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.

#### 10.3 Primary Documents:

A. All Primary Documents shall be prepared in accordance with the NCP and applicable guidance issued by EPA. USDA shall complete and submit draft reports for the following Primary Documents to EPA for review and comment in accordance with the provisions of this Section:

- (1) AOC Work Plans
- (2) AOC Reports (including AOC Closeout Reports)
- (3) Statements of Work
- (4) RI/FS and FFS Work Plans (including Baseline Risk Assessments)
- (5) RI Reports (including Baseline Risk Assessments)
- (6) FS and FFS Reports
- (7) Proposed Plans
- (8) Final Remedial Designs
- (9) RD/RA Work Plans
  - Remedial Action Sampling Plan
  - Remedial Action Construction Quality Assurance Plan
  - Remedial Action Environmental Monitoring Plan
- (10) Community Relations Plan
- (11) Supplemental Work Plans
- (12) Operation and Maintenance Plans
- (13) Remedial Action Reports
- (14) Removal Action Memorandums
- (15) Engineering Evaluation/Cost Analysis Reports
- (16) Non-Time Critical Removal Action Plans
- (17) Site Management Plan

B. Only the draft final reports for the Primary Documents identified above shall be subject to dispute resolution in accordance with Section XVIII - DISPUTE RESOLUTION of this Agreement. USDA shall complete and submit draft Primary Documents in accordance with the schedule and deadlines established in Section XI - SITE MANAGEMENT PLAN, of this Agreement. These deadlines are enforceable and if not complied with can subject USDA to stipulated penalties.

#### 10.4 Secondary Documents:

A. All Secondary Documents shall be prepared in accordance with the NCP and applicable guidance issued by EPA. USDA shall complete and submit draft reports for the following Secondary



Documents to EPA for review and comment in accordance with the provisions of this Section:

- (1) Sampling and Data Results
- (2) Well Closure Methods and Procedures
- (3) Conceptual Design Document
- (4) 30 Percent Design Report
- (5) 60 Percent Design Report
- (6) 90 Percent Design Report
- (7) Periodic Review Assessment Reports
- (8) Health and Safety Plans
- (9) Pilot/Treatability Study Work Plans
- (10) Pilot/Treatability Study Reports
- (11) Any other document as agreed upon by the Parties to this Agreement

B. Although EPA may comment on the draft reports for the Secondary Documents listed above, such documents shall not be subject to dispute resolution except as provided by Subsection 10.2 hereof. Target dates shall be established for the completion and transmission of draft Secondary Documents pursuant to Section XI - SITE MANAGEMENT PLAN, of this Agreement.

#### 10.5 Meetings of the Project Managers:

The Project Managers shall meet or confer approximately every thirty (30) days, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the Site on the Primary and Secondary Documents. Prior to preparing any draft report specified in Subsections 10.3 and 10.4 above, the Project Managers shall confer to discuss the documents or report results in an effort to reach a common understanding, to the maximum extent practicable, with respect to the contents to be presented in the draft documents. At least one week prior to any scheduled Project Manager meeting, USDA will provide to the EPA a draft agenda and summary of the status of the work subject to this Agreement. These status reports shall include, when applicable:

- (1) copies of all results of sampling tests (including screening data when requested by EPA) and all other data (or summary thereof) received or generated by USDA during the

reporting period consistent with the limitations of Subsection 30.1;

(2) summaries of 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 or anticipated delays, including delays associated with funding issues, the reasons for such delays, concerns over possible SMP implementation or problems that arise in the execution of a Work Plan during the quarter and any steps that were taken to alleviate the delays or problems.

The minutes of each Project Manager meeting, which will be kept by USDA, with the meeting agenda and all documents discussed during the meeting (which were not previously provided as attachments), will be sent to the EPA Project Manager within twenty-one (21) days after the meeting.

#### 10.6 Identification and Determination of Potential ARARs:

A. Prior to the issuance of draft Primary Documents or Secondary Documents that consist of, or include ARAR determinations, the Project Managers shall meet to identify and propose, to the best of their ability, all potential ARARs pertinent to the report being addressed. USDA shall request from MDE in writing that MDE identify all potential State ARARs, as early in the remedial process as possible, as required by CERCLA Section 121(d)(2)(A)(ii), 42 U.S.C. Section 9621(d)(2)(A)(ii), and the NCP. Draft ARAR determinations shall be prepared by USDA in accordance with CERCLA Section 121(d)(2), 42 U.S.C. Section 9621(d)(2), the NCP, and pertinent guidance issued by EPA, that is consistent with CERCLA and the NCP.

B. In identifying potential ARARs, the Parties recognize that actual ARARs can be identified only on a site-specific basis and that ARARs depend on the specific hazardous substances, pollutants and contaminants at a site, the particular actions proposed as a remedy and the characteristics of a site. The Parties recognize that ARAR identification is necessarily an iterative process and that potential ARARs must be reexamined throughout the RI/FS process until a ROD is issued. Requirements that are promulgated or modified after ROD signature must be attained when they are determined to be applicable or relevant and appropriate and necessary to assure that the remedy will protect human health and the environment. Components of the remedy not described in the ROD must attain requirements that are identified as applicable or relevant and appropriate at the time the amendment to the ROD or the explanation of significant difference describing the component is signed.

C. ARARs shall apply under this Agreement in the same manner and to the same extent that ARARs are applied to a non-federal facility pursuant to CERCLA Section 120(a)(1) and the NCP.

#### 10.7 Review and Comment on Draft Documents:

A. USDA shall complete and submit each draft Primary Document to EPA on or before the corresponding deadline established pursuant to Section XI - SITE MANAGEMENT PLAN of this Agreement. USDA shall complete and submit each Secondary Document in accordance with the target dates established for the issuance of such reports.

B. Unless the Parties mutually agree to another time period, all draft reports shall be subject to a sixty (60) day period for review and comment. The Site Management Plan shall be reviewed and commented on in accordance with Section XI - SITE MANAGEMENT PLAN. Review of any document by EPA may concern all aspects of the report (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP, applicable State statutes and regulations, and pertinent policy or guidance issued by EPA. To expedite the review process, USDA shall make an oral presentation of the Primary Document(s) to the Parties at the next scheduled meeting of the Project Managers subsequent to the submittal of the draft document. Comments by EPA shall be provided with adequate specificity so that USDA may respond to the comments and, if appropriate, make changes to the draft report. The EPA shall refer to any pertinent sources of authority or references upon which its comments are based, and upon request of USDA, EPA shall provide a copy of the cited authority or reference.

C. If, upon determination that it will not complete a formal review of documents within the time allowed, EPA may extend the sixty (60) day comment period for an additional twenty (20) days by written notice to the other Party prior to the end of the initial comment period. In appropriate circumstances, this time period may be further extended in accordance with Section XII - EXTENSIONS, hereof. On or before the close of the comment period, EPA shall submit written comments to USDA.

