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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION II
AND THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

IN THE MATTER OF:	)	
	)	FEDERAL FACILITY
THE UNITED STATES DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION	)	AGREEMENT UNDER CERCLA SECTION 120
	)	
FEDERAL AVIATION ADMINISTRATION TECHNICAL CENTER	)	Administrative Docket Number: II-CERCLA-FAA-90101

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:

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I. JURISDICTION

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

(i) The U.S. Environmental Protection Agency (USEPA), Region II, enters into those portions of this Agreement that relate to the remedial investigation/feasibility study (RI/FS) Qpursuant to Section 120(e)(1) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. § 9620(e)(1), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499 (hereinafter referred to as CERCLA) and Executive Order 12580;

(ii) USEPA, enters into those portions of this Agreement that relate to final remedial actions and other operable unit actions pursuant to Section 120(e)(2) of CERCLA, and Executive Order 12580;

(iii) The Federal Aviation Administration (FAA) (an agency of the U.S. Department of Transportation) enters into those portions of this Agreement that relate to the RI/FS pursuant to Section 120(e)(1) of CERCLA, and Executive Order 12580;

(iv) The FAA enters into those portions of this Agreement that relate to final remedial actions and other operable unit actions pursuant to Section 120(e)(2) of CERCLA and Executive Order 12580.

II. PARTIES

The Parties to this Agreement are USEPA and the FAA. The terms of this Agreement shall apply to and be binding upon USEPA, its agents and assigns, employees, response action contractors for the FAA Technical Center and upon the FAA, its agents and assigns, employees, response action contractors for the FAA Technical Center and all successor owners, operators and lessees of the FAA Technical Center. This Agreement shall be enforceable against all Parties to this Agreement. The FAA will notify USEPA of the identity and assigned tasks of each of its contractors performing work under this Agreement at or before the next meeting of the Project Managers. The FAA shall notify its agents and assigns, employees, response action contractors for the FAA Technical Center, and all successor owners, operators and lessees of the FAA Technical Center of the existence of this Agreement.

III. DEFINITIONS

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

In addition:

A. "Agreement" shall refer to this document and shall include all Attachments to this document. All such Attachments, ie., Final Primary Documents, shall be appended to and made an integral and enforceable part of this document.

B. "ARAR" shall mean legally "applicable" or "relevant and appropriate" requirements as those terms are used in CERCLA Section 121(d), 42 U.S.C. Section 9621(d) and the National Contingency Plan.

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

D. "Days" shall mean calendar days, unless business days are specified. Any Submittal that under the terms of this Agreement would be due on a Saturday, Sunday, or Federal holiday shall be due on the following business day.

E. "FAA" shall mean the Federal Aviation Administration, an administration of the Department of Transportation (DOT), its employees and authorized representatives.

F. "FAA Technical Center" shall mean all real property within the ownership, custody or control of the FAA including property leased to or by the FAA, comprising approximately 5052 contiguous acres in southeastern New Jersey, within the Townships of Galloway, Hamilton, and Egg Harbor in Atlantic County.

G. "NJDEPE" shall mean the New Jersey Department of Environmental Protection and Energy, its employees and authorized representatives.

H. "Quality Assured Data" shall mean data that have undergone quality assurance as set forth in the approved Quality Assurance Project Plan.

I. "Area of Concern('AOC')" shall mean any location, whether on the FAA Technical Center or not, which is related in

whole or in part to releases or threatened releases of hazardous substances from the FAA Technical Center.

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

K. "Timetables and deadlines" shall mean schedules for those actions that are to be completed and performed, including but not limited to work and submission of documents.

IV. PURPOSE

A. The general purposes of this Agreement are to:

(1) ensure that the environmental impacts associated with past and present activities at the FAA Technical Center are thoroughly investigated and appropriate remedial action taken as necessary to protect the public health, welfare and the environment;

(2) establish a procedural framework and schedule for developing, implementing and monitoring appropriate response actions at the FAA Technical Center in accordance with CERCLA, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. § 300 et. seq., Superfund guidance and policy, Resource, Conservation, and Recovery Act (RCRA), RCRA guidance and policy; and,

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

B. The specific purposes of this Agreement are to:

(1) Identify operable unit remedial action alternatives which are appropriate at the FAA Technical Center prior to the implementation of final remedial action(s) for the FAA Technical Center. The alternatives shall be identified and proposed to the Parties as early as possible prior to formal proposal of operable unit remedial actions to USEPA pursuant to CERCLA. This process is designed to promote cooperation among the Parties in identifying operable unit remedial action alternatives prior to selection of final remedial actions.

(2) Establish requirements for the performance of a Remedial Investigation (RI) to determine fully the nature and extent of the threat to the public health or welfare, or to the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at the FAA Technical Center and to establish requirements for the performance of a Feasibility Study (FS) for the FAA Technical Center to identify, evaluate, and select alternatives for the appropriate remedial action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants

or contaminants at the FAA Technical Center in accordance with CERCLA.

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

(4) Implement the selected final remedial action(s) and other operable unit remedial action(s) in accordance with CERCLA and meet the requirements of Section 120(e)(2) of CERCLA for an interagency agreement between USEPA and the FAA.

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

(6) Coordinate response actions at the FAA Technical Center with the mission and support activities at the FAA Technical Center.

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

V. STATUTORY COMPLIANCE

A. The Parties intend that the activities covered by this Agreement will be deemed to achieve compliance with CERCLA, 42 U.S.C. § 9601 et. seq. and to meet or exceed all applicable or relevant and appropriate Federal and State laws and regulations, to the extent required by Section 121 of CERCLA, 42 U.S.C. § 9621.

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

C. The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the National Contingency Plan. The Parties further recognize that any hazardous waste management activities at the FAA Technical Center may require the issuance of permits under Federal and State laws. This Agreement does not affect the requirements, if any, to obtain such permits.

VI. SCOPE OF AGREEMENT

Under this Agreement the FAA agrees that it shall:

A. Conduct a Remedial Investigation (RI) for the FAA Technical Center which complies with the requirements of the National Contingency Plan (NCP) and CERCLA.

B. Conduct a Feasibility Study (FS) which complies with the requirements of the National Contingency Plan and CERCLA on areas of concern selected by USEPA for such review based on RI data subject to dispute resolution.

C. Develop remedial action alternatives for each AOC selected by USEPA and/or proposed by the FAA. USEPA may add or delete AOC's on the basis of additional information which more accurately reflects the area of concern related in whole or in part to the FAA Technical Center, subject to dispute resolution.

D. Implement those remedial actions proposed by the FAA and selected by USEPA for the AOC(s).

VII. DETERMINATION OF FACTS

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

A. In 1942 a Naval Air Base was constructed on land that was owned by the City of Atlantic City which encompasses much of the eastern portion of the present FAA Technical Center property. The Airways Modernization Board (AMB), established by President Eisenhower, elected to use the Atlantic City site as its National Aviation Facilities Experimental Center (NAFEC) in 1957. In 1958 the Navy's leasehold facility was officially transferred to the AMB from the Navy. In 1959, the FAA exercised its option in that lease to purchase 2700 acres from the City of Atlantic City. Subsequent additions have brought the total land area to approximately 5,052 acres.

B. The Federal Aviation Administration (now an administration of the United States Department of Transportation) took over the operation of the AMB in November of 1958. The early 1960's saw the development of most of the Research and Development (R&D) Facility south of the Atlantic City Reservoir by the FAA. In 1962, the Atlantic City Municipal Terminal Building was dedicated on a 79-acre tract of land surrounded by FAA Technical Center property. The tract and building have been continuously owned by the City of Atlantic City since 1962. The FAA's large technical

and administrative complex was constructed in 1979. The New Jersey Air National Guard has maintained some facilities at the FAA Technical Center since 1958.

C. Part of the City of Atlantic City's municipal water supply is provided by nine (9) ground water wells north of the upper Atlantic City Reservoir on land on which the FAA has granted an easement to the Atlantic City Municipal Utility Authority. This water supply is supplemented by water withdrawn from two Atlantic City reservoirs. The upper reservoir is located on land surrounded by FAA Technical Center property. The lower reservoir is located southeast and outside the boundaries of the FAA Technical Center. The Atlantic City Reservoirs are fed primarily by the North and South Branches of Doughty's Mill Stream, which traverses portions of the FAA Technical Center grounds.

D. The FAA contracted TRC Environmental Consultants to produce a Remedial Investigative/Feasibility Study for a number of AOCs at the facility. Most of these AOCs were defined in a report, "Environmental Investigative/Feasibility Study, FAA Technical Center, Atlantic City Airport, New Jersey" submitted to USEPA in a revised form on March 31, 1989. This report included, but was not limited to AOCs 20(A), 27, 29, 41, 56, A, B, C, D, E, F, G, H, I, J, K, M, N, P, and Q. Preliminary field investigation work has been done on a number of the AOCs with further studies to be performed in the future. A second phase of field investigation work was performed for Areas 20A, 27, 29, 41, 56, A through G, J, L, M, N, P, and R. The technical report for this work "Environmental Investigative/Feasibility Study, FAA Technical Center, Atlantic City Airport, N.J., Phase II Investigations" was submitted in a revised form on January 30, 1990. Supplemental field investigations were done for Areas 41, B, P, R, and S. The technical report for this work "Environmental Investigative/Feasibility Study, FAA Technical Center, Atlantic City Airport, N.J. Supplemental Investigation" was submitted March 2, 1990 and will be revised.

Based on these reports and other documentation the current AOCs and their suspected sources of contamination are summarized as follows:

o AOC No. 20(A) (Salvage Area) - Storage of scrap materials and drummed hazardous materials have led to leakage and spills. Soil sampling in the area showed extensive impact on soil quality from PCB's and VOC's. Several volatile organics (1,1-dichloroethene, 1,1,1-trichloroethane, and tetrachloroethene) were found in groundwater.

o AOC No. 27 (Fuel Mist Test Facility) - Spraying and burning of jet fuel to test additives designed to prevent explosion have contaminated soils. Elevated levels of petroleum hydrocarbons were found in soils on site.

o AOC No. 29 (Fire Training Area) - Test burning extinguishing of fuel fires contaminated soils and ground water. Significant contamination with PCB's and organics (benzene, phthalates) was found in soils and ground water. Drums and tanks were stored in a portion of this AOC, formerly known as AOC K. These drums and tanks may have leaked onto the ground resulting in soil and ground water contamination.

o AOC No. 41 (Fuel Farm and Photo Lab) - Potential leaks from underground storage tanks, discharge of photographic lab wastes into drainage swale and spillage of fuel at surface above tanks has contaminated soils. Soil borings contained relatively high levels of tentatively identified volatile organic and base/neutral extractable compounds. Specific compounds could not be identified.

o AOC No. 56 (Abandoned Navy Landfill) - Burial of various aviation facility wastes occurred at this site. Low levels of 1,1,1-trichloroethane and 1,1-dichloroethane were present in groundwater on site. Elevated concentration levels of four inorganic constituents, (cadmium, chromium, mercury, and lead) which exceeded Federal Safe Drinking Water Act standards were found in the ground water.

o AOC A, R & D Navy Landfill -- Use of the area as an uncontrolled dump by the Navy may have contaminated soil and ground water.

o AOC B, Navy Fire Test Facility -- Spraying and burning of fuel in the open may have contaminated soil and ground water.

o AOC C, Butler Aviation Fuel Spill -- Documented ground water contamination at Butler Aviation may have migrated off-site, onto FAA property.

o AOC D, Jet Fuel Farm -- Leakage from dry wells at the fuel farm may have contaminated soil and ground water.

o AOC E, Building 11, Tank Excavation Area -- Past leakage from an underground No. 6 fuel oil tank may have contaminated soil and ground water.

o AOC F, Air Blast Facility -- Possible leaks from three former underground tanks may have contaminated soil and ground water.

o AOC G, Transformer Storage Area -- Spillage of PCB oils from transformers on a storage pad is known to have occurred and may have contaminated surface and subsurface soil.

o AOC H, Salvage Yard Near Sewage Treatment Plant -- The use of the area as a salvage yard provides potential for soil and ground water contamination.

o AOC I, Former Incinerator Building -- Incinerator ash present at the site is potentially toxic and may have contaminated soil and groundwater.

o AOC J, Excavation Area Near Runway -- An excavation shown on a 1962 aerial photograph suggests the area may have been used as a landfill which could have contaminated soil and ground water.

o AOC M, Building 202, Gelled Fuel Test Area -- The spraying and burning of fuel in the open could have contaminated surface soils and ground water.

o AOC N, Building 214, Catapult Test Area -- The spraying and burning of fuel in the open could have contaminated surface soils and ground water.

o AOC P, Building 204 Fuel Spill -- The spill of an unknown quantity of JP-4 jet fuel may have contaminated soil and ground water.

o AOC Q, Fire Station -- Open burning of fuel during fire training exercises may have contaminated soils.

o AOC R, Trash Dump West of Tilton Road -- Trash and construction debris dumped here may have impacted ground water.

o AOC S, Excavation Area West of Tilton Road -- Aerial photographs indicates several surface impoundments and areas of stained soil.

o AOC 2, Aircraft Defueling Area -- Defueling of JP-4 jet fuel into the soil may have contaminated the soil and groundwater.

o AOC 3, Old Aircraft Wash Rack -- Cleaning aircraft with detergents, solvents and JP-4 jet fuel, storage and dumping of hydraulic and other waste oils, storage of various oils and other hazardous materials may have contaminated soil and groundwater.

o AOC 5, Liquid Waste Holding Area Behind Building 65 -- Storage of waste engine oil, solvents and penetrant and defueling of JP-4 jet fuel have stained soil and may have contaminated groundwater as well.

o AOC 6, Drum Burials at Blast Pad in Alert Area -- Storage of unknown liquid material may have contaminated soil and groundwater.