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

E. In commenting on a draft document which contains a proposed ARAR determination, EPA shall include a reasoned

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

F. Following the close of any comment period for a draft report, USDA shall give full consideration to all written comments on the draft report submitted during the comment period. Within thirty (30) days of the close of the comment period on a draft Secondary Document, USDA shall submit 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, USDA shall submit to EPA a draft final Primary Document, which shall include USDA's response to all written comments received within the comment period. Before the issuance of a draft final report and within the thirty (30) day response to comment period, the Parties shall confer to informally attempt to resolve any disputed issues. While the resulting draft final report shall be the responsibility of USDA, it shall be the product of consensus to the maximum extent possible.

G. USDA may extend the 30-day period for either responding to comments on a draft report or for issuing the draft final Primary Document for an additional twenty (20) days by requesting EPA to grant an extension, at its discretion, not to exceed twenty (20) days for final draft documents. In appropriate circumstances, this time period may be further extended in accordance with Section XII - EXTENSIONS, hereof.

#### 10.8 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 XVIII - DISPUTE RESOLUTION.

B. When dispute resolution is invoked on a draft final Primary Document, all elements of the work required by this agreement which are not affected by the dispute shall continue and be completed in accordance with the applicable deadline or schedule.

#### 10.9 Finalization of Reports:

The draft final Primary Document shall serve as the final Primary Document after appropriate opportunity for review and comment by EPA, if no party invokes dispute resolution on the draft final document or, if invoked, at the completion of the dispute resolution process should USDA's position be sustained. If USDA's determination is not sustained in the dispute resolution process, USDA shall prepare, within thirty (30) days, a revision of the draft final report which conforms to the

results of dispute resolution. This time period may be extended where appropriate in accordance with Section XII - EXTENSIONS, hereof.

Upon incorporation of EPA's comments into a draft final report, EPA's written approval of the final report must be obtained before the document can be considered final.

#### 10.10 Subsequent Modification of Final Report:

Following finalization of any primary report pursuant to Subsection 10.9 above, either Party may seek to modify the report, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in Subparagraphs A and B below.

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

B. In the event that an agreement is not reached by the Project Managers on the need for a modification, either Party may invoke dispute resolution to determine if such modification should be allowed. Modification of a report shall be required only upon a showing that:

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

(2) The requested modification could be of significant assistance in evaluating impacts on the public health, welfare, or the environment, or in evaluating the selection of remedial alternatives.

C. Nothing in this section shall alter EPA's ability to request the performance of supplemental response actions which were not contemplated by this Agreement. USDA's obligation to perform such work must be established by either a modification of a report or document or by amendment to this Agreement. USDA agrees to perform such supplemental response actions pursuant to the terms of this Agreement.

## XI. SITE MANAGEMENT PLAN

11.1 USDA shall develop a Site Management Plan (SMP) which shall

be used as a management tool in planning, reviewing and setting priorities for all response activities at the Site. The SMP shall be a five year planning device and shall contain a timetable, plan or schedule which indicates the time and sequence of events that will occur at the Site over the ensuing five fiscal years. To ensure that the SMP continues to function as a five year planning device that is reflective of both ongoing and planned future activities, USDA shall update the SMP on an annual basis. Each annual update shall amend, revise and/or supplement the SMP, as appropriate, so that the SMP continues to address events that will occur at the Site over the following five fiscal years. For the purpose of the SMP, a fiscal year is the yearly time frame used by the United States Government that commences on October 1st of a given calendar year and ends on September 30th of the following calendar year.

11.2 The SMP shall, at a minimum:

A. identify each OU and AOC at the Site and describe the nature of the proposed action(s) at each area, including those actions which are necessary to mitigate any immediate threat to human health, welfare or the environment;

B. list the schedules and the deadlines for all activities and response actions which are ongoing, planned and/or proposed over the course of the ensuing five fiscal years, including:

- a schedule for the initiation, duration and completion of any planned response action(s) at the Site;
- enforceable deadlines for the submittal of primary documents (listed herein at Subsection 10.3) over the ensuing five fiscal years;
- target dates for the submittal of all secondary documents (listed herein at Subsection 10.4) over the ensuing five fiscal years;
- existing enforceable deadlines as established in this Agreement.

C. incorporate any deadlines contained in previously approved Work Plans (all schedules approved in future Work Plans shall become enforceable when approved and shall be incorporated into the SMP on an annual basis);

D. include projected schedules for all known response activities planned for subsequent (more than five years into the future) fiscal years which shall be used for planning purposes only and shall not be enforceable under this Agreement until approved by EPA and incorporated as deadlines into an amended SMP

covering those future years. The work projections shall include required 5-year Periodic Assessments and Operation and Maintenance Activities.

11.3 Within ninety (90) days of the effective date of this Agreement, USDA shall submit to EPA a Draft SMP for fiscal Years 1998 through 2002 (FY 1998-02). The Draft SMP for FY 1998-02 shall include each of the items identified in Subsection 11.2 herein. The proposal of deadlines shall be based upon the assumption that all response actions for the Site will be submitted during the development of the President's budget for FY 1998 and will be fully funded.

11.4 The Parties shall meet as necessary to discuss issues pertaining to the Draft SMP for FY 1998-02. EPA shall review the Draft SMP and provide comments to USDA. Within thirty (30) days of USDA receipt of EPA comments on the Draft SMP, and in accordance with Subsections 10.7F and G herein, USDA shall revise the Draft SMP, as appropriate, and shall transmit to EPA a Draft Final SMP for FY 1998-02. In the event of any disagreement, or if unresolved issues remain between the Parties following receipt of the Draft Final SMP, such disagreements and/or disputes shall be resolved pursuant to Section XVIII - DISPUTE RESOLUTION of this Agreement.

11.5 USDA shall submit a Final SMP for FY 1998-02 within thirty (30) days after USDA has received official notification of its budget appropriation for FY 1998, or within thirty (30) days after issuance of the draft final SMP if the FY 1998 budget is already in place. USDA may propose to modify the content of the prior Draft Final SMP for FY 1998-02 on the basis of the actual funding levels contained within its FY 1998 budget appropriation. However, any such proposed modification shall be explained and justified fully in a cover letter, signed by the Area Director, Beltsville Area, Agricultural Research Service, which shall accompany the Final SMP for FY 1998-02. If EPA disagrees with the Final SMP and/or requests a further explanation of its content, the Parties shall meet within thirty (30) days of EPA's receipt of the Final SMP for FY 1998-02 to discuss and attempt to resolve their differences. If the Parties fail to resolve their differences within the thirty (30) day period, the matter immediately shall be submitted for dispute resolution pursuant to Section XVIII - DISPUTE RESOLUTION. Within thirty (30) days after the close of the review period (if all differences have been resolved by and between the Parties) or the conclusion of Dispute Resolution, USDA shall revise and reissue the Final SMP as appropriate. Deadlines established in the Final SMP are enforceable and subject to stipulated penalties in accordance with Section XIX - STIPULATED PENALTIES of this Agreement.