E. The FAA intends to enter into a Memorandum of Agreement (MOA) with the United States Air Force on behalf of the New Jersey Air National Guard (NJANG) to address AOCs 2, 3, 5, 6, 41, G, and H. Upon executing the MOA with NJANG, the FAA will place the MOA in the administrative record. The MOA with NJANG does not relieve the FAA of its obligations under this Agreement.

F. The FAA Technical Center is a Facility as defined in Section 101(9) of CERCLA and was proposed for listing on the National Priorities List on July 14, 1989, 54 FR 29820 and was listed on the National Priorities List (NPL) on August 30, 1990, 55 FR 35502, with an effective date of October 1, 1990.

G. The purpose of the NPL is to identify releases or threatened releases of hazardous substances that are priorities for further evaluation. The USEPA believes that it would be neither feasible nor consistent with this limited purpose for the NPL to attempt to describe releases in precise geographical terms. The term "facility" is broadly defined in CERCLA to include any area where a hazardous substance has "come to be located" (CERCLA Section 101(9)), and the listing process is not intended to define or reflect boundaries of such facilities or releases. Site names are provided for general identification purposes only. For example, the FAA Technical Center is the name given to the area listed on the NPL. Should federal legislation, EPA regulation or EPA policy be enacted or issued after this Agreement is signed which relates to conveyance of federal facility property, the parties agree to be governed by the new legislation, EPA regulation or EPA policy.

H. Except with respect to implementation and enforcement of this Agreement, nothing contained in this Article shall constitute an admission of liability by the FAA or an admission by either party of any determination of fact noted herein.

VIII. REMOVAL AND EMERGENCY REMOVAL ACTIONS

A. Any CERCLA removal activity at the FAA Technical Center which has not been approved through the Record of Decision (ROD) process and which is not an "emergency removal" under Section B of this Article, shall require the written approval of USEPA of such activity before such activity can commence. The FAA shall notify USEPA at least forty-five (45) days prior to the planned commencement of such activity. The FAA shall not unilaterally begin "removal" actions as such term is defined in CERCLA, Section 101(23), not approved through the Consultation with USEPA process on any portion of the FAA Technical Center without the written approval of USEPA of the proposed action.

B. USEPA has sole authority to conduct emergency removals at the FAA Technical Center, which are those actions

where a release requires that response actions begin on-site within hours of the determination that a removal action is appropriate. A determination that a release requires an emergency removal may be made by either USEPA or the FAA. If the FAA determines that an emergency removal is required, it shall immediately notify USEPA. USEPA retains final decision making authority with respect to what constitutes an emergency removal.

C. If there is an immediate threat to public health or welfare or the environment which falls outside the scope of CERCLA and which requires an immediate response, the FAA may take action. However, within 24 hours of the discovery of the threat the FAA must notify the USEPA Project Manager orally and inform the Project Manager of the actions to be taken.

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

IX. IDENTIFICATION AND DETERMINATION OF AOC'S

A. New AOCs shall be designated solely by USEPA upon review of Submittals. AOC's may be proposed by the FAA for designation by USEPA. USEPA may add or delete AOCs on the basis of additional information which more accurately reflects releases or threatened releases of hazardous substances related in whole or in part to the FAA Technical Center. The FAA shall conduct RI's and focussed FS's for all AOC's identified in Article VII of this Agreement. USEPA may continue to designate new AOCs until Remedial Actions are completed on all designated AOCs, including those designated after the effective date of this Agreement.

B. The FAA shall conduct a Remedial Preliminary Assessment (PA) and Remedial Site Inspection (SI), in accordance with the National Contingency Plan, on all new AOCs designated by USEPA. Upon completion of the PA and SI, the FAA shall prepare a Completion Report for USEPA review.

C. USEPA will review all Completion Reports submitted by the FAA to ascertain the adequacy of the documentation and to determine, based on information and conditions known by USEPA at that time, whether the AOC presents a threat to public health, welfare, or the environment.

(1) Based on the Completion Report and on information and conditions known by USEPA at that time, if USEPA determines that no response action will be necessary, USEPA shall inform the FAA in writing that no response action is required for that particular AOC. The Completion Report on which the

determination has been made shall be documented and incorporated into/or constitute a RI/FS and shall be finalized in a ROD.

(2) Based on the Completion Report and on information and conditions known by USEPA at that time, if USEPA determines that a response action is required, the AOC will be addressed through the RI/FS process as set forth in Article X of this Agreement.

(3) All AOCs will be documented in a ROD.

D. Determinations by USEPA regarding an AOC shall not preclude USEPA from making subsequent determinations at the delisting phase that measures taken hereunder are not protective of public health, welfare or the environment.

X. CONSULTATION WITH USEPA

Review and Comment Process for Draft and Final Documents

A. Applicability:

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

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

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

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

invoked or as modified by decision of the dispute resolution process.

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

C. Primary documents:

(1) The FAA shall complete and transmit drafts for the following primary documents to USEPA for review and comment in accordance with the provisions of this Part:

A. Health and Safety Plan

B. QA/QC Plan

C. Community Relations Plan

D. RI/FS Work Plan

E. RI/FS and Focussed Feasibility Study(FFS) documents including the Risk Assessment Report

F. Proposed Remedial Action Plan

G. Record of Decision and Responsiveness Summary

H. Remedial Design

I. Remedial Action Work Plan

J. Remedial Preliminary Assessment/Preliminary Inspection (PA/SI) Workplan

K. PA/SI Completion Report

(2) The FAA shall complete and transmit draft primary documents in accordance with the timetable and deadlines established in Part XIV (Deadlines) of this Agreement.

D. Secondary Documents:

(a) The FAA shall complete and transmit draft documents for the following secondary documents to USEPA for review and comment in accordance with the provisions of this Part:

1. Detailed Analysis of Alternatives

2. Post-screening Investigation Work Plan

3. Results of Treatability Studies

4. Sampling and Data Results

(b) Although USEPA may comment on the draft documents for the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by Subpart B hereof.

E. Meetings of the Project Managers on Development of Documents:
The Project Managers shall meet approximately every 45 days, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the site. Prior to preparing any draft document specified in Parts C and D above, the Project Managers shall meet to discuss the document results in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft document.

F. Identification and Determination of Potential ARARs:
(a) For those primary documents or secondary documents that consist of or include ARAR determinations, prior to the issuance of a draft document, the Project Managers shall meet to identify and propose, to the best of their ability, all potential ARARs pertinent to the document being addressed. Draft ARAR determinations shall be prepared by the FAA in accordance with Section 121(d)(2) of CERCLA, the NCP and pertinent guidance issued by USEPA, which is not inconsistent with CERCLA and the NCP.
(b) In identifying potential ARARs, the Parties recognize that actual ARARs can be identified only on a site-specific basis and that ARARs depend on the specific hazardous substances, pollutants and contaminants at a site, the particular actions proposed as a remedy and the characteristics of a site. The Parties recognize that ARAR identification is necessarily an iterative process and that potential ARARs must be re-examined throughout the RI/FS process until a ROD is issued.

G. Review and Comment on Draft Documents:
(a) The FAA shall complete and transmit each draft primary document to USEPA on or before the corresponding deadline established for the issuance of the document.
(b) Unless the Parties mutually agree to another time period, all draft documents shall be subject to a 60-day period for review and comment. Review of any document by the USEPA may concern all aspects of the document (including completeness) and should include, but is not limited to, technical evaluation of

any aspect of the document, and consistency with CERCLA, the NCP and any pertinent guidance or policy promulgated by the USEPA. Comments by the USEPA shall be provided with adequate specificity so that the FAA may respond to the comment and, if appropriate, make changes to the draft document. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of the FAA, USEPA shall provide a copy of the cited authority or reference to the FAA. In cases involving complex or unusually lengthy documents, USEPA may extend the 60-day comment period for an additional 20 days by written notice to the FAA prior to the end of the 60-day period. On or before the close of the comment period, USEPA shall transmit by next day mail their written comments to the FAA.

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

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

(e) Following the close of the comment period for a draft document, the FAA shall give full consideration to all written comments on the draft document submitted during the comment period. Unless the Parties mutually agree to another time period, within 30 days of the close of the comment period on a draft secondary document, the FAA shall transmit to USEPA its written response to comments received within the comment period. Unless the Parties mutually agree to another time period, within 30 days of the close of the comment period on a draft primary document, the FAA shall transmit to USEPA a draft final primary document, which shall include the FAA's response to all written comments, received within the comment period. While the resulting draft final document shall be the responsibility of the FAA, it shall be the product of consensus to the maximum extent possible.

(f) The FAA may extend the 30-day period for either responding to comments on a draft document or for issuing the draft final primary document for an additional 20 days by providing written notice to USEPA. In appropriate circumstances, this time period may be further extended in accordance with Part XV (Extensions) hereof.

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

(a) Dispute resolution shall be available to the Parties for draft final primary documents as set forth in Part XI (Dispute Resolution).

(b) When dispute resolution is invoked on a draft primary document, work may be stopped in accordance with the procedures set forth in Part XI (Dispute Resolution) regarding dispute resolution.

I. Finalization of Documents:

The draft final primary document shall serve as the final primary document if no party invokes dispute resolution regarding the document or, if invoked, at completion of the dispute resolution process should the FAA's position be sustained. If the FAA's determination is not sustained in the dispute resolution process, the FAA shall prepare, within not more than 35 days from receipt of the final written resolution of the dispute (unless the Parties mutually agree to another time period), a revision of the draft final document which conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Part XV (Extensions) hereof.

J. Subsequent Modifications of Final Documents:

Following finalization of any primary document pursuant to Subpart I above, USEPA or the FAA may seek to modify the document, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in Paragraphs (a) and (b) below.

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

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

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

XI. DISPUTE RESOLUTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

XII. ENFORCEABILITY

A. The Parties agree that:

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

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

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

(4) Any final resolution of a dispute pursuant to Part XIV (Deadlines) of this Agreement which establishes a term, condition, timetable, deadline or schedule shall be enforceable

by any person pursuant to Section 310(c) of CERCLA, and any violation of such term, condition, timetable, deadline or schedule will be subject to civil penalties under Sections 310(c) and 109 of CERCLA.

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

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

XIII. STIPULATED PENALTIES

A. In the event that the FAA fails to submit a primary document to USEPA pursuant to the appropriate timetable or deadline in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement which relates to an operable unit remedial action, USEPA may assess a stipulated penalty against the FAA. A stipulated penalty may be assessed in an amount not to exceed $5,000 for the first week (or part thereof), and $10,000 for each additional week (or part thereof) for which a failure set forth in this Paragraph occurs.

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

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

(1) The facility responsible for the failure;

(2) A statement of the facts and circumstances giving rise to the failure;

(3) A statement of any administrative or other corrective action taken at the relevant facility, or a statement of why such measures were determined to be inappropriate;

(4) A statement of any additional action taken by or at the facility to prevent recurrence of the same type of failure; and

(5) The total dollar amount of the stipulated penalty assessed for the particular failure.

D. Stipulated penalties assessed pursuant to this Part shall be payable to the Hazardous Substances Response Trust Fund only in the manner and to the extent expressly provided for in Acts authorizing funds for, and appropriations to, the FAA. Such payment shall specifically reference the FAA Technical Center and the USEPA Docket Number for this Agreement and be forwarded to :

USEPA Region II
PO Box 360188M
Pittsburgh, PA. 15251
Attn: Superfund Accounting

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

F. This Part shall not affect the FAA's ability to obtain an extension of a timetable, deadline or schedule pursuant to Part XV (Extensions) of this Agreement.

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

XIV. DEADLINES

The following deadlines have been established for documents pursuant to this Agreement:

A. Within ninety (90) days of the effective date of this Agreement, the FAA shall submit to the USEPA a draft Community Relations Plan, Health and Safety Plan and QA/QC Plan that complies with the requirements of the National Contingency Plan.

B. Within thirty (30) days after the effective date of this Agreement, the FAA shall propose deadlines for completion of the following draft primary documents for each AOC listed within this Agreement:

1) RI/FS Work Plan

2) RI/FS and Focused Feasibility Study(FFS) documents including the Risk Assessment Report

3) FS Report

4) Proposed Remedial Action Plan

5) Record of Decision and Responsiveness Summary

C. Within thirty (30) days after the designation by USEPA or the FAA of any new AOC(s), the FAA shall propose deadlines for completion of the following draft primary documents:

1) PA/SI Workplan

2) PA/SI Completion Report

Within thirty (30) days after USEPA's determination that a response action is required and that the particular AOC must therefore follow the procedures under Article X, the FAA shall propose deadlines for the documents required under paragraph B of this Article.

D. Within fifteen (15) days of receipt of proposed deadlines under paragraphs B or C of this Article, the USEPA shall review and provide comments to the FAA regarding the proposed deadlines. Within fifteen (15) days following receipt of the comments the FAA shall, as appropriate, make revisions and reissue the proposal. The Parties shall meet as necessary to discuss and finalize the proposed deadlines. If they agree on proposed deadlines, the finalized deadlines shall be incorporated into the appropriate Work Plans. If the Parties fail to agree within ninety (90) days on the proposed deadlines, the matter shall immediately be submitted for dispute resolution pursuant to Part XI of this Agreement. The final deadlines established pursuant to this Subpart shall be published by USEPA.

E. Within twenty-one (21) days of issuance of the ROD, the FAA shall propose deadlines for completion of the following draft primary documents:

1. Remedial Design
2. Remedial Action Work Plan (including a schedule for completion of the remedial action)

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

F. The deadlines set forth in this Part, or to be established as set forth in this Part, may be extended pursuant to Part XV (Extensions) of this Agreement. The Parties recognize that one possible basis for extension of the deadlines for completion of the Remedial Investigation and Feasibility Study Document is the identification of significant new Site conditions during the performance of the remedial investigation.

XV. EXTENSIONS

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

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

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

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

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

D. Within seven days of receipt of a request for an extension of a timetable and deadline or a schedule, USEPA shall advise the FAA in writing of its respective position on the request. Any failure by USEPA to respond within the seven day period shall be deemed to constitute concurrence in the request for extension. If USEPA does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

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

F. Within seven days of receipt of a statement of nonconcurrence with the requested extension, the FAA may invoke dispute resolution.

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

XVI. FORCE MAJEURE

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

increased costs or expenses violate the Antideficiency Act, in accordance with Article XVII - Funding.

XVII. FUNDING

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

Funds authorized and appropriated annually by Congress under the FAA's Facilities and Equipment appropriation in the Department of Transportation Appropriation Act may be a source of funds for activities required by this Agreement.

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

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

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

XVIII. NOTIFICATION

A. Unless otherwise specified, ten (10) copies of any Report or Submittal provided pursuant to a schedule or deadline identified in or developed under this Agreement shall be sent by certified mail, return receipt requested and addressed or hand delivered to:

CERCLA Regional Project Manager
(FAA Technical Center)
Federal Facilities Section
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region II
26 Federal Plaza,
New York, New York 10278

Documents sent to the FAA shall be addressed as follows unless the FAA specifies otherwise by written notice:

RI/FS Project Manager
Federal Aviation Administration Technical Center
Resource Management Service
Facility Engineering and Operations Division
Environmental Branch, ACM - 440
Atlantic City Int'l Airport, New Jersey 08405

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

XIX. PROJECT MANAGERS

USEPA and the FAA shall each designate a Project Manager and Alternate (hereinafter jointly referred to as Project Manager) for the purpose of overseeing the implementation of this Agreement. Within ten (10) days of the effective date of this Agreement, the FAA shall notify USEPA of the name and address of its Project Manager. Any Party may change its designated Project Manager by notifying the other Parties, in writing, within five days of the change. To the maximum extent possible, communications between the Parties concerning the terms and conditions of this Agreement shall be directed through the Project Manager. Each Project Manager shall be responsible for assuring that all communications from the other Project Manager is appropriately disseminated and processed by the entities which the Project Managers represent. To the maximum extent practicable, at meetings of the project managers, the project managers will discuss new developments in pertinent guidance and policy.

The Project Manager for the FAA shall be physically present on the FAA Technical Center or reasonably available to supervise work performed pursuant to this Agreement and shall make himself available to the USEPA Project Manager for the pendency of this agreement. The absence of the USEPA Project Manager from the FAA Technical Center shall not be cause for work stoppage.

XX. SAMPLING AND DATA/DOCUMENT AVAILABILITY

The FAA shall make available to USEPA quality assured results of sampling, tests or other data generated by any Party, or on their behalf, with respect to the implementation of this Agreement within sixty (60) days of their collection or performance. If quality assurance is not completed within sixty (60) days, raw data or results shall be submitted within the

sixty (60) day period and quality assured data or results shall be submitted as soon as they become available.

At the request of the USEPA Project Manager, the FAA shall allow split or duplicate samples to be taken by USEPA during sample collection conducted during the implementation of this Agreement. The FAA Technical Center Project Manager shall notify the USEPA Project Manager not less than fourteen (14) days in advance of any sample collection. If due to an emergency it is not possible to provide fourteen (14) days prior notification, the FAA shall notify the USEPA Project Manager as soon as possible after becoming aware that samples will be collected.

The FAA will not bear the oversight costs of sampling and analysis for USEPA split samples, subject to national resolution of the issue of the cost reimbursement by the Executive Branch or an Act of Congress.

XXI. RETENTION OF RECORDS

Upon request by USEPA, the FAA shall make available to USEPA all of its records and documents in its possession or in the possession of its divisions, employees, agents, accountants, contractors which address the presence of hazardous substances, pollutants and contaminants at the FAA Technical Center related to activities taken pursuant to this Agreement. The FAA shall preserve, for a minimum of five (5) years after termination of this Agreement, all such documents and records despite any document retention policy to the contrary. After this five (5) year period, the FAA shall notify USEPA prior to destruction or disposal of any such documents or records.

XXII. ACCESS

A. Without limiting any authority conferred on USEPA by statute or regulation, USEPA and/or their authorized representatives, shall have authority to enter the FAA Technical Center at all reasonable times for the purposes of, among other things: (1) inspecting records, operating logs, contracts and other documents relevant to implementation of this Agreement; (2) reviewing the progress of the FAA, its response action contractors or agents in implementing this Agreement; (3) conducting such tests as the USEPA Project Manager deems necessary; and (4) verifying the data submitted to USEPA by the FAA. The FAA reserves the right to assert a confidentiality claim in accordance with Article XXV when appropriate for the information reviewed. The FAA shall honor all reasonable requests for such access by USEPA conditioned only upon presentation of proper credentials.

B. To the extent that access is required to areas of the FAA Technical Center presently owned by or leased to parties other than the FAA, the FAA agrees to exercise its authorities to obtain access pursuant to Section 104(e) of CERCLA from the present owners and/or lessees within thirty (30) calendar days after the effective date of this Agreement or, where appropriate, within thirty (30) days after the relevant Submittals. The FAA shall use its best efforts to obtain access agreements which shall provide reasonable access to USEPA and/or its authorized representatives.

C. In the event that the FAA Technical Center access is not obtained within the thirty (30) day time period set forth in Subpart B above, within fifteen (15) days after the expiration of the thirty (30) day period the FAA shall notify USEPA regarding the lack of, and efforts to obtain, such access agreements. Within fifteen (15) days of any such notice, the FAA shall submit appropriate modification(s) to any timetable, deadline or schedule under Article XV in response to such inability to obtain access.

D. The FAA may request the assistance of USEPA where access problems arise.

XXIII. FIVE YEAR REVIEW

Consistent with Section 121(c) of CERCLA, and in accordance with this Agreement, the FAA agrees that USEPA will review the remedial actions and long term operation and maintenance of the actions no less often than each five years after the initiation of the final remedial actions to assure that human health and the environment are being protected by the remedial actions being implemented. If upon such review it is the judgement of USEPA that additional action or modification of the remedial actions are appropriate in accordance with Sections 104 or 106 of CERCLA, USEPA shall require the FAA to implement such additional or modified actions.

XXIV. OTHER CLAIMS

Nothing in this Agreement shall constitute or be construed as a bar or 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 or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the FAA Technical Center.

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

This Agreement shall not restrict USEPA or the FAA from taking any legal or response action for any matter not specifically covered by this Agreement.

This Agreement shall not be construed to indemnify any person.

Notwithstanding any provision of this Agreement, no action or decision by USEPA, including without limitation decisions of the USEPA Region II Regional Administrator or his designate pursuant to this Agreement, shall constitute final agency action giving rise to any rights to judicial review prior to USEPA's initiation of judicial action to compel the FAA's compliance with the mandate(s) of this Agreement.

XXV. CONFIDENTIAL INFORMATION

The FAA may assert a confidentiality claim covering all or part of the information requested by this Agreement. Analytical data shall not be claimed as confidential by the FAA.

Information determined to be confidential by USEPA pursuant to 40 CFR Part 2 shall be afforded the protection specified therein. If no claim of confidentiality accompanies the information when it is submitted to USEPA, the information may be made available to the public without further notice to the FAA.

In the event that the FAA provides information to USEPA claimed to be confidential under the FAA's regulation, USEPA shall review the confidentiality claim pursuant to 40 CFR Part 2, and shall make an independent confidentiality determination. The FAA's prior confidentiality determination made pursuant to its regulation shall be relevant to, but shall not control, EPA's confidentiality determination.

In the event that USEPA determines that the information submitted by the FAA contains confidential information, USEPA shall manage such information according to USEPA procedures for the management of Confidential Business Information (CBI).

In the event that USEPA determines that information submitted by the FAA pursuant to this Exhibit is not confidential pursuant to 40 CFR Part 2, the Parties to this Agreement recognize that the conflicting confidentiality determinations made by USEPA and the FAA give rise to a unique inter-agency dispute. Therefore, when such a dispute arises, USEPA and the FAA agree to jointly elevate the resulting dispute to the EPA Office of General Counsel and the FAA Office of Chief Counsel for assistance in resolving the dispute. USEPA and the FAA agree to abide by the final inter-agency resolution of the dispute resulting from such elevation, including appropriate management of the information in question in accordance with the resolution of the dispute.

XXVI. AMENDMENT OF AGREEMENT

This Agreement may be amended by a written agreement and pursuant to Part XXIX (Public Comment), between the FAA and USEPA.

XXVII. CONVEYANCE OF TITLE

A. In the event the FAA decides to enter into any contract for the sale or other transfer of any part of the FAA Technical Center, the FAA shall comply with the requirements of CERCLA § 120(h), 42 U.S.C. § 9620(h). If the parcel does not meet the criteria of CERCLA § 120(h)(1), 42 U.S.C. §9620(h)(1), the transfer of such property is not subject to the requirements of CERCLA § 120(h)(3), 42 U.S.C. § 9620(h)(3).

B. No conveyance of title, easement, or other interest in the FAA property at the FAA Technical Center on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, shall be consummated by the FAA without provision for continued maintenance of any system or response action(s) which have been taken as a result of activities which occurred on the property which is the subject of the said conveyance. Such transfer shall also provide the USEPA access to transferred parcels as may be necessary to conduct response actions on other portions of the FAA facility. In addition, the FAA shall include notice of this Agreement in any document transferring ownership or operation of said property to any subsequent owner and/or operator of any portion of said property. At least thirty (30) days prior to any conveyance, the FAA shall notify the USEPA of the provisions made for the continued operation and maintenance of any response action(s) or systems installed or implemented pursuant to this Agreement. The terms of this Article, including the provision for continued maintenance, notice of this Agreement, and notice to the USEPA, shall not apply to property owned by the FAA Technical Center which is not an AOC under this Agreement. The terms of this Article shall apply, however, to property transferred by the FAA and property currently owned by the FAA which may subsequently be determined to be an AOC within the meaning of this Agreement.

XXVIII. PUBLIC PARTICIPATION

A. The Parties agree that this Agreement and any subsequent proposed remedial action alternative(s) and subsequent plan(s) for remedial action at the FAA Technical Center arising out of this Agreement shall comply with the administrative record

and public participation requirements of CERCLA (including Section 117), the National Contingency Plan, USEPA guidance on public participation and administrative records.

B. The FAA shall develop and implement a Community Relations Plan which responds to the need for an interactive relationship with all interested community elements of work undertaken by the FAA. The FAA agrees to develop and implement the Community Relations Plan in a manner consistent with Section 117 of CERCLA, the National Contingency Plan, USEPA guidelines set forth in USEPA's Community Relations Handbook, and any modifications thereto.

C. Any Party issuing a formal press release to the media regarding any of the work required by this Agreement shall advise the other Parties of such press release and the contents thereof, at least forty-eight (48) hours before the issuance of such press release and of any subsequent changes prior to release.

D. USEPA agrees it shall fund and administer Technical Assistance Grants in accordance with Section 117(e) of CERCLA and regulations issued thereunder. The FAA agrees it shall fund the Technical Assistance Grants by making payment to USEPA for the dollar amount of the Technical Assistance Grant to be paid to the grant recipient. If the Technical Assistance Grant is renewed, renewal is at the discretion of USEPA, the FAA will make payment of the amount of the renewed grant as described above.

E. The FAA agrees it shall establish and maintain an administrative record at or near the FAA Technical Center in accordance with Section 113(k) of CERCLA. The administrative record shall be established and maintained in accordance with current and future USEPA policy and guidelines. A copy of each document placed in the administrative record will be provided to USEPA. The administrative record developed by the FAA shall be updated and supplied to USEPA on at least a quarterly basis. An index of documents in the administrative record will accompany each update of the administrative record. In developing the administrative record, the FAA agrees it shall follow the public participation requirements of CERCLA Section 113(k) and comply with any guidance and/or regulations issued by USEPA with respect to such Section.

XXIX. PUBLIC COMMENT

A. Within 15 days after the date the Regional Administrator of USEPA, Region II, executes this Agreement, USEPA shall announce the availability of this Agreement to the public for their review and comment. USEPA shall accept comments from the public for 45 days after such announcement. After the 45 day

public comment period expires, the Parties shall review all such comments. Within 30 days after the expiration of the public comment period the Parties shall decide that either:

(1) the Agreement shall be made effective without any modifications; or,

(2) the Agreement shall be modified prior to being made effective.