11.6 Subsequent to approval of the Final SMP for FY 1998-02, and on an annual basis thereafter, USDA shall be required to amend

the existing SMP. On or before June 15, 1998, and no later than June 15th of each subsequent fiscal year, USDA shall submit to EPA a Draft Amended SMP for the next five fiscal years (i.e., FY 1999-03, FY 2000-04, etc.) which shall include each of the items identified in Subsection 11.2 herein. Each subsequent Draft Amended SMP shall identify and incorporate any new AOCs, or OUs at the Site and shall include outstanding deadlines approved in the previous SMP(s). Such outstanding deadlines shall be re-evaluated by the Parties on the basis of Site conditions, funding levels, and other relevant factors. Within each Draft Amended SMP, USDA shall: propose the modification, if any, of previously established deadlines; propose new deadlines for the completion of Primary Documents; and revise Target Dates for the submission of Secondary Documents to be submitted in the fiscal years covered by the Amended SMP. The proposal of new deadlines shall be based upon the assumption that specific cost estimates for all response actions at the Site have been submitted to Congress by USDA during the development of the President's annual budget, in accordance with Section XXV - FUNDING of this Agreement, and that USDA's budget request will be fully funded.

11.7 Each subsequent Draft Amended and Draft Final Amended SMP shall be reviewed and discussed, comments shall be provided, and disputes, disagreements and/or requests for further explanations resolved, in the same manner and according to the same procedures and time frames established in Subsection 11.4 herein for review of the Draft and Draft Final SMP's for FY 1998-02.

11.8 On an annual basis, USDA shall submit a Final Amended SMP to EPA. Each Final Amended SMP shall be submitted within thirty (30) days after USDA has received official notification of its upcoming fiscal year budget appropriation. In the event that USDA proposes to modify the content of the prior Draft Final Amended SMP as a result of the actual funding levels contained within its annual budget appropriation, any such proposed modification, shall be explained and justified fully in the manner set forth in Subsection 11.5 herein.

11.9 Final deadlines established pursuant to this Section XI shall be published by EPA in accordance with Section 120(e)(1) of CERCLA, 42 U.S.C. Section 9620(e)(1).

## XII. EXTENSIONS

12.1 A deadline or a schedule may be extended in accordance with Subsection 12.5 upon receipt of a timely request for extension of such deadline or schedule and when good cause exists for the requested extension as described in Subsection 12.2 below. Any request for extension shall be submitted in writing and shall specify:



- A. The deadline or the schedule that is sought to be extended;
- B. The length of the extension sought;
- C. The good cause(s) for the extension;
- D. Any related deadline or schedule, and the extent to which it would be affected, if the extension were granted; and
- E. All efforts undertaken to comply with the deadline or schedule.

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

- A. An event of force majeure, as defined in Section XX - FORCE MAJEURE;
- B. A delay caused by another Party's failure to meet any requirement of this Agreement;
- C. A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;
- D. A delay caused, or which is likely to be caused, by the grant of an extension in regard to another deadline or schedule;
- E. Any other event or series of events mutually agreed to by the Parties as constituting good cause.

12.3 Absent the agreement of the Parties that there is good cause to justify an extension, 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 respective position on the request. If a Party does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

12.5 If the other Party agrees that the requested extension is warranted, the requesting Party shall extend the affected deadline or schedule accordingly. If the other Party does not agree as to whether 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. If there is agreement between the Parties that part of

the requested extension is warranted, USDA shall extend the affected deadline or schedule in accordance with the agreement, and the remaining part of the requested extension 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 nonconcurrence with the requested extension, the requesting Party may invoke dispute resolution.

12.7 A written, timely and good faith request by USDA 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 USDA shall each designate a Project Manager and an Alternate Project Manager and shall notify the other Party of the name, address, telephone number, and fax number of both their Project Manager and Alternate Project Manager. The Project Managers shall be responsible on a daily basis for assuring proper implementation of all work performed under the terms of the Agreement. To the maximum extent practicable, communications between USDA and EPA on all documents, including reports, comments and other correspondence concerning the activities performed pursuant to this Agreement, shall, to the maximum extent possible, be directed through the Project Managers. The Alternate Project Manager shall be authorized to exercise the authority of the Project Manager in his or her absence.

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

13.3 The Parties' Project Managers shall meet or confer informally as necessary and as provided in Section X - CONSULTATION, of this Agreement. Although USDA 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 AOC, RI/FS or RD/RA progress, and attempting to resolve disputes informally.

13.4 Necessary and appropriate adjustments to deadlines or schedules may be proposed by either Party and must be approved orally by the Project Manager of the other Party to be effective. Within five (5) working days following a modification, the Party which requested the modification shall prepare a memorandum detailing the modification and the reasons therefore, and shall provide a copy of the memorandum to the other Party for signature and return.

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 this Agreement. The minor field modifications proposed under this Part must be approved orally by the other Party's Project Manager and, in order to become effective must be followed by a written confirmation within seven (7) days of the oral approval. Unless otherwise agreed by the Project Managers, USDA's Project Manager shall be responsible for providing written notification of approved minor field modifications. No such work modifications can be so implemented if an increase in contract cost will result without the authorization of USDA's Contracting Officer.

13.6 Modifications of deadlines, schedules and/or work not provided for in Subsections 13.4 and 13.5 of this Section must be approved by both Project Managers to be effective. If both Parties orally agree to the modification, within five (5) business days thereafter, 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 Project Manager of the other Party for signature and return. If agreement cannot be reached on the proposed modification of work, dispute resolution as set forth in Section XVIII - DISPUTE RESOLUTION, shall be available. Within five (5) business days following any modification resulting from the resolution of a dispute initiated under this Section, the Project Manager who initially requested the modification shall prepare a memorandum detailing the modification, if any, 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. Should the implementation of any work modification result in increased contract costs to USDA, the prior authorization of USDA's Contracting Officer must be obtained prior to the actual implementation of any such modification.

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 Each Party shall submit in accordance with Section II, Subsection 2.1.Y - DEFINITIONS Primary and Secondary Documents and all notices required herein to the other Party specified in Subsection 13.9 below by the deadlines established under Section XI - SITE MANAGEMENT PLAN. Time limitations shall commence upon receipt. Unless otherwise specified by the EPA Project Manager, USDA shall provide to EPA three (3) and two (2) copies, respectively, of each Primary and Secondary Document.

13.9 As appropriate, notice to the individual Parties shall be provided under this Agreement to the following addresses, telephone and telefacsimile numbers:

A. For USDA: Beltsville Agricultural Research Center  
Attn: Sr. Remedial Project Manager  
SOHES/ARS  
10300 Baltimore Boulevard  
Building 003, Room 117  
Beltsville, Maryland 20705-2350  
Phone: (301) 504-5557  
Fax: (301) 504-5857

B. For EPA: EPA Region III (3HW50)  
Attn: BARC Project Manager  
Federal Facilities Branch  
841 Chestnut Building  
Philadelphia, PA 19107  
Phone: (215) 566-3371  
Fax: (215) 566-3001

13.10 The Project Managers shall represent their respective Parties with regard to the day-to-day field activities at the Site. USDA's Project Manager or other designated employee of USDA 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. For all times that such Work is being performed, USDA's Project Manager shall inform USDA and the EPA Project Manager of the name and telephone number of any designated employee responsible for supervising the Work. 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.

13.11 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 and Quality Assurance Project Plans ("QAPPs");

(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 XXVIII - RECORD PRESERVATION; and

(d) Determining the form and specific content of the Project Manager meetings.

13.12. 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) working 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 at BARC (or any areas therein), pursuant to Section 120(j) of CERCLA, 42 U.S.C. Section 9620(j). Such an Executive Order may exempt such area(s) from the requirements of CERCLA for a period of time not to exceed one (1) year after the issuance of that Order. USDA shall obtain access to and perform all actions required by this Agreement, within all areas inside BARC, which are not the subject of any such Executive Order issued by the President.

14.2 The EPA reserves any statutory right it may have to challenge any order or exemption specified in Subsection 14.1 relieving USDA of its obligations to comply with this Agreement.

#### XV. ACCESS

15.1 The EPA, and/or its duly authorized representative, 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 USDA, its contractors and lessees in carrying out the activities under this Agreement; conducting, with prior notice to USDA, tests which EPA deem necessary; assessing the need for planning additional remedial response actions at the Site; and verifying data or information submitted to EPA. USDA shall honor all reasonable requests for access to the Site made by EPA, upon presentation of credentials showing the bearers' identification and that he/she/they are employees or agents of EPA. USDA's Project Manager or his/her designee will provide briefing information, coordinate access and provide escorts to restricted or controlled-access areas, arrange for passes, if necessary, and coordinate any other access requests which arise. USDA shall use its best efforts to ensure that conformance with the requirements of this paragraph do not delay access.

15.2 USDA shall provide an escort whenever EPA requires access to restricted areas of BARC for purposes consistent with the provisions of this Agreement. EPA shall provide reasonable notice (which, if practical, may be 48 hours advance notice) to USDA's Project Manager to request any necessary escorts for such restricted areas. USDA shall not require an escort to any area of this Site unless it is a restricted or controlled-access area. Upon the effective date of this Agreement, USDA shall promptly provide a map and written list of current restricted or controlled-access areas.

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

15.4 Upon a denial of any aspect of access, USDA 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, USDA shall provide a written explanation for the denial. To the extent possible, USDA shall expeditiously provide a recommendation for accommodating the requested access in an alternate manner.

15.5 USDA shall ensure that all response measures, groundwater 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 USDA or leased by USDA to any other entity or (b) are in any manner under the control of USDA or any lessees or agents of USDA, shall not be impeded or impaired in any manner by any transfer of title or change in occupancy or any other change in the circumstances of such areas.

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

## XVI. PERMITS

16.1 The Parties recognize that under Sections 121(d) and 121(e) (1) of CERCLA, 42 U.S.C. Sections 9621(d) and 9621(e) (1), and the NCP, portions of the response actions selected and carried out pursuant to this Agreement entirely onsite, where such response actions are selected and carried out in accordance with CERCLA, are exempt from the procedural requirement to obtain federal, State, or local permits. However, USDA must satisfy all the applicable or relevant and appropriate federal and State standards, requirements, criteria, or limitations which would have been included in any such permit.

16.2 When USDA proposes a response action, other than an emergency removal action as defined in the NCP, to be conducted entirely on the Site, which in the absence of Section 121(e) (1) of CERCLA and the NCP would require a federal, State or local permit, USDA shall include in its submittal to EPA:

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

At EPA's discretion, EPA may provide its written position, with respect to 16.2B and C above.

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

16.4 USDA shall notify EPA in writing of any permits required for any off-site activities it plans to undertake at the Site as soon as it becomes aware of the need for off-site activities. USDA shall apply for all such permits and provide EPA with copies of all such permits, applications, other documents related to the permit process and final permits.

16.5 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, USDA agrees to notify EPA of its intention to propose modifications to this Agreement to obtain conformance with the permit, or lack thereof. Notification by USDA of its intention to propose modifications shall be submitted within seven (7) calendar days of receipt by USDA of notification that: (1) a permit will not be issued; (2) a permit has been issued or reissued; or (3) a final determination with respect to any appeal related to the issuance of a permit has been entered. Within thirty (30) days from the date it submits its notice of intention to propose modifications to this Agreement, USDA shall submit to EPA its proposed modifications to this Agreement with an explanation of its reasons in support thereof.

16.6 EPA shall review USDA's proposed modifications to this Agreement in accordance with Section XXXIV - AMENDMENT OR MODIFICATION OF AGREEMENT, of this Agreement. If USDA 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.

16.7 During any appeal by either Party of any permit required to implement this Agreement or during review of any proposed modification(s) to the permit, USDA shall continue to implement those portions of this Agreement which can be reasonably implemented independent of final resolution of the permit issue(s) under appeal. However, as to work that cannot be so implemented, any corresponding deadline, timetable, or schedule shall be subject to Section XII - EXTENSIONS, of this Agreement.

16.8 Nothing in this Agreement shall be construed to affect USDA's obligation to comply with any RCRA permit(s) it may already have or be issued in the future for the Site.

## XVII. PERIODIC REVIEW

17.1 Consistent with Section 121(c) of CERCLA, 42 U.S.C. Section 9621(c), and in accordance with this Agreement, if the selected remedial action results in any hazardous substance, pollutants or contaminants remaining at the Site, the Parties shall review the remedial action program for each OU at least every five (5) years after the initiation of the final remedial action for that OU to assure that human health and the environment are being protected by the remedial action being implemented. As part of this Periodic Review, USDA shall report the findings of the review to EPA upon its completion. This report, the Periodic Review Assessment Report, shall be a Secondary Document as described in Section X - CONSULTATION.

17.2 If upon such Periodic Review or any other such review, it is the conclusion of either 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. Sections 9604 or 9606, USDA shall implement such additional or modified action in accordance with Section IX - WORK TO BE PERFORMED, of this Agreement.

17.3 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 XVIII - DISPUTE RESOLUTION, of this Agreement and enforceable hereunder.

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

17.5 The EPA reserves the right to exercise any available authority it may have pursuant to applicable law to seek the performance of additional work, which EPA determines, as a result of Periodic Review, to be necessary to protect public health or welfare, or the environment.

17.6 With the exception of emergency response actions, which shall be governed by Subsection 9.9 of this Agreement, the assessment and selection of any additional response actions determined necessary as a result of a Periodic Review, and based on the criteria of Subsection 9.10B, shall be implemented as a supplemental response action in accordance with Subsection 9.10 of this Agreement.

#### XVIII. DISPUTE RESOLUTION

18.1 Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Section shall apply. Either Party to this Agreement may invoke this dispute resolution procedure. Both 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.