B. If the Parties decide that the Agreement shall be made effective without any modifications, USEPA shall transmit a copy of the signed Agreement to the FAA and shall notify the FAA in writing that the Agreement is effective. The effective date of the Agreement shall be the date of that letter from USEPA to the FAA.

C. If the Parties agree that modifications are needed and agree upon the modifications and amend the Agreement by mutual consent within 60 days after the expiration of the public comment period, USEPA will determine whether the modified Agreement requires additional public notice and comment pursuant to any provision of CERCLA. If USEPA determines that no additional notice and comment are required, USEPA shall transmit a copy of the modified Agreement to the FAA and shall notify the FAA in writing that the modified Agreement is effective. The effective date of the Agreement shall be the date of that letter from USEPA to the FAA. If the parties amend the Agreement within this 60 day period and if USEPA concludes that such modifications require that the public receive additional opportunity for notice and comment, such additional notice and comment will be provided consistent with the provisions stated in Section A above. If the Parties agree, after such additional notice and comment has been provided, that the Agreement does not require any further modification, USEPA shall send a copy of the mutually agreed upon Agreement to the FAA and shall notify the FAA that the Agreement is effective. The effective date of the Agreement shall be the date of that letter from USEPA to the FAA.

D. If, 30 days after the expiration of the 45 day comment period has expired, the Parties have not reached agreement on either:

(1) whether modifications to the Agreement are needed; or,

(2) what modifications to the Agreement should be made; or,

(3) any language, any provisions, any deadlines, any work to be performed or any of the content of the Agreement or any attachments to the Agreement,

the matters which are in dispute shall be resolved by the dispute resolution procedures of Part XI, above. For the purposes of this Article, the Agreement shall not be effective while the dispute resolution proceedings are underway. After these proceedings are completed, Administrative Notice shall be provided to the Parties indicating the results of the dispute resolution proceedings. The FAA and USEPA reserve the right to withdraw from the Agreement by providing written notice to the other Party within 20 days after receiving the Administrative Notice of the resolution of the matters in dispute. Failure by a Party to provide such a written notice of withdrawal within this 20 day period shall act as a waiver of the right of that Party to withdraw from the Agreement. If neither Party withdraws from the Agreement within this 20 day period, USEPA shall thereafter send a copy of the final Agreement to the FAA and shall notify the FAA that the Agreement is effective. The effective date of the Agreement shall be the date of that letter from USEPA to the FAA.

XXX. RECOVERY OF EXPENSES

The Parties agree to amend this Agreement at a later date in accordance with any subsequent national resolution of the issues of cost reimbursement. EPA reserves all rights it may have for seeking cost reimbursement under Section 107 of CERCLA.

XXXI. CREATION OF DANGER

In the event USEPA determines that activities conducted pursuant to this Agreement are creating a danger to the health or welfare of the people on or in the surrounding area or to the environment, the FAA will take immediate action to notify all affected parties, including State and local health officials; in the case of contamination originating on the FAA Technical Center or which is the result of activities in connection with the FAA Technical Center, the FAA will take appropriate measures to protect the public health or welfare or the environment affected. The USEPA may direct the FAA to stop further implementation of this Agreement for such a period of time as needed to abate the danger.

XXXII. TERMINATION

The provisions of this Agreement shall be deemed satisfied and terminated on the date that notice of final deletion from the National Priorities List is published in the Federal Register.

XXXIII. EFFECTIVE DATE

This Agreement is effective upon issuance of a notice to the Parties by USEPA following implementation of Part XXIX (Public Comment) of this Agreement.

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

IT IS SO AGREED;

April 7, 1993
Date

Mr. Harvey B. Safeer, Director
Federal Aviation Administration
Technical Center

Date

Constantine Sidamon-Eristoff
Regional Administrator
United States Environmental
Protection Agency, Region II

May 17, 1993.
DATE

William J. Muszynski
Acting Regional Administrator
United States Environmental
Protection Agency, Region II

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION II
AND THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

IN THE MATTER OF:	)	
	)	FEDERAL FACILITY
THE UNITED STATES DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION	)	AGREEMENT UNDER CERCLA SECTION 120
	)	
FEDERAL AVIATION ADMINISTRATION TECHNICAL CENTER	)	Administrative Docket Number: II-CERCLA-FAA-90101

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:

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I. JURISDICTION

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

(i) The U.S. Environmental Protection Agency (USEPA), Region II, enters into those portions of this Agreement that relate to the remedial investigation/feasibility study (RI/FS) Qpursuant to Section 120(e)(1) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. § 9620(e)(1), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499 (hereinafter referred to as CERCLA) and Executive Order 12580;

(ii) USEPA, enters into those portions of this Agreement that relate to final remedial actions and other operable unit actions pursuant to Section 120(e)(2) of CERCLA, and Executive Order 12580;

(iii) The Federal Aviation Administration (FAA) (an agency of the U.S. Department of Transportation) enters into those portions of this Agreement that relate to the RI/FS pursuant to Section 120(e)(1) of CERCLA, and Executive Order 12580;

(iv) The FAA enters into those portions of this Agreement that relate to final remedial actions and other operable unit actions pursuant to Section 120(e)(2) of CERCLA and Executive Order 12580.

II. PARTIES

The Parties to this Agreement are USEPA and the FAA. The terms of this Agreement shall apply to and be binding upon USEPA, its agents and assigns, employees, response action contractors for the FAA Technical Center and upon the FAA, its agents and assigns, employees, response action contractors for the FAA Technical Center and all successor owners, operators and lessees of the FAA Technical Center. This Agreement shall be enforceable against all Parties to this Agreement. The FAA will notify USEPA of the identity and assigned tasks of each of its contractors performing work under this Agreement at or before the next meeting of the Project Managers. The FAA shall notify its agents and assigns, employees, response action contractors for the FAA Technical Center, and all successor owners, operators and lessees of the FAA Technical Center of the existence of this Agreement.

III. DEFINITIONS

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

In addition:

A. "Agreement" shall refer to this document and shall include all Attachments to this document. All such Attachments, ie., Final Primary Documents, shall be appended to and made an integral and enforceable part of this document.

B. "ARAR" shall mean legally "applicable" or "relevant and appropriate" requirements as those terms are used in CERCLA Section 121(d), 42 U.S.C. Section 9621(d) and the National Contingency Plan.

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

D. "Days" shall mean calendar days, unless business days are specified. Any Submittal that under the terms of this Agreement would be due on a Saturday, Sunday, or Federal holiday shall be due on the following business day.

E. "FAA" shall mean the Federal Aviation Administration, an administration of the Department of Transportation (DOT), its employees and authorized representatives.

F. "FAA Technical Center" shall mean all real property within the ownership, custody or control of the FAA including property leased to or by the FAA, comprising approximately 5052 contiguous acres in southeastern New Jersey, within the Townships of Galloway, Hamilton, and Egg Harbor in Atlantic County.

G. "NJDEPE" shall mean the New Jersey Department of Environmental Protection and Energy, its employees and authorized representatives.

H. "Quality Assured Data" shall mean data that have undergone quality assurance as set forth in the approved Quality Assurance Project Plan.

I. "Area of Concern('AOC')" shall mean any location, whether on the FAA Technical Center or not, which is related in

whole or in part to releases or threatened releases of hazardous substances from the FAA Technical Center.

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

K. "Timetables and deadlines" shall mean schedules for those actions that are to be completed and performed, including but not limited to work and submission of documents.

IV. PURPOSE

A. The general purposes of this Agreement are to:

(1) ensure that the environmental impacts associated with past and present activities at the FAA Technical Center are thoroughly investigated and appropriate remedial action taken as necessary to protect the public health, welfare and the environment;

(2) establish a procedural framework and schedule for developing, implementing and monitoring appropriate response actions at the FAA Technical Center in accordance with CERCLA, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. § 300 et. seq., Superfund guidance and policy, Resource, Conservation, and Recovery Act (RCRA), RCRA guidance and policy; and,

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

B. The specific purposes of this Agreement are to:

(1) Identify operable unit remedial action alternatives which are appropriate at the FAA Technical Center prior to the implementation of final remedial action(s) for the FAA Technical Center. The alternatives shall be identified and proposed to the Parties as early as possible prior to formal proposal of operable unit remedial actions to USEPA pursuant to CERCLA. This process is designed to promote cooperation among the Parties in identifying operable unit remedial action alternatives prior to selection of final remedial actions.

(2) Establish requirements for the performance of a Remedial Investigation (RI) to determine fully the nature and extent of the threat to the public health or welfare, or to the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at the FAA Technical Center and to establish requirements for the performance of a Feasibility Study (FS) for the FAA Technical Center to identify, evaluate, and select alternatives for the appropriate remedial action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants

or contaminants at the FAA Technical Center in accordance with CERCLA.

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

(4) Implement the selected final remedial action(s) and other operable unit remedial action(s) in accordance with CERCLA and meet the requirements of Section 120(e)(2) of CERCLA for an interagency agreement between USEPA and the FAA.

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

(6) Coordinate response actions at the FAA Technical Center with the mission and support activities at the FAA Technical Center.

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

V. STATUTORY COMPLIANCE

A. The Parties intend that the activities covered by this Agreement will be deemed to achieve compliance with CERCLA, 42 U.S.C. § 9601 et. seq. and to meet or exceed all applicable or relevant and appropriate Federal and State laws and regulations, to the extent required by Section 121 of CERCLA, 42 U.S.C. § 9621.

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

C. The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the National Contingency Plan. The Parties further recognize that any hazardous waste management activities at the FAA Technical Center may require the issuance of permits under Federal and State laws. This Agreement does not affect the requirements, if any, to obtain such permits.

VI. SCOPE OF AGREEMENT

Under this Agreement the FAA agrees that it shall:

A. Conduct a Remedial Investigation (RI) for the FAA Technical Center which complies with the requirements of the National Contingency Plan (NCP) and CERCLA.

B. Conduct a Feasibility Study (FS) which complies with the requirements of the National Contingency Plan and CERCLA on areas of concern selected by USEPA for such review based on RI data subject to dispute resolution.

C. Develop remedial action alternatives for each AOC selected by USEPA and/or proposed by the FAA. USEPA may add or delete AOC's on the basis of additional information which more accurately reflects the area of concern related in whole or in part to the FAA Technical Center, subject to dispute resolution.

D. Implement those remedial actions proposed by the FAA and selected by USEPA for the AOC(s).

VII. DETERMINATION OF FACTS

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

A. In 1942 a Naval Air Base was constructed on land that was owned by the City of Atlantic City which encompasses much of the eastern portion of the present FAA Technical Center property. The Airways Modernization Board (AMB), established by President Eisenhower, elected to use the Atlantic City site as its National Aviation Facilities Experimental Center (NAFEC) in 1957. In 1958 the Navy's leasehold facility was officially transferred to the AMB from the Navy. In 1959, the FAA exercised its option in that lease to purchase 2700 acres from the City of Atlantic City. Subsequent additions have brought the total land area to approximately 5,052 acres.

B. The Federal Aviation Administration (now an administration of the United States Department of Transportation) took over the operation of the AMB in November of 1958. The early 1960's saw the development of most of the Research and Development (R&D) Facility south of the Atlantic City Reservoir by the FAA. In 1962, the Atlantic City Municipal Terminal Building was dedicated on a 79-acre tract of land surrounded by FAA Technical Center property. The tract and building have been continuously owned by the City of Atlantic City since 1962. The FAA's large technical

and administrative complex was constructed in 1979. The New Jersey Air National Guard has maintained some facilities at the FAA Technical Center since 1958.

C. Part of the City of Atlantic City's municipal water supply is provided by nine (9) ground water wells north of the upper Atlantic City Reservoir on land on which the FAA has granted an easement to the Atlantic City Municipal Utility Authority. This water supply is supplemented by water withdrawn from two Atlantic City reservoirs. The upper reservoir is located on land surrounded by FAA Technical Center property. The lower reservoir is located southeast and outside the boundaries of the FAA Technical Center. The Atlantic City Reservoirs are fed primarily by the North and South Branches of Doughty's Mill Stream, which traverses portions of the FAA Technical Center grounds.

D. The FAA contracted TRC Environmental Consultants to produce a Remedial Investigative/Feasibility Study for a number of AOCs at the facility. Most of these AOCs were defined in a report, "Environmental Investigative/Feasibility Study, FAA Technical Center, Atlantic City Airport, New Jersey" submitted to USEPA in a revised form on March 31, 1989. This report included, but was not limited to AOCs 20(A), 27, 29, 41, 56, A, B, C, D, E, F, G, H, I, J, K, M, N, P, and Q. Preliminary field investigation work has been done on a number of the AOCs with further studies to be performed in the future. A second phase of field investigation work was performed for Areas 20A, 27, 29, 41, 56, A through G, J, L, M, N, P, and R. The technical report for this work "Environmental Investigative/Feasibility Study, FAA Technical Center, Atlantic City Airport, N.J., Phase II Investigations" was submitted in a revised form on January 30, 1990. Supplemental field investigations were done for Areas 41, B, P, R, and S. The technical report for this work "Environmental Investigative/Feasibility Study, FAA Technical Center, Atlantic City Airport, N.J. Supplemental Investigation" was submitted March 2, 1990 and will be revised.

Based on these reports and other documentation the current AOCs and their suspected sources of contamination are summarized as follows:

o AOC No. 20(A) (Salvage Area) - Storage of scrap materials and drummed hazardous materials have led to leakage and spills. Soil sampling in the area showed extensive impact on soil quality from PCB's and VOC's. Several volatile organics (1,1-dichloroethene, 1,1,1-trichloroethane, and tetrachloroethene) were found in groundwater.

o AOC No. 27 (Fuel Mist Test Facility) - Spraying and burning of jet fuel to test additives designed to prevent explosion have contaminated soils. Elevated levels of petroleum hydrocarbons were found in soils on site.

o AOC No. 29 (Fire Training Area) - Test burning extinguishing of fuel fires contaminated soils and ground water. Significant contamination with PCB's and organics (benzene, phthalates) was found in soils and ground water. Drums and tanks were stored in a portion of this AOC, formerly known as AOC K. These drums and tanks may have leaked onto the ground resulting in soil and ground water contamination.

o AOC No. 41 (Fuel Farm and Photo Lab) - Potential leaks from underground storage tanks, discharge of photographic lab wastes into drainage swale and spillage of fuel at surface above tanks has contaminated soils. Soil borings contained relatively high levels of tentatively identified volatile organic and base/neutral extractable compounds. Specific compounds could not be identified.

o AOC No. 56 (Abandoned Navy Landfill) - Burial of various aviation facility wastes occurred at this site. Low levels of 1,1,1-trichloroethane and 1,1-dichloroethane were present in groundwater on site. Elevated concentration levels of four inorganic constituents, (cadmium, chromium, mercury, and lead) which exceeded Federal Safe Drinking Water Act standards were found in the ground water.

o AOC A, R & D Navy Landfill -- Use of the area as an uncontrolled dump by the Navy may have contaminated soil and ground water.

o AOC B, Navy Fire Test Facility -- Spraying and burning of fuel in the open may have contaminated soil and ground water.

o AOC C, Butler Aviation Fuel Spill -- Documented ground water contamination at Butler Aviation may have migrated off-site, onto FAA property.

o AOC D, Jet Fuel Farm -- Leakage from dry wells at the fuel farm may have contaminated soil and ground water.

o AOC E, Building 11, Tank Excavation Area -- Past leakage from an underground No. 6 fuel oil tank may have contaminated soil and ground water.

o AOC F, Air Blast Facility -- Possible leaks from three former underground tanks may have contaminated soil and ground water.

o AOC G, Transformer Storage Area -- Spillage of PCB oils from transformers on a storage pad is known to have occurred and may have contaminated surface and subsurface soil.

o AOC H, Salvage Yard Near Sewage Treatment Plant -- The use of the area as a salvage yard provides potential for soil and ground water contamination.

o AOC I, Former Incinerator Building -- Incinerator ash present at the site is potentially toxic and may have contaminated soil and groundwater.

o AOC J, Excavation Area Near Runway -- An excavation shown on a 1962 aerial photograph suggests the area may have been used as a landfill which could have contaminated soil and ground water.

o AOC M, Building 202, Gelled Fuel Test Area -- The spraying and burning of fuel in the open could have contaminated surface soils and ground water.

o AOC N, Building 214, Catapult Test Area -- The spraying and burning of fuel in the open could have contaminated surface soils and ground water.

o AOC P, Building 204 Fuel Spill -- The spill of an unknown quantity of JP-4 jet fuel may have contaminated soil and ground water.

o AOC Q, Fire Station -- Open burning of fuel during fire training exercises may have contaminated soils.

o AOC R, Trash Dump West of Tilton Road -- Trash and construction debris dumped here may have impacted ground water.

o AOC S, Excavation Area West of Tilton Road -- Aerial photographs indicates several surface impoundments and areas of stained soil.

o AOC 2, Aircraft Defueling Area -- Defueling of JP-4 jet fuel into the soil may have contaminated the soil and groundwater.

o AOC 3, Old Aircraft Wash Rack -- Cleaning aircraft with detergents, solvents and JP-4 jet fuel, storage and dumping of hydraulic and other waste oils, storage of various oils and other hazardous materials may have contaminated soil and groundwater.

o AOC 5, Liquid Waste Holding Area Behind Building 65 -- Storage of waste engine oil, solvents and penetrant and defueling of JP-4 jet fuel have stained soil and may have contaminated groundwater as well.

o AOC 6, Drum Burials at Blast Pad in Alert Area -- Storage of unknown liquid material may have contaminated soil and groundwater.

E. The FAA intends to enter into a Memorandum of Agreement (MOA) with the United States Air Force on behalf of the New Jersey Air National Guard (NJANG) to address AOCs 2, 3, 5, 6, 41, G, and H. Upon executing the MOA with NJANG, the FAA will place the MOA in the administrative record. The MOA with NJANG does not relieve the FAA of its obligations under this Agreement.

F. The FAA Technical Center is a Facility as defined in Section 101(9) of CERCLA and was proposed for listing on the National Priorities List on July 14, 1989, 54 FR 29820 and was listed on the National Priorities List (NPL) on August 30, 1990, 55 FR 35502, with an effective date of October 1, 1990.

G. The purpose of the NPL is to identify releases or threatened releases of hazardous substances that are priorities for further evaluation. The USEPA believes that it would be neither feasible nor consistent with this limited purpose for the NPL to attempt to describe releases in precise geographical terms. The term "facility" is broadly defined in CERCLA to include any area where a hazardous substance has "come to be located" (CERCLA Section 101(9)), and the listing process is not intended to define or reflect boundaries of such facilities or releases. Site names are provided for general identification purposes only. For example, the FAA Technical Center is the name given to the area listed on the NPL. Should federal legislation, EPA regulation or EPA policy be enacted or issued after this Agreement is signed which relates to conveyance of federal facility property, the parties agree to be governed by the new legislation, EPA regulation or EPA policy.

H. Except with respect to implementation and enforcement of this Agreement, nothing contained in this Article shall constitute an admission of liability by the FAA or an admission by either party of any determination of fact noted herein.

VIII. REMOVAL AND EMERGENCY REMOVAL ACTIONS

A. Any CERCLA removal activity at the FAA Technical Center which has not been approved through the Record of Decision (ROD) process and which is not an "emergency removal" under Section B of this Article, shall require the written approval of USEPA of such activity before such activity can commence. The FAA shall notify USEPA at least forty-five (45) days prior to the planned commencement of such activity. The FAA shall not unilaterally begin "removal" actions as such term is defined in CERCLA, Section 101(23), not approved through the Consultation with USEPA process on any portion of the FAA Technical Center without the written approval of USEPA of the proposed action.

B. USEPA has sole authority to conduct emergency removals at the FAA Technical Center, which are those actions

where a release requires that response actions begin on-site within hours of the determination that a removal action is appropriate. A determination that a release requires an emergency removal may be made by either USEPA or the FAA. If the FAA determines that an emergency removal is required, it shall immediately notify USEPA. USEPA retains final decision making authority with respect to what constitutes an emergency removal.

C. If there is an immediate threat to public health or welfare or the environment which falls outside the scope of CERCLA and which requires an immediate response, the FAA may take action. However, within 24 hours of the discovery of the threat the FAA must notify the USEPA Project Manager orally and inform the Project Manager of the actions to be taken.

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

IX. IDENTIFICATION AND DETERMINATION OF AOC'S

A. New AOCs shall be designated solely by USEPA upon review of Submittals. AOC's may be proposed by the FAA for designation by USEPA. USEPA may add or delete AOCs on the basis of additional information which more accurately reflects releases or threatened releases of hazardous substances related in whole or in part to the FAA Technical Center. The FAA shall conduct RI's and focussed FS's for all AOC's identified in Article VII of this Agreement. USEPA may continue to designate new AOCs until Remedial Actions are completed on all designated AOCs, including those designated after the effective date of this Agreement.

B. The FAA shall conduct a Remedial Preliminary Assessment (PA) and Remedial Site Inspection (SI), in accordance with the National Contingency Plan, on all new AOCs designated by USEPA. Upon completion of the PA and SI, the FAA shall prepare a Completion Report for USEPA review.

C. USEPA will review all Completion Reports submitted by the FAA to ascertain the adequacy of the documentation and to determine, based on information and conditions known by USEPA at that time, whether the AOC presents a threat to public health, welfare, or the environment.

(1) Based on the Completion Report and on information and conditions known by USEPA at that time, if USEPA determines that no response action will be necessary, USEPA shall inform the FAA in writing that no response action is required for that particular AOC. The Completion Report on which the

determination has been made shall be documented and incorporated into/or constitute a RI/FS and shall be finalized in a ROD.

(2) Based on the Completion Report and on information and conditions known by USEPA at that time, if USEPA determines that a response action is required, the AOC will be addressed through the RI/FS process as set forth in Article X of this Agreement.

(3) All AOCs will be documented in a ROD.

D. Determinations by USEPA regarding an AOC shall not preclude USEPA from making subsequent determinations at the delisting phase that measures taken hereunder are not protective of public health, welfare or the environment.

X. CONSULTATION WITH USEPA

Review and Comment Process for Draft and Final Documents

A. Applicability:

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

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

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

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

invoked or as modified by decision of the dispute resolution process.

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

C. Primary documents:

(1) The FAA shall complete and transmit drafts for the following primary documents to USEPA for review and comment in accordance with the provisions of this Part:

A. Health and Safety Plan

B. QA/QC Plan

C. Community Relations Plan

D. RI/FS Work Plan

E. RI/FS and Focussed Feasibility Study(FFS) documents including the Risk Assessment Report

F. Proposed Remedial Action Plan

G. Record of Decision and Responsiveness Summary

H. Remedial Design

I. Remedial Action Work Plan

J. Remedial Preliminary Assessment/Preliminary Inspection (PA/SI) Workplan

K. PA/SI Completion Report

(2) The FAA shall complete and transmit draft primary documents in accordance with the timetable and deadlines established in Part XIV (Deadlines) of this Agreement.

D. Secondary Documents:

(a) The FAA shall complete and transmit draft documents for the following secondary documents to USEPA for review and comment in accordance with the provisions of this Part:

1. Detailed Analysis of Alternatives

2. Post-screening Investigation Work Plan

3. Results of Treatability Studies

4. Sampling and Data Results

(b) Although USEPA may comment on the draft documents for the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by Subpart B hereof.

E. Meetings of the Project Managers on Development of Documents:
The Project Managers shall meet approximately every 45 days, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the site. Prior to preparing any draft document specified in Parts C and D above, the Project Managers shall meet to discuss the document results in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft document.

F. Identification and Determination of Potential ARARs:
(a) For those primary documents or secondary documents that consist of or include ARAR determinations, prior to the issuance of a draft document, the Project Managers shall meet to identify and propose, to the best of their ability, all potential ARARs pertinent to the document being addressed. Draft ARAR determinations shall be prepared by the FAA in accordance with Section 121(d)(2) of CERCLA, the NCP and pertinent guidance issued by USEPA, which is not inconsistent with CERCLA and the NCP.
(b) In identifying potential ARARs, the Parties recognize that actual ARARs can be identified only on a site-specific basis and that ARARs depend on the specific hazardous substances, pollutants and contaminants at a site, the particular actions proposed as a remedy and the characteristics of a site. The Parties recognize that ARAR identification is necessarily an iterative process and that potential ARARs must be re-examined throughout the RI/FS process until a ROD is issued.

G. Review and Comment on Draft Documents:
(a) The FAA shall complete and transmit each draft primary document to USEPA on or before the corresponding deadline established for the issuance of the document.
(b) Unless the Parties mutually agree to another time period, all draft documents shall be subject to a 60-day period for review and comment. Review of any document by the USEPA may concern all aspects of the document (including completeness) and should include, but is not limited to, technical evaluation of

any aspect of the document, and consistency with CERCLA, the NCP and any pertinent guidance or policy promulgated by the USEPA. Comments by the USEPA shall be provided with adequate specificity so that the FAA may respond to the comment and, if appropriate, make changes to the draft document. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of the FAA, USEPA shall provide a copy of the cited authority or reference to the FAA. In cases involving complex or unusually lengthy documents, USEPA may extend the 60-day comment period for an additional 20 days by written notice to the FAA prior to the end of the 60-day period. On or before the close of the comment period, USEPA shall transmit by next day mail their written comments to the FAA.

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

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

(e) Following the close of the comment period for a draft document, the FAA shall give full consideration to all written comments on the draft document submitted during the comment period. Unless the Parties mutually agree to another time period, within 30 days of the close of the comment period on a draft secondary document, the FAA shall transmit to USEPA its written response to comments received within the comment period. Unless the Parties mutually agree to another time period, within 30 days of the close of the comment period on a draft primary document, the FAA shall transmit to USEPA a draft final primary document, which shall include the FAA's response to all written comments, received within the comment period. While the resulting draft final document shall be the responsibility of the FAA, it shall be the product of consensus to the maximum extent possible.

(f) The FAA may extend the 30-day period for either responding to comments on a draft document or for issuing the draft final primary document for an additional 20 days by providing written notice to USEPA. In appropriate circumstances, this time period may be further extended in accordance with Part XV (Extensions) hereof.