18.2 Within thirty (30) days after: (a) issuance of a draft final Primary Document pursuant to Section X - CONSULTATION, 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 technical, legal and/or factual information the disputing Party is relying upon to support its position.

18.3 Prior to either Party's issuance of a written statement of

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

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

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

18.6 The SEC will be established and 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 is the Regional Administrator of EPA Region III. USDA's representative on the SEC is the Administrator, ARS, USDA. 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 both Parties. If unanimous resolution of the dispute is not reached within twenty-one (21) days after elevation to the SEC, the EPA Regional Administrator shall thereafter issue a written position on the dispute. Within twenty-one (21) days of the issuance of the EPA Regional Administrator's written notice of position, USDA may 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 USDA elects not to elevate the dispute to the EPA Administrator within the designated twenty-one (21) day escalation period, USDA shall be deemed to have agreed with the EPA Regional Administrator's written position with respect to the dispute.

18.7 Upon escalation of a dispute to the EPA Administrator pursuant to Subsection 18.6 above, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the Administrator shall meet and/or confer with the Secretary of Agriculture to discuss the issue(s) under dispute. If either Party is unable to meet or confer during the twenty-one day period, that Party shall provide written notice to the other Party and request an extension under Section XII - EXTENSIONS. Upon resolution, the EPA Administrator shall provide USDA with a written final decision setting forth resolution of the dispute. The duties of the Administrator set forth in this Section shall not be delegated.

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

#### 18.9 Work Stoppage

A. When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Superfund Federal Facilities Branch Chief of 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 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.

B. To the extent practicable, either Party seeking a work stoppage shall consult with the other Party prior to initiating a work stoppage request. After the EPA Region III Superfund Federal Facilities Branch Chief makes a determination concerning work stoppage and issues a work stoppage request, if USDA believes that the determination is inappropriate, or that it may have a potentially significant adverse impact, USDA may meet with EPA to discuss the determination and the issuance of a work stoppage request. Following this conference, and upon further consideration of the issues, the EPA Region III Superfund Federal Facilities Branch Chief will issue a final written decision with respect to the work stoppage. The final written decision of the EPA Region III Superfund Federal Facilities Branch Chief immediately may be subject to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at

the discretion of USDA.

18.10 Within twenty-one (21) days of resolution of a dispute pursuant to the procedure specified in this Section, USDA shall incorporate the resolution and final determination into the appropriate documents, plans, schedules or procedures and proceed to implement this Agreement according to the amended documents, plans, schedules or procedures.

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

#### XIX. STIPULATED PENALTIES

19.1 Upon determining that USDA has failed to submit a Primary Document, as listed in Section X - CONSULTATION, to EPA in accordance with the appropriate schedule, deadline or requirement of this Agreement, or has failed to comply with a term or condition of this Agreement which relates to any remedial (interim or final) action, EPA may assess a stipulated penalty against USDA. EPA may assess a stipulated penalty by notifying USDA, in writing, of its failure(s) and by including within such notice a stipulated penalty demand in an amount certain. 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 the occurrence of any failure described in this paragraph 19.1.

19.2 If the failure in question is not already subject to dispute resolution at the time such notice is received by USDA, USDA 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 and/or on the appropriateness of the assessed stipulated penalty amount. USDA shall not be liable for any stipulated penalty assessed by EPA if the failure is determined, through the dispute resolution process, not to have occurred. If it is determined that a failure has occurred, assessment of a stipulated penalty may commence from the date such failure occurred. In the event that USDA initiates dispute resolution within fifteen (15) days of receipt of the notice, no assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty. Absent alternative terms and conditions in any final resolution of dispute that includes the assessment of a stipulated penalty, such stipulated penalty shall be due within thirty (30) days after the conclusion of dispute resolution procedures. If after fifteen (15) days, USDA has not initiated dispute resolution, then assessment of the stipulated penalty is

final and shall be due within thirty (30) days thereafter, subject to the provisions of Section XX - FORCE MAJEURE and Section XXV - FUNDING.

19.3 All payments to EPA under this Section shall be in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund", and referencing Administrative Docket No. III-FCA-CERC-013. USDA shall forward the certified check(s) to the United States Environmental Protection Agency, Region III, Attention: Superfund Accounting, P.O. Box 360515, Pittsburgh, PA 15251-6515 and shall send copies of the check(s) to the Regional Hearing Clerk (3RC00), United States Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

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

19.5 Neither the invocation of dispute resolution procedures under Section XVIII - DISPUTE RESOLUTION nor the payment of any stipulated penalty shall alter in any way USDA's obligation to complete the performance of the Work required under this Agreement. However, nothing in this Section shall affect USDA's ability to obtain an extension of a deadline or schedule pursuant to Section XII - EXTENSIONS of this Agreement.

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

- 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 Site to prevent recurrence of the same type of failure; and
- D. The total dollar amount of the stipulated penalty assessed for the particular failure.

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

## XX. FORCE MAJEURE

20.1 A Force Majeure, for the purpose of this Agreement, shall mean any event arising from events 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, acts of God; fire; war; insurrection; civil disturbance; explosion; unanticipated accidents or breakage of machinery or equipment despite reasonably diligent maintenance; adverse weather conditions that could not be reasonably anticipated; unusual delay in transportation due to circumstances beyond the control of USDA; restraint by court order or order of public authority; inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority other than USDA; delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; and insufficient availability of appropriated funds, if USDA shall have made a timely request for such funds as a part of the budgetary process as set forth in Section XXV - 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 solely include increased costs or expenses of response actions, whether or not anticipated at the time such response actions were initiated.

20.2 When circumstances, which may delay or prevent the completion of USDA's obligation under this Agreement, are caused by a Force Majeure event, USDA shall notify the EPA Project Manager orally of the circumstances within forty-eight (48) hours after USDA first knew of these circumstances. If the EPA Project Manager is not available, USDA shall notify the Alternate Project Manager in Region III. Within fifteen days of the oral notification, USDA 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. USDA shall exercise its best efforts to avoid or minimize any such delay and any effects of such delay.

## XXI. ENFORCEABILITY

21.1 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. Sections 9659(c) and 9609;

B. All schedules or deadlines associated with RI/FSs, shall be enforceable by any person pursuant to Section 310 of CERCLA, and any violation of such schedules or deadlines will be subject to civil penalties under Sections 310(c) and 109 of CERCLA;

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

D. Any final resolution of a dispute pursuant to Section XVIII - 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.

21.2 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. Section 9613(h).

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

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

## XXII. OTHER CLAIMS

22.1 Subject to Section VII - STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION, nothing in this Agreement shall restrict EPA from taking any action under CERCLA, RCRA, or other environmental statutes for any matter not specifically part of the work performed under CERCLA, which is the subject matter of this Agreement.

22.2 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.

22.3 This Agreement does not constitute any decision or preauthorization by EPA of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. Section 9611(a)(2) for any person, agent, contractor or consultant acting for USDA.