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

(a) Dispute resolution shall be available to the Parties for draft final primary documents as set forth in Part XI (Dispute Resolution).

(b) When dispute resolution is invoked on a draft primary document, work may be stopped in accordance with the procedures set forth in Part XI (Dispute Resolution) regarding dispute resolution.

I. Finalization of Documents:

The draft final primary document shall serve as the final primary document if no party invokes dispute resolution regarding the document or, if invoked, at completion of the dispute resolution process should the FAA's position be sustained. If the FAA's determination is not sustained in the dispute resolution process, the FAA shall prepare, within not more than 35 days from receipt of the final written resolution of the dispute (unless the Parties mutually agree to another time period), a revision of the draft final document which conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Part XV (Extensions) hereof.

J. Subsequent Modifications of Final Documents:

Following finalization of any primary document pursuant to Subpart I above, USEPA or the FAA may seek to modify the document, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in Paragraphs (a) and (b) below.

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

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

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

XI. DISPUTE RESOLUTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

XII. ENFORCEABILITY

A. The Parties agree that:

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

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

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

(4) Any final resolution of a dispute pursuant to Part XIV (Deadlines) of this Agreement which establishes a term, condition, timetable, deadline or schedule shall be enforceable

by any person pursuant to Section 310(c) of CERCLA, and any violation of such term, condition, timetable, deadline or schedule will be subject to civil penalties under Sections 310(c) and 109 of CERCLA.

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

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

XIII. STIPULATED PENALTIES

A. In the event that the FAA fails to submit a primary document to USEPA pursuant to the appropriate timetable or deadline in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement which relates to an operable unit remedial action, USEPA may assess a stipulated penalty against the FAA. A stipulated penalty may be assessed in an amount not to exceed $5,000 for the first week (or part thereof), and $10,000 for each additional week (or part thereof) for which a failure set forth in this Paragraph occurs.

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

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

(1) The facility responsible for the failure;

(2) A statement of the facts and circumstances giving rise to the failure;

(3) A statement of any administrative or other corrective action taken at the relevant facility, or a statement of why such measures were determined to be inappropriate;

(4) A statement of any additional action taken by or at the facility to prevent recurrence of the same type of failure; and

(5) The total dollar amount of the stipulated penalty assessed for the particular failure.

D. Stipulated penalties assessed pursuant to this Part shall be payable to the Hazardous Substances Response Trust Fund only in the manner and to the extent expressly provided for in Acts authorizing funds for, and appropriations to, the FAA. Such payment shall specifically reference the FAA Technical Center and the USEPA Docket Number for this Agreement and be forwarded to :

USEPA Region II
PO Box 360188M
Pittsburgh, PA. 15251
Attn: Superfund Accounting

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

F. This Part shall not affect the FAA's ability to obtain an extension of a timetable, deadline or schedule pursuant to Part XV (Extensions) of this Agreement.

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

XIV. DEADLINES

The following deadlines have been established for documents pursuant to this Agreement:

A. Within ninety (90) days of the effective date of this Agreement, the FAA shall submit to the USEPA a draft Community Relations Plan, Health and Safety Plan and QA/QC Plan that complies with the requirements of the National Contingency Plan.

B. Within thirty (30) days after the effective date of this Agreement, the FAA shall propose deadlines for completion of the following draft primary documents for each AOC listed within this Agreement:

1) RI/FS Work Plan

2) RI/FS and Focused Feasibility Study(FFS) documents including the Risk Assessment Report

3) FS Report

4) Proposed Remedial Action Plan

5) Record of Decision and Responsiveness Summary

C. Within thirty (30) days after the designation by USEPA or the FAA of any new AOC(s), the FAA shall propose deadlines for completion of the following draft primary documents:

1) PA/SI Workplan

2) PA/SI Completion Report

Within thirty (30) days after USEPA's determination that a response action is required and that the particular AOC must therefore follow the procedures under Article X, the FAA shall propose deadlines for the documents required under paragraph B of this Article.

D. Within fifteen (15) days of receipt of proposed deadlines under paragraphs B or C of this Article, the USEPA shall review and provide comments to the FAA regarding the proposed deadlines. Within fifteen (15) days following receipt of the comments the FAA shall, as appropriate, make revisions and reissue the proposal. The Parties shall meet as necessary to discuss and finalize the proposed deadlines. If they agree on proposed deadlines, the finalized deadlines shall be incorporated into the appropriate Work Plans. If the Parties fail to agree within ninety (90) days on the proposed deadlines, the matter shall immediately be submitted for dispute resolution pursuant to Part XI of this Agreement. The final deadlines established pursuant to this Subpart shall be published by USEPA.

E. Within twenty-one (21) days of issuance of the ROD, the FAA shall propose deadlines for completion of the following draft primary documents:

1. Remedial Design
2. Remedial Action Work Plan (including a schedule for completion of the remedial action)

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

F. The deadlines set forth in this Part, or to be established as set forth in this Part, may be extended pursuant to Part XV (Extensions) of this Agreement. The Parties recognize that one possible basis for extension of the deadlines for completion of the Remedial Investigation and Feasibility Study Document is the identification of significant new Site conditions during the performance of the remedial investigation.

XV. EXTENSIONS

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

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

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

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

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

D. Within seven days of receipt of a request for an extension of a timetable and deadline or a schedule, USEPA shall advise the FAA in writing of its respective position on the request. Any failure by USEPA to respond within the seven day period shall be deemed to constitute concurrence in the request for extension. If USEPA does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

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

F. Within seven days of receipt of a statement of nonconcurrence with the requested extension, the FAA may invoke dispute resolution.

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

XVI. FORCE MAJEURE

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

increased costs or expenses violate the Antideficiency Act, in accordance with Article XVII - Funding.

XVII. FUNDING

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

Funds authorized and appropriated annually by Congress under the FAA's Facilities and Equipment appropriation in the Department of Transportation Appropriation Act may be a source of funds for activities required by this Agreement.

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

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

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

XVIII. NOTIFICATION

A. Unless otherwise specified, ten (10) copies of any Report or Submittal provided pursuant to a schedule or deadline identified in or developed under this Agreement shall be sent by certified mail, return receipt requested and addressed or hand delivered to:

CERCLA Regional Project Manager
(FAA Technical Center)
Federal Facilities Section
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region II
26 Federal Plaza,
New York, New York 10278

Documents sent to the FAA shall be addressed as follows unless the FAA specifies otherwise by written notice:

RI/FS Project Manager
Federal Aviation Administration Technical Center
Resource Management Service
Facility Engineering and Operations Division
Environmental Branch, ACM - 440
Atlantic City Int'l Airport, New Jersey 08405

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

XIX. PROJECT MANAGERS

USEPA and the FAA shall each designate a Project Manager and Alternate (hereinafter jointly referred to as Project Manager) for the purpose of overseeing the implementation of this Agreement. Within ten (10) days of the effective date of this Agreement, the FAA shall notify USEPA of the name and address of its Project Manager. Any Party may change its designated Project Manager by notifying the other Parties, in writing, within five days of the change. To the maximum extent possible, communications between the Parties concerning the terms and conditions of this Agreement shall be directed through the Project Manager. Each Project Manager shall be responsible for assuring that all communications from the other Project Manager is appropriately disseminated and processed by the entities which the Project Managers represent. To the maximum extent practicable, at meetings of the project managers, the project managers will discuss new developments in pertinent guidance and policy.

The Project Manager for the FAA shall be physically present on the FAA Technical Center or reasonably available to supervise work performed pursuant to this Agreement and shall make himself available to the USEPA Project Manager for the pendency of this agreement. The absence of the USEPA Project Manager from the FAA Technical Center shall not be cause for work stoppage.

XX. SAMPLING AND DATA/DOCUMENT AVAILABILITY

The FAA shall make available to USEPA quality assured results of sampling, tests or other data generated by any Party, or on their behalf, with respect to the implementation of this Agreement within sixty (60) days of their collection or performance. If quality assurance is not completed within sixty (60) days, raw data or results shall be submitted within the

sixty (60) day period and quality assured data or results shall be submitted as soon as they become available.

At the request of the USEPA Project Manager, the FAA shall allow split or duplicate samples to be taken by USEPA during sample collection conducted during the implementation of this Agreement. The FAA Technical Center Project Manager shall notify the USEPA Project Manager not less than fourteen (14) days in advance of any sample collection. If due to an emergency it is not possible to provide fourteen (14) days prior notification, the FAA shall notify the USEPA Project Manager as soon as possible after becoming aware that samples will be collected.

The FAA will not bear the oversight costs of sampling and analysis for USEPA split samples, subject to national resolution of the issue of the cost reimbursement by the Executive Branch or an Act of Congress.

XXI. RETENTION OF RECORDS

Upon request by USEPA, the FAA shall make available to USEPA all of its records and documents in its possession or in the possession of its divisions, employees, agents, accountants, contractors which address the presence of hazardous substances, pollutants and contaminants at the FAA Technical Center related to activities taken pursuant to this Agreement. The FAA shall preserve, for a minimum of five (5) years after termination of this Agreement, all such documents and records despite any document retention policy to the contrary. After this five (5) year period, the FAA shall notify USEPA prior to destruction or disposal of any such documents or records.

XXII. ACCESS

A. Without limiting any authority conferred on USEPA by statute or regulation, USEPA and/or their authorized representatives, shall have authority to enter the FAA Technical Center at all reasonable times for the purposes of, among other things: (1) inspecting records, operating logs, contracts and other documents relevant to implementation of this Agreement; (2) reviewing the progress of the FAA, its response action contractors or agents in implementing this Agreement; (3) conducting such tests as the USEPA Project Manager deems necessary; and (4) verifying the data submitted to USEPA by the FAA. The FAA reserves the right to assert a confidentiality claim in accordance with Article XXV when appropriate for the information reviewed. The FAA shall honor all reasonable requests for such access by USEPA conditioned only upon presentation of proper credentials.

B. To the extent that access is required to areas of the FAA Technical Center presently owned by or leased to parties other than the FAA, the FAA agrees to exercise its authorities to obtain access pursuant to Section 104(e) of CERCLA from the present owners and/or lessees within thirty (30) calendar days after the effective date of this Agreement or, where appropriate, within thirty (30) days after the relevant Submittals. The FAA shall use its best efforts to obtain access agreements which shall provide reasonable access to USEPA and/or its authorized representatives.

C. In the event that the FAA Technical Center access is not obtained within the thirty (30) day time period set forth in Subpart B above, within fifteen (15) days after the expiration of the thirty (30) day period the FAA shall notify USEPA regarding the lack of, and efforts to obtain, such access agreements. Within fifteen (15) days of any such notice, the FAA shall submit appropriate modification(s) to any timetable, deadline or schedule under Article XV in response to such inability to obtain access.

D. The FAA may request the assistance of USEPA where access problems arise.

XXIII. FIVE YEAR REVIEW

Consistent with Section 121(c) of CERCLA, and in accordance with this Agreement, the FAA agrees that USEPA will review the remedial actions and long term operation and maintenance of the actions no less often than each five years after the initiation of the final remedial actions to assure that human health and the environment are being protected by the remedial actions being implemented. If upon such review it is the judgement of USEPA that additional action or modification of the remedial actions are appropriate in accordance with Sections 104 or 106 of CERCLA, USEPA shall require the FAA to implement such additional or modified actions.

XXIV. OTHER CLAIMS

Nothing in this Agreement shall constitute or be construed as a bar or 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 or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the FAA Technical Center.

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

This Agreement shall not restrict USEPA or the FAA from taking any legal or response action for any matter not specifically covered by this Agreement.

This Agreement shall not be construed to indemnify any person.

Notwithstanding any provision of this Agreement, no action or decision by USEPA, including without limitation decisions of the USEPA Region II Regional Administrator or his designate pursuant to this Agreement, shall constitute final agency action giving rise to any rights to judicial review prior to USEPA's initiation of judicial action to compel the FAA's compliance with the mandate(s) of this Agreement.

XXV. CONFIDENTIAL INFORMATION

The FAA may assert a confidentiality claim covering all or part of the information requested by this Agreement. Analytical data shall not be claimed as confidential by the FAA.

Information determined to be confidential by USEPA pursuant to 40 CFR Part 2 shall be afforded the protection specified therein. If no claim of confidentiality accompanies the information when it is submitted to USEPA, the information may be made available to the public without further notice to the FAA.

In the event that the FAA provides information to USEPA claimed to be confidential under the FAA's regulation, USEPA shall review the confidentiality claim pursuant to 40 CFR Part 2, and shall make an independent confidentiality determination. The FAA's prior confidentiality determination made pursuant to its regulation shall be relevant to, but shall not control, EPA's confidentiality determination.

In the event that USEPA determines that the information submitted by the FAA contains confidential information, USEPA shall manage such information according to USEPA procedures for the management of Confidential Business Information (CBI).

In the event that USEPA determines that information submitted by the FAA pursuant to this Exhibit is not confidential pursuant to 40 CFR Part 2, the Parties to this Agreement recognize that the conflicting confidentiality determinations made by USEPA and the FAA give rise to a unique inter-agency dispute. Therefore, when such a dispute arises, USEPA and the FAA agree to jointly elevate the resulting dispute to the EPA Office of General Counsel and the FAA Office of Chief Counsel for assistance in resolving the dispute. USEPA and the FAA agree to abide by the final inter-agency resolution of the dispute resulting from such elevation, including appropriate management of the information in question in accordance with the resolution of the dispute.

XXVI. AMENDMENT OF AGREEMENT

This Agreement may be amended by a written agreement and pursuant to Part XXIX (Public Comment), between the FAA and USEPA.

XXVII. CONVEYANCE OF TITLE

A. In the event the FAA decides to enter into any contract for the sale or other transfer of any part of the FAA Technical Center, the FAA shall comply with the requirements of CERCLA § 120(h), 42 U.S.C. § 9620(h). If the parcel does not meet the criteria of CERCLA § 120(h)(1), 42 U.S.C. §9620(h)(1), the transfer of such property is not subject to the requirements of CERCLA § 120(h)(3), 42 U.S.C. § 9620(h)(3).

B. No conveyance of title, easement, or other interest in the FAA property at the FAA Technical Center on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, shall be consummated by the FAA without provision for continued maintenance of any system or response action(s) which have been taken as a result of activities which occurred on the property which is the subject of the said conveyance. Such transfer shall also provide the USEPA access to transferred parcels as may be necessary to conduct response actions on other portions of the FAA facility. In addition, the FAA shall include notice of this Agreement in any document transferring ownership or operation of said property to any subsequent owner and/or operator of any portion of said property. At least thirty (30) days prior to any conveyance, the FAA shall notify the USEPA of the provisions made for the continued operation and maintenance of any response action(s) or systems installed or implemented pursuant to this Agreement. The terms of this Article, including the provision for continued maintenance, notice of this Agreement, and notice to the USEPA, shall not apply to property owned by the FAA Technical Center which is not an AOC under this Agreement. The terms of this Article shall apply, however, to property transferred by the FAA and property currently owned by the FAA which may subsequently be determined to be an AOC within the meaning of this Agreement.

XXVIII. PUBLIC PARTICIPATION

A. The Parties agree that this Agreement and any subsequent proposed remedial action alternative(s) and subsequent plan(s) for remedial action at the FAA Technical Center arising out of this Agreement shall comply with the administrative record

and public participation requirements of CERCLA (including Section 117), the National Contingency Plan, USEPA guidance on public participation and administrative records.

B. The FAA shall develop and implement a Community Relations Plan which responds to the need for an interactive relationship with all interested community elements of work undertaken by the FAA. The FAA agrees to develop and implement the Community Relations Plan in a manner consistent with Section 117 of CERCLA, the National Contingency Plan, USEPA guidelines set forth in USEPA's Community Relations Handbook, and any modifications thereto.

C. Any Party issuing a formal press release to the media regarding any of the work required by this Agreement shall advise the other Parties of such press release and the contents thereof, at least forty-eight (48) hours before the issuance of such press release and of any subsequent changes prior to release.

D. USEPA agrees it shall fund and administer Technical Assistance Grants in accordance with Section 117(e) of CERCLA and regulations issued thereunder. The FAA agrees it shall fund the Technical Assistance Grants by making payment to USEPA for the dollar amount of the Technical Assistance Grant to be paid to the grant recipient. If the Technical Assistance Grant is renewed, renewal is at the discretion of USEPA, the FAA will make payment of the amount of the renewed grant as described above.

E. The FAA agrees it shall establish and maintain an administrative record at or near the FAA Technical Center in accordance with Section 113(k) of CERCLA. The administrative record shall be established and maintained in accordance with current and future USEPA policy and guidelines. A copy of each document placed in the administrative record will be provided to USEPA. The administrative record developed by the FAA shall be updated and supplied to USEPA on at least a quarterly basis. An index of documents in the administrative record will accompany each update of the administrative record. In developing the administrative record, the FAA agrees it shall follow the public participation requirements of CERCLA Section 113(k) and comply with any guidance and/or regulations issued by USEPA with respect to such Section.

XXIX. PUBLIC COMMENT

A. Within 15 days after the date the Regional Administrator of USEPA, Region II, executes this Agreement, USEPA shall announce the availability of this Agreement to the public for their review and comment. USEPA shall accept comments from the public for 45 days after such announcement. After the 45 day

public comment period expires, the Parties shall review all such comments. Within 30 days after the expiration of the public comment period the Parties shall decide that either:

(1) the Agreement shall be made effective without any modifications; or,

(2) the Agreement shall be modified prior to being made effective.

B. If the Parties decide that the Agreement shall be made effective without any modifications, USEPA shall transmit a copy of the signed Agreement to the FAA and shall notify the FAA in writing that the Agreement is effective. The effective date of the Agreement shall be the date of that letter from USEPA to the FAA.

C. If the Parties agree that modifications are needed and agree upon the modifications and amend the Agreement by mutual consent within 60 days after the expiration of the public comment period, USEPA will determine whether the modified Agreement requires additional public notice and comment pursuant to any provision of CERCLA. If USEPA determines that no additional notice and comment are required, USEPA shall transmit a copy of the modified Agreement to the FAA and shall notify the FAA in writing that the modified Agreement is effective. The effective date of the Agreement shall be the date of that letter from USEPA to the FAA. If the parties amend the Agreement within this 60 day period and if USEPA concludes that such modifications require that the public receive additional opportunity for notice and comment, such additional notice and comment will be provided consistent with the provisions stated in Section A above. If the Parties agree, after such additional notice and comment has been provided, that the Agreement does not require any further modification, USEPA shall send a copy of the mutually agreed upon Agreement to the FAA and shall notify the FAA that the Agreement is effective. The effective date of the Agreement shall be the date of that letter from USEPA to the FAA.

D. If, 30 days after the expiration of the 45 day comment period has expired, the Parties have not reached agreement on either:

(1) whether modifications to the Agreement are needed; or,

(2) what modifications to the Agreement should be made; or,

(3) any language, any provisions, any deadlines, any work to be performed or any of the content of the Agreement or any attachments to the Agreement,

the matters which are in dispute shall be resolved by the dispute resolution procedures of Part XI, above. For the purposes of this Article, the Agreement shall not be effective while the dispute resolution proceedings are underway. After these proceedings are completed, Administrative Notice shall be provided to the Parties indicating the results of the dispute resolution proceedings. The FAA and USEPA reserve the right to withdraw from the Agreement by providing written notice to the other Party within 20 days after receiving the Administrative Notice of the resolution of the matters in dispute. Failure by a Party to provide such a written notice of withdrawal within this 20 day period shall act as a waiver of the right of that Party to withdraw from the Agreement. If neither Party withdraws from the Agreement within this 20 day period, USEPA shall thereafter send a copy of the final Agreement to the FAA and shall notify the FAA that the Agreement is effective. The effective date of the Agreement shall be the date of that letter from USEPA to the FAA.

XXX. RECOVERY OF EXPENSES

The Parties agree to amend this Agreement at a later date in accordance with any subsequent national resolution of the issues of cost reimbursement. EPA reserves all rights it may have for seeking cost reimbursement under Section 107 of CERCLA.

XXXI. CREATION OF DANGER

In the event USEPA determines that activities conducted pursuant to this Agreement are creating a danger to the health or welfare of the people on or in the surrounding area or to the environment, the FAA will take immediate action to notify all affected parties, including State and local health officials; in the case of contamination originating on the FAA Technical Center or which is the result of activities in connection with the FAA Technical Center, the FAA will take appropriate measures to protect the public health or welfare or the environment affected. The USEPA may direct the FAA to stop further implementation of this Agreement for such a period of time as needed to abate the danger.

XXXII. TERMINATION

The provisions of this Agreement shall be deemed satisfied and terminated on the date that notice of final deletion from the National Priorities List is published in the Federal Register.

XXXIII. EFFECTIVE DATE

This Agreement is effective upon issuance of a notice to the Parties by USEPA following implementation of Part XXIX (Public Comment) of this Agreement.

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

IT IS SO AGREED;

April 7, 1993
Date

Mr. Harvey B. Safeer, Director
Federal Aviation Administration
Technical Center

Date

Constantine Sidamon-Eristoff
Regional Administrator
United States Environmental
Protection Agency, Region II

May 17, 1993.
DATE

William J. Muszynski
Acting Regional Administrator
United States Environmental
Protection Agency, Region II

ENVIRONMENTAL PROTECTION AGENCY - REGION II
CERCLA INTERAGENCY AGREEMENTS (IAGs)

NPL SITE	FACILITY	AGENCY	STATE ENV.	EPA	STATE A.G.
Brookhaven Natl Lab	N/A	11/19/91	1/21/92	2/28/92	N/A
FAA Technical Center	4/7/93	N/A	N/A	5/17/93	N/A
Fort Dix	6/19/91	5/29/91	N/A	7/19/91	N/A
Griffiss AFB	N/A	3/29/90	5/25/90	6/14/90	6/4/90
Maywood (MISS)	N/A	6/23/90	N/A	9/17/90	N/A
NAEC Lakehurst	N/A	9/25/90	N/A	10/4/89	N/A
NSGA Sabana Seca	N/A	3/19/92	3/19/92	3/19/92	N/A
NWS Earle	N/A	12/10/90	N/A	2/16/91	N/A
Picatinny Arsenal	3/26/91	3/20/91	N/A	4/17/91	N/A
Plattsburgh AFB	3/21/91	4/23/91	6/13/91	7/10/91	6/26/91
Seneca Army Depot	9/8/92	8/12/92	12/4/92	1/21/93	1/8/93
Wayne (WISS)	N/A	7/23/90	N/A	9/17/90	N/A

NOTES: Date shown is the date of signature by responsible official.
A.G. = Attorney General's Office
NJDEPE does not sign CERCLA IAGs as a matter of policy.

EPA

AUG 17 1993

From the desk of: Steven T. Petrucelli

ENVIRONMENTAL ENGINEER
ENVIRONMENTAL IMPACTS BRANCH

TO: Offis Pratt
~~Maria Gilbreath~~

Enclosed for inclusion in the Interagency Agreement (IAG) Repository is a copy of the signed CERCLA Federal Facility Agreement between the Environmental Protection Agency (EPA) - Region II and the Federal Aviation Administration Technical Center. The IAG was signed in May 1993 and recently became effective following conclusion of the public comment period.

I have also enclosed a revised list of Region II's CERCLA IAGs. As you can see, we now have signed IAGs for each of the NPL sites in the Region.

In a related matter, I have enclosed a copy of a recently signed RCRA Federal Facility Compliance Agreement for the West Valley Demonstration Project site, which is jointly operated by the Department of Energy and New York State.

If you have any questions, or need additional information, feel free to call me at (212) 264-6720.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

The West Valley Demonstration Project; and The Western New York Nuclear Service Center UNITED STATES DEPARTMENT OF ENERGY, EPA ID Number NYD980779540; WEST VALLEY NUCLEAR SERVICES COMPANY, INC.,(INCLUDING SUCCESSOR DOE MANAGEMENT AND OPERATING CONTRACTOR); and THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY, EPA ID Number NYD986905545 RESPONDENTS	Docket No. II RCRA - 92 - 0207

FEDERAL AND STATE FACILITY COMPLIANCE AGREEMENT

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1.0 PARTIES

1.1 The Parties to this Federal and State Facility Compliance Agreement ("Agreement") are the United States Environmental Protection Agency, Region II ("EPA"), the State of New York ("State") through its Department of Environmental Conservation ("NYSDEC" or "DEC"), the United States Department of Energy ("DOE"), the New York State Energy Research and Development Authority ("NYSERDA"), and the West Valley Nuclear Services Co., Inc. ("WVNS").

1.2 The terms of this Agreement shall apply to and be binding upon the Parties.

1.3 DOE, WVNS and NYSERDA shall take all appropriate measures to ensure that their respective employees, contractors, agents or assignees performing work under this Agreement act in a manner consistent with the terms of this Agreement. This Section shall not be construed as an Agreement by the Parties to indemnify each other or any third party.

1.4 Reference in this Agreement to WVNS shall also constitute reference to any successor DOE Management and Operating contractor performing work on DOE's behalf at the West Valley Demonstration Project ("WVDP"). Upon termination of the WVNS contract, as defined in Section 4.1.17, DOE shall give written notice to the other Parties that as of the termination date, WVNS is no longer a Party to this Agreement and will designate the substitute contractor or contractors if any. At the time of termination of the WVNS contract, or, if WVNS obligations have been terminated by operation of this Agreement, the Parties agree that DOE will require the successor contractor to accept transfer of WVNS responsibilities pursuant to this Agreement or DOE shall be deemed to have accepted transfer of responsibility for such future performance. Upon such termination, WVNS will be relieved of any further obligations for performance under this Agreement, including its responsibilities under Section 7.0 of this Agreement.

2.0 PURPOSE OF THE AGREEMENT

2.1 EPA and NYSDEC have determined that Respondents have either failed to comply, or, have been unable to comply due to conditions unique to this facility and the waste generated and/or stored therein, with the requirements of RCRA, as defined below: a) container storage; b) waste analysis; and c) storage of

radioactive mixed waste. Respondents neither admit nor deny the previous EPA and NYSDEC determinations. This Agreement is entered into by the Parties to provide a plan and schedule, regarding those issues identified in Section 7, below, to bring the Western New York Nuclear Service Center ("the Center") into compliance with the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), codified at 42 U.S.C. § 6901 et. seq. ("RCRA" or "the Act"), and with Article 27, Title 9 of the Environmental Conservation Law ("ECL"), the New York State Industrial Hazardous Waste Management Act ("IHWMA").