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

22.5 USDA shall notify the appropriate federal and State natural resources 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. Section 9604(b)(2), and Section 2(e)(2) of Executive Order 12580. Except as provided herein, USDA 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.

22.6 This Agreement does not bar:

(a) any claims for natural resources damage assessments, or for damage to natural resources;

(b) any claims by EPA based on failure or refusal by USDA to meet a requirement of this Agreement;

(c) any claims for liability for disposal of any hazardous substances or waste material taken from the Site.

### XXIII. RESERVATION OF RIGHTS

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



of CERCLA or RCRA or State laws or related regulations.

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

23.3 The Parties, after exhausting their remedies under this Agreement, reserve any and all rights 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.

#### XXIV. TRANSFER OF REAL PROPERTY

24.1 No change or transfer of any interest in the Site or any part thereof shall in any way alter the status or responsibility of the Parties under this Agreement. USDA 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. USDA agrees to comply with Section 120(h) of CERCLA, 42 U.S.C. Section 9620(h), including the Community Environmental Response Facilitation Act (CERFA), and any additional amendments thereof, and with 40 C.F.R. Part 373, if applicable.

24.2 USDA agrees to include notice of this Agreement in any document transferring ownership of the Site or any portion of the Site to any subsequent owner in accordance with Section 120(h) of CERCLA, 42 U.S.C. Section 9620(h) and 40 C.F.R. Part 373.

24.3 Within thirty days of the effective date of this Agreement, USDA shall provide all non-ARS tenants at BARC with notice of this Agreement. USDA shall include notice of this Agreement in any future Host/Tenant Agreement or Memorandum of Understanding that permits any non-ARS activity to function on any portion of the Site. Such notice shall include information advising all non-ARS tenants as to the availability and location of this Agreement for review or duplication.

#### XXV. FUNDING

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

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

25.3 The Parties recognize and agree that USDA must operate within specific requirements of the federal budget process and legal restrictions concerning obligations of funds, and that no provision of this Agreement shall be construed to require USDA to obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. §1341, in any fiscal year for actions subject to this Agreement. However, USDA recognizes that Section 1-5 of Executive Order No. 12088, 43 Fed. Reg. 47707 (October 13, 1978), states that "[t]he head of each executive agency shall ensure that sufficient funds for compliance with applicable pollution control standards are requested in the agency budget." EPA specifically retains its right to assert that the lack of necessary appropriated funds shall not release USDA of its obligation to comply with all of the terms and conditions of this Agreement and with applicable laws governing the release or threatened release of hazardous substances, and cost recovery.

25.4 If appropriated funds are not available to fulfill USDA'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.

25.5 Funds authorized and appropriated annually by Congress to USDA will be the source of funds for activities required by this Agreement. However, should the appropriation be inadequate in any year to meet the total USDA CERCLA implementation requirements, USDA shall notify EPA of the steps that they will pursue in order to assure the protection of human health and the environment. USDA will also outline the steps that they will take in an attempt to acquire additional funds to meet their obligations under this Agreement.

#### XXVI. RECOVERY OF EPA EXPENSES

26.1 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 any and all rights it may have with respect to cost reimbursement.

#### XXVII. QUALITY ASSURANCE

27.1 USDA shall use quality assurance, quality control, and chain of custody procedures throughout all field investigation, sample collection and laboratory analysis activities. A Quality Assurance Project Plan (QAPP) shall be submitted as a component of each AOC, and RI/FS Work Plan as appropriate. These work plans will be reviewed as Primary Documents pursuant to Section X - CONSULTATION, of this Agreement. QAPPs shall be prepared in

accordance with applicable guidance issued by EPA.

27.2 In order to provide for quality assurance and maintain quality control regarding all field work and samples collected pursuant to this Agreement, USDA shall include in each QAPP submitted to EPA for review and comment all protocols to be used for sampling and analysis. USDA shall also ensure that any laboratory used for analysis is a participant in a quality assurance/quality control program that is consistent with guidance issued by EPA.

27.3 USDA shall ensure that lab audits are conducted as appropriate and are made available to EPA upon request. USDA shall ensure that EPA, or its authorized representative, shall have access to all laboratories performing analyses on behalf of USDA pursuant to this Agreement.

#### XXVIII. RECORD PRESERVATION

28.1 Despite any document retention policy to the contrary, EPA and USDA shall preserve, during the pendency of this Agreement and for a minimum of seven (7) years after its termination or for a minimum of seven (7) years after implementation of any additional action taken pursuant to Section XVII - PERIODIC REVIEW, all records and documents in their possession which relate to actions taken pursuant to this Agreement. After the seven (7) year period, each Party shall notify the other Party at least thirty (30) days prior to the proposed destruction or disposal of any such documents or records. Upon the request of either 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 thirty (30) days after the final decision by the highest court or administrative body requested to review the matter.

28.2 All such records and documents shall be preserved for a period of seven (7) years following the termination of any judicial action regarding the Work performed under this agreement, except that such retention obligations automatically shall be extended through the course of any unresolved litigation, enforcement action or dispute resolution.

#### XXIX. SAMPLING AND DATA/DOCUMENT AVAILABILITY

29.1 Each Party shall make available to the other Party all the quality-assured results of sampling, tests, or other data or documents generated through the implementation of this Agreement.

All quality-assured data will be supplied as soon as it becomes available, and no later than ninety (90) days after sample collection. Raw data and data validation packages shall be included with these results only if quality-assured data is not available within ninety (90) days. If quality assurance is not completed within ninety (90) days, raw data or results shall be submitted within the ninety (90) day period and quality-assured data or results shall be submitted as soon as they become available.

29.2 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. Additionally, USDA shall allow EPA to collect independent samples at the Site as the need arises under 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 initiate written confirmation within three (3) days of the telephonic notification.

29.3 If preliminary analysis indicates an imminent or substantial endangerment to human health or the environment, all Project Managers shall be immediately notified.

### XXX. CONFIDENTIAL INFORMATION

30.1 USDA may assert a confidentiality claim for information to which it would be entitled to claim an exemption pursuant to the Freedom of Information Act, 5 U.S.C. Section 552(b), covering information requested by this Agreement. Analytical data shall not be claimed as confidential by USDA. Information claimed to be confidential by USDA pursuant to the Freedom of Information Act shall be afforded the protection specified therein by EPA.

30.2 If EPA requests confidential USDA information to which it is entitled, EPA shall comply with the provisions set forth in 40 C.F.R. Section 2.111(d).

30.3 If USDA refuses to comply in whole or part with an EPA Request for information, it shall identify the document(s), summarize the contents of such document(s) and state the reason(s) and legal authorities for USDA's failure to comply with EPA's request.

30.4 If no claim of confidentiality accompanies the information when it is submitted to EPA, the information may be made available to the public without further notice to USDA.

## XXXI. COMMUNITY RELATIONS

31.1 The Parties agree that Work conducted under this Agreement and any subsequent response actions at the Site arising out of this Agreement shall comply with all of the Administrative Record and public participation requirements of CERCLA, including Sections 113(k) and 117, 42 U.S.C. Sections 9613(k) and 9617, the NCP, all relevant EPA policy and guidance on community relations programs, and other applicable, relevant and appropriate requirements, laws and regulations.

31.2 USDA shall develop and will implement a Community Relations Plan (CRP) in accordance with the NCP and EPA guidance. This plan will respond to the need for an interactive relationship with all interested community elements regarding environmental activities conducted pursuant to this Agreement by USDA.

31.3 Except in case of an emergency requiring the release of necessary information and except in the case of an enforcement action, either 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 at least three (3) days prior to the issuance of such release.

31.4 USDA shall establish and maintain two identical Administrative Records at two locations, one near BARC and convenient to the public, and another on the Site, in accordance with CERCLA Section 113(k), 42 U.S.C. Section 9613(k), Subpart I of the NCP, and applicable guidance issued by EPA. A copy of each document placed in the Administrative Record shall be provided by USDA to EPA. The Administrative Record developed by USDA shall be updated and new documents supplied to EPA on at least a quarterly basis. An index of documents in the Administrative Record shall be provided to EPA and shall accompany each update of the Administrative Record.

31.5 A. In accordance with EPA policy/guidelines, USDA shall keep the citizenry informed as to the status of the environmental response actions which are planned or being conducted under this Agreement and shall facilitate public review and comment on proposed actions with respect to releases or threatened releases of hazardous substances. USDA further shall keep the citizenry informed with regard to technical issues arising at the Site and under this Agreement, and shall provide a forum for local community interaction and communication exchange.

B. USDA shall encourage community interaction and involvement that reflects the diverse interests of the area including but not limited to the following:

- (1) local residents/community members (including minority and low income areas)
- (2) Technical Assistance Grant recipients
- (3) local government officials/agencies
- (4) business community
- (5) school districts
- (6) facility employees/residents
- (7) local environmental groups/activists
- (8) civic/public interest organizations
- (9) religious community
- (10) other regulatory agencies
- (11) local homeowners organizations

C. The Parties shall schedule periodic meetings which shall be open to the public and shall be held at a time and location convenient to the general public.

#### XXXII. PUBLIC COMMENT ON THIS AGREEMENT

32.1 Within fifteen (15) days after the execution of this Agreement (the date by which both Parties have signed the Agreement), EPA shall announce the availability of this Agreement to the public, including publication in at least two (2) major local newspapers of general circulation for review and comment. 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 submit copies of all comments received within the comment period to USDA along with a response to each comment in a Responsiveness Summary. Within thirty (30) days after the submittal, 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.

32.2 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 submit a copy of the signed Agreement to USDA and shall notify USDA in writing that the Agreement is effective. The Effective Date of the Agreement shall be the date of receipt by USDA of the signed Agreement from EPA.

32.3 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 USDA, 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 submit a copy of the modified Agreement to USDA and shall notify USDA 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 32.1 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 USDA and shall notify USDA that the modified Agreement is effective. In either case, the Effective Date of the modified Agreement shall be receipt by USDA from EPA of notification that the modified Agreement is effective.

32.4 In the event that the Parties cannot agree on the modifications or on the Responsiveness Summary within the time period listed in Subsection 32.2 above, the Parties agree to have at least one meeting within the thirty (30) days following the comment period to attempt to reach agreement. The Parties agree to negotiate in good faith for at least a fifteen (15) day period before invoking dispute resolution.

32.5 If, thirty (30) days after the expiration of the forty-five (45) day comment period has expired, 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) whether additional public notice and comments are required; or
- (d) the contents of the Responsiveness Summary,

then the matters which are in dispute shall be resolved by the dispute resolution procedures of Section XVIII - 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.

32.6 At the start of the public comment period, USDA will submit copies of this Agreement to the appropriate federal, State, and local Natural Resource Trustees for review and comment within the time limits set forth in this Section.

32.7 Existing records maintained by USDA which will be included in the Administrative Record such as reports, plans, and schedules, shall be made available by USDA for public review during the public comment period. The public notices announcing the public comment period shall include information advising the public as to availability and location of these records.

#### XXXIII. EFFECTIVE DATE

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

#### XXXIV. AMENDMENT OR MODIFICATION OF AGREEMENT

34.1 Except as provided in Section XIII - PROJECT MANAGERS, this Agreement may be amended or modified solely upon written consent of both Parties. Such amendments or modifications shall be in writing, and shall become effective on the third business day following the date on which the EPA signs the amendments or modifications. The Parties may agree on a different Effective Date. As the final signatory to any amendment to this Agreement, EPA will provide notice to USDA pursuant to Section XIII - PROJECT MANAGERS, of the Effective Date of modification.

34.2 The Party initiating the amendment of this Agreement shall provide in writing the amendment for review, approval and signature of the other Party.

34.3 During the course of activities under this Agreement, the Parties anticipate that statutes, regulations, guidance, and other rules may change. All 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 XVIII - 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.

#### XXXV. FACILITY CLOSURE

35.1 Facility closure will not constitute a Force Majeure under Section XX - FORCE MAJEURE, of this Agreement. The closure of BARC will not automatically constitute good cause for extensions under Section XII - EXTENSIONS, of this Agreement unless otherwise mutually agreed to by the Parties.

#### XXXVI. SEVERABILITY

36.1 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.

#### XXXVII. TERMINATION AND SATISFACTION

37.1 The provisions of this Agreement shall be deemed satisfied upon an agreement of both Parties that USDA has completed its obligations under the terms of this Agreement. Following EPA Certification of all the response actions at the Site pursuant to Subsection 9.11 of Section IX - 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 Party that receives the request for termination of this Agreement shall have ninety (90) days from the receipt of the request to grant or deny the request. The obligations and objectives of this Agreement shall be deemed satisfied and terminated upon receipt by USDA of written notice from EPA, that USDA 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 the same ninety (90) days of receipt of the proposal.

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

37.3 Upon termination of this Agreement, USDA shall place a public notice announcing termination in two (2) major local newspapers of general circulation.

37.4 This Section shall not affect the Parties' obligations pursuant to Section XVII - PERIODIC REVIEW of this Agreement. In no event will this Agreement terminate prior to USDA'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

Edward B. Knippling

Date 7/17/97

Administrator, Agricultural Research Service  
United States Department of Agriculture

By

Mark M. She

Date 3/2/98

Regional Administrator  
Environmental Protection Agency, Region III

APPENDIX A  
Areas of Concern as of Date of NPL Listing (May 31, 1994)

SITE NO	LOCATION/DESCRIPTION	ACTIVITY
BARC-01 <sup>a</sup>	Experimental Wood Trt	Open Storage Area
BARC-02	South Farm Dump	Disposal/Fill Area
BARC-03	North Farm Dump	Disposal/Fill Area
BARC-04	B-033 Washdown Area	Spill Site
BARC-05	Herbicide Washdown Area	Spill Site
BARC-06	Biodegradable Site	Disposal/Fill Area
BARC-07	South Dairy Road Spill	Spill Site
BARC-08	APU Waste Dump	Disposal/Fill Area
BARC-09	Dump off Odell Road	Disposal/Fill Area
BARC-10	B-301 Washdown Area	Spill Site
BARC-11	Dump East of B-409	Disposal/Fill Area
BARC-12	Chemical Disposal Pits	Pits
BARC-13	Hayden Farm Spill	Spill Site
BARC-14	Airport Mixing Pad	Spill Site
BARC-15	Airport Test Droplet Area	Spill Site
BARC-16	Airport Chemical Burial	Pits
BARC-17	B-064 Scrap Area	Open Storage Area
BARC-18	Radiological Burial Site	Disposal/Fill Area
BARC-19	Trenches Behind B-029	Disposal/Fill Area
BARC-20	Fill Area/SW Corner	Disposal Fill Area
BARC-21	Fill Area/NE Corner	Disposal/Fill Area
BARC-22	College Park Landfill	Disposal/Fill Area
BARC-23	APU Animal Burial Area	Pits
BARC-24	APU Sewage Sludge Site	Disposal/Fill Area
BARC-25	Radioactive Truck Spill	Spill Site
BARC-26	Dump off Poultry Road	Disposal/Fill Area
BARC-27	Beaverdam Road Landfill	Disposal/Fill Area

SITE NO	LOCATION/DESCRIPTION	ACTIVITY
BARC-28	SCS Dump Area	Disposal/Fill Area
BARC-29	Fill Area Little Paint Branch	Disposal/Fill Area
BARC-30	Chemical Storage Area	Open Storage Area
BARC-31	B-442 Scrap Area	Open Storage Area
BARC-32	PCB Storage Area	Open Storage Area
BARC-33	Fill Area B-531	Disposal/Fill Area
BARC-34	Fill Area B-537	Disposal/Fill Area
BARC-35	Chicken Hill	Disposal/Fill Area
BARC-36	Airport Scrap Pile	Disposal/Fill Area
BARC-37	Waste Oil Pit	Pits
BARC-38	Airport Detonation Area	Spill Site
BARC-39	Hydraulic Leak, B-303	Spill Site
BARC-40	Hydraulic Leak, B-203	Spill Site
BARC-41	UST, B-312	Spill Site
BARC-42	Airport Cement Pad	Spill Site
BARC-43	Excavation, B-551	Disposal/Fill Area
BARC-44	Dump at Airport	Disposal/Fill Area
APS-01 <sup>b</sup>	East of B-056	Open Storage Area
APS-02	Northeast of BARC-17	Pits
APS-03	Northwest of BARC-5	Open Storage Area
APS-04	South of B-040	Undeterminable
APS-05	East of BARC-5	Undeterminable
APS-06	South of APS-5	Pits
APS-07	Around B-013	Open Storage Area
APS-08	Around B-013	Open Storage Area
APS-09	Around B-013	Open Storage Area
APS-10	Adjacent to B-050	Open Storage Area
APS-11	West of B-008	Open Storage Area

SITE NO	LOCATION/DESCRIPTION	ACTIVITY
APS-12	South of NAL	Undeterminable
APS-13	Southeast of NAL	Undeterminable
APS-14	South of APS-13	Disposal/Fill Area
APS-15	NW Cnr Sunnyside & Edmonston	Pits
APS-16	NE Cnr RR & Sunnyside Avenue	Disposal/Fill Area
APS-17	Adjacent and West of BARC-6	Undeterminable
APS-18	South of BARC-6	Undeterminable
APS-19	South of APS-18	Undeterminable
APS-20	East of Edmonston Ave at APU	Disposal/Fill Area
APS-21	South and Adjacent to BARC-8	Open Storage Area
APS-22	Northeast of BARC-8	Disposal/Fill Area
APS-23	East of APS-22	Undeterminable
APS-24	North of BARC-7	Disposal/Fill Area
APS-25	Tanks around B-167 Complex	Tanks/Silos
APS-26	Beaverdam Creek & Research Rd	Disposal/Fill Area
APS-27	East of BARC-23	Disposal/Fill Area
APS-28	Southeast of APS-26	Disposal/Fill Area
APS-29	Southeast of BARC-27	Undeterminable
APS-30	East and Adjacent to APS-29	Pits
APS-31	East of BARC-10	Disposal/Fill Area
APS-32	Northeast of APS-31	Disposal/Fill Area
APS-33	East of B-307	Disposal/Fill Area
APS-34	Southeast of B-315	Disposal/Fill Area
APS-35	North of B-335D	Disposal/Fill Area
APS-36	East-southeast of B-335D	Disposal/Fill Area
APS-37	S/SW of B-468; E Entomology Rd	Disposal/Fill Area
APS-38	Around B-426	Open Storage Area
APS-39	East of B-442	Disposal/Fill Area

SITE NO	LOCATION/DESCRIPTION	ACTIVITY
APS-40	North of BARC-12	Undeterminable
APS-41	North of Odell Rd and BARC-26	Disposal/Fill Area
APS-42	North of BARC-15 and APHIS	Disposal/Fill Area
APS-43	Pax. Wildlife Research Center	Disposal/Fill Area
APS-44	Pax. Wildlife Research Center	Disposal/Fill Area
APS-45	East of Telegraph Rd.	Disposal/Fill Area
APS-46	East and adjacent to BARC-38	Undeterminable
APS-47	North and adjacent to BARC-15	Undeterminable
APS-48	East and adjacent to BARC-35	Undeterminable
FDA-01 <sup>c</sup>	Fill area near 339F	Disposal/Fill Area
FDA-02	Dump in Ravine at FDA	Disposal/Fill Area

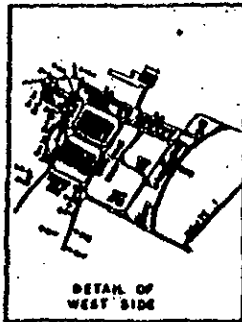
- a - A complete description of locations BARC1-BARC44 can be found in the Preliminary Assessment/Site Investigation report dated May 24, 1991 by Apex Environmental, Inc.
- b - A complete description of locations for APS-1 through APS-48 can be found in the March 11, 1993 EPIC report.
- c - FDA-1 and FDA-2 are newly discovered sites by BARC. Written information on these sites does not exist at this time.

## APPENDIX B

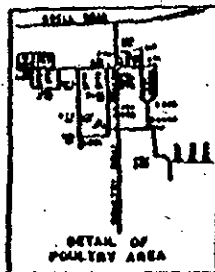


DETAIL OF ANIMAL  
PARASITOLOGY INSTITUTE

**UNION** 



**DETAIL OF  
WEST SIDE  
INSERT B**



DETAIL OF  
POLYTRY AREA



DETAIL OF DAILY  
INSERT 2