2.2 The purpose of this Agreement is to specify terms and conditions under which the DOE, NYSERDA, and WVNS shall accomplish the following mutual objectives:

2.2.1 Identify, store, treat and minimize restricted wastes prohibited from land disposal.

2.2.2 Achieve compliance with requirements for RCRA interim status treatment and storage facilities.

2.2.3 Facilitate cooperation and exchange of information between all Parties to the Agreement.

2.3 EPA and DEC have determined that this Agreement, including the requirements contained herein, constitutes a "plan" as described in Section 1-601 of Executive Order 12088, to address compliance issues at the Center regarding hazardous waste requirements found at 40 C.F.R. Parts 260 to 270, or in equivalent New York State Regulations.

3.0 JURISDICTION

3.1 EPA enters into this Agreement pursuant to the Act.

3.2 DEC enters into this Agreement pursuant to the IHWMA, E.C.L. Article 27, Title 9, and E.C.L 3-0301, and the regulations promulgated thereunder.

3.3 DOE enters into this Agreement under authority of Executive Order 12088.

3.4 NYSERDA enters into this Agreement pursuant to the authority of Sections 1854 and 1855 of the New York Public Authorities Law.

3.5 WVNS enters into this Agreement pursuant to the WVNS contract so as to facilitate the performance of its obligations under that contract.

4.0 DEFINITIONS

4.1 Except as provided below or otherwise explicitly stated herein, the definitions provided in the Act and the regulations promulgated thereunder, shall control the meaning of the terms used in this Agreement.

4.1.1 Additional Work shall mean any work agreed upon by the Parties to this Agreement.

4.1.2 Authorized Representatives shall mean a Party's employees, agents, successors, assigns, contractors or subcontractors, including Management and Operating contractors, acting in any capacity (including an advisory capacity) consistent with their contracts.

4.1.3 Center shall mean the Western New York Nuclear Service Center, and shall include the WVDP, as defined in the Administrative Order on Consent, Docket No. II RCRA-3008(h)-92-0202.

4.1.4 Cooperative Agreement shall mean the Cooperative Agreement entered into between NYSERDA and DOE effective October 1, 1980, as amended September 18, 1981.

4.1.5 Days shall mean calendar days, unless business days are specified.

4.1.6 DOE shall mean the United States Department of Energy and its authorized representatives, exclusive of WVNS, but including the Idaho Field Office and the West Valley Project Office.

4.1.7 Facility (same as Center, see 4.1.3. above).

4.1.8 Hazardous Waste(s) shall have the meaning set forth in Section 1004(5) of RCRA, 42 U.S.C. Section 6903(5), 40 C.F.R. Parts 260 and 261 and in 6 NYCRR Part 371.

4.1.9 Lead Regulatory Agency ("LRA") shall mean the NYSDEC except for those requirements of HSWA for which NYSDEC has not yet been authorized,

in which case the EPA shall be the lead regulatory agency until NYSDEC is authorized by EPA for such HSWA requirements.

4.1.10 Management and Operating Contractor ("M&O Contractor") shall mean a contractor with the federal government which operates, maintains, or supports, on DOE's behalf, a federal government-owned or controlled research, development, demonstration, special production or testing establishment wholly or principally devoted to one or more major programs of the contracting federal agency.

4.1.11 Project Coordinator(s) shall mean the representative(s) designated by the Parties to coordinate, monitor or direct actions required by this Agreement at the Center.

4.1.12 Radioactive Mixed Waste (RMW) or Mixed Waste shall mean waste that contains both hazardous components subject to RCRA and radioactive components subject to the Atomic Energy Act of 1954 and as further defined in DOE's interpretive rule for by-product material, 10 C.F.R. 962, (52 Fed. Reg. 15937), May 1, 1987.

4.1.13 RCRA for purposes of this Agreement, where DEC is the LRA, shall refer to both the Act, as well as the Environmental Conservation Law, Article 27, Title 9, and regulations promulgated thereunder.

4.1.14 Solid Waste(s) shall have the meaning set forth in Section 1004(27) of RCRA, 42 U.S.C. Section 6903(27), and 40 C.F.R. Part 261 and in 6 NYCRR Part 371.

4.1.15 Solid Waste Management Unit (SWMU) means 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 or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released.

4.1.16 WVNS shall mean West Valley Nuclear Services Co., Inc., DOE's management and operating contractor at the time of the effective date

of this Agreement and any successor DOE Management and Operating contractor, for the WVDP.

4.1.17 WVNS Contract shall mean the Management and Operating Contract between DOE and WVNS for the West Valley Demonstration Project, Contract No. DE-AC07-81NE44139, effective on August 24, 1981.

5.0 SCOPE

5.1 Except as specifically set forth herein, this Agreement shall apply to all SWMUs and RMW units located at the Center, and to wastes at the Center subject to the RCRA Land Disposal Restrictions.

5.2 The Parties acknowledge that this Agreement is not intended to implement remedial actions authorized pursuant to the IHWMA, E.C.L. Article 27, Title 13, or the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended. Corrective action, to the extent required, shall be separately addressed as specified in any permits to be issued by DEC or EPA, or applicable and appropriate orders, issued pursuant to the Act, the IHWMA, or other statutes, or any combination of the foregoing.

5.3 Notwithstanding anything to the contrary herein, in no event shall WVNS be required under this Agreement to fund any work to be undertaken pursuant to this Agreement, take any action or exercise any discretion outside the scope of the WVNS Contract, or incur any liability other than that contemplated by the WVNS Contract unless such obligations are otherwise imposed by law or regulation.

6.0 STATEMENT OF FACTS

6.1 BACKGROUND

6.1.1 Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), permits the Administrator of the EPA to authorize a State to operate a hazardous waste program. NYSDEC received final authorization to administer the pre-HSWA hazardous waste program as of May 29, 1986 (51 Fed. Reg. 17737 (May 15, 1986)). NYSDEC was authorized to administer most of the HSWA program on May 21, 1992.

6.1.2 On September 23, 1988, EPA published a Clarification Notice (53 Fed. Reg. 37045) which

stated that "Facilities treating, storing, or disposing of radioactive mixed waste in states that received authorization by September 23, 1988 are not subject to RCRA regulations until the state revises its existing authorized hazardous waste program to include authority to regulate radioactive mixed waste." The State of New York has revised its authorized program as required by the above Notice.

6.1.3 By EPA "Immediate Final Rule" dated March 6, 1990, NYSDEC was authorized to regulate the hazardous waste constituents of radioactive mixed waste, effective May 7, 1990 (55 Fed. Reg. 7896).

6.2 OWNER/OPERATOR

EPA has determined that Respondent DOE is the operator of the WVDP. Respondent WVNS is DOE's M&O contractor for the WVDP. Respondent NYSERDA owns the Center, and is the operator for all parts of the Center except those parts which are used or are in the possession of DOE as part of the WVDP.

6.3 RESPONDENT IS A "PERSON"

Respondent NYSERDA is a "person" as defined by Section 1004(15) of the Act, 42 U.S.C. § 6905(15) and Title Six (6) New York Codes, Rules and Regulations, Part 370, Section 370.2(b)(102) [6 NYCRR § 370.2(b)(102)]. Pursuant to Section 6001 of the Act, 42 U.S.C. § 6961, DOE is subject to all federal, state, interstate, and local requirements, both substantive and procedural, respecting control and abatement of solid waste or hazardous waste disposal and management in the same manner, and to the same extent, as any person is subject to such requirements.

6.4 NOTIFICATION

Pursuant to Section 3010 of the Act, 42 U.S.C. § 6930, on October 17, 1984, Respondent DOE notified EPA of its hazardous waste activity, as that term is defined by Section 1004(5) of the Act, 42 U.S.C. § 6903(5) and requested the issuance of an EPA Hazardous Waste Identification number. On June 5, 1990, Respondent NYSERDA notified DEC and EPA of its hazardous waste activity, as that term is defined by Section 1004(5) of the Act, 42 U.S.C. § 6903(5) and requested the issuance of an EPA Hazardous Waste Identification number. In these notifications, Respondent DOE identified itself as a generator of hazardous waste, and an operator of a hazardous waste treatment, storage, and disposal facility; and NYSERDA established itself as the owner of the Center as the term Owner is used under RCRA. In addition, EPA has determined that NYSERDA is a generator of

hazardous waste due to the generation of hazardous waste in the leachate at the State-Licensed Disposal Area (SDA).

6.5 PART A PERMIT APPLICATION

Pursuant to Section 3005(e) of the Act, 42 U.S.C. § 6925(e), on June 4, 1990, Respondent DOE submitted to DEC and EPA its Part A Hazardous Waste Permit application. Based on Respondent DOE's Part A application and subsequent amendments, Respondent DOE stores and treats hazardous wastes at its Facility, including, but not limited to, storage in containers, storage in tanks, and treatment of the following:

a) D005 (wastes that are TC Toxic for Barium)
b) D006 (wastes that are TC Toxic for Cadmium)
c) D007 (wastes that are TC Toxic for Chromium)
d) D009 (wastes that are TC Toxic for Mercury)
e) D010 (wastes that are TC Toxic for Selenium)
f) D002 (corrosive wastes).

Pursuant to Section 3005(e) of the Act, 42 U.S.C. § 6925(e), on June 5, 1990, Respondent NYSERDA submitted to DEC and EPA its Part A Hazardous Waste Permit application in which NYSERDA asserted that it submitted its application to EPA as a protective filing. Based on Respondent NYSERDA's Part A application and subsequent amendments, EPA has determined that Respondent NYSERDA stores and treats hazardous wastes at its Facility, including, but not limited to, storage in containers, storage in tanks, and treatment of the following:

a) Storage of hazardous wastes (F002, F003, F005, U019, U159, U044, U165, U101, U076, U083, U210, U228, U080, U239, U002, U161, and U188) in tanks;
b) Treatment of hazardous wastes (F002, F003, F005, U019, U159, U044, U165, U101, U076, U083, U210, U228, U080, U239, U002, U161, and U188); and
c) Storage of hazardous wastes in containers.
d) All the wastes listed in a, b, and c, above, are also F039 wastes.

6.6 INTERIM STATUS

Pursuant to Section 3005(e) of the Act, 42 U.S.C. § 6925(e), and 40 C.F.R. §§ 270.1(b) and 270.70(a), Respondents DOE and NYSERDA received "interim status" due to timely submission of their:

a) Section 3010 Notification; and
b) Part A of the Permit Application.

Interim status facilities are subject to the regulations promulgated pursuant to Sections 3004 and 3005 of the Act, 42 U.S.C. §§ 6924 and 6925, which are codified in 40 C.F.R. Parts 260 - 265 and 270, and equivalent New York State regulations at 6 NYCRR Parts 370 - 373.

7.0 COMPLIANCE REQUIREMENTS

The Respondents shall, as applicable, comply with the relevant requirements of Section 7. With respect to WVNS, its responsibilities under Section 7 are expressly limited to its responsibilities pursuant to the WVNS Contract. Pursuant to the WVNS Contract, in accordance with work programs approved by DOE and subject to the direction, instructions and sufficient funding of DOE, WVNS shall be responsible for: performing for DOE, day-to-day activities related to the handling, packaging, inspecting, monitoring and record keeping requirements of Section 7.1; conducting for DOE, the historic and informational search required by Section 7.2 and, if required, performing for DOE sampling and further waste characterization and handling efforts; and performing for DOE the handling, monitoring, record keeping and documentation requirements of Section 7.3. However, nothing herein alters or limits any right or obligation of DOE or WVNS under the WVNS Contract.

7.1 CONTAINER STORAGE REQUIREMENTS

7.1.1 6 NYCRR § 373-3.9 requires that "at least weekly, the owner or operator must inspect areas where containers are stored, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors."

7.1.2 Except with the written approval of the LRA for additional or expanded storage, the provisions of this Section 7.1 will only apply to the storage of RMW in SWMU 15 (LAG Storage Building) and SWMU 16a (LAG Storage Areas 3 and 4). All other storage will be in accordance with RCRA interim status requirements.

7.1.3 Due to the "dense packing" arrangement of containers to reduce personnel radiation exposure as a result of the self-shielding provided by the contents of containers, weekly inspections of the container storage areas identified in 7.1.2 will not be required, provided that the following conditions are met:

7.1.3.1 The containers are elevated or otherwise protected from contact from accumulated liquids;

7.1.3.2 The containers are packed in the tightest possible configuration, so that inner containers in the configuration will be shielded by the outer containers;

7.1.3.3 The containers exhibiting the highest levels of radiation (on surface contact) are stored in the innermost portion of the dense packing arrangements;

7.1.3.4 All RMW stored in the storage units must be packed in accordance with applicable WVDP solid radioactive and hazardous waste procedures. The WVDP waste management procedures provide for the following:

7.1.3.4.1 RMW bulk liquids are prohibited from storage in the dense packing arrangement. Any RMW containing liquids must be packaged with at least two times the amount of dry absorbent necessary to absorb the liquid; the absorbent must then remain stable;

7.1.3.4.2 RMW containing organic liquid wastes must be immobilized, in addition to the requirements of Section 7.1.3.4.1 prior to dense packing;

7.1.3.4.3 Dense packed RMW containing liquid shall contain as little free-standing and corrosive liquid as reasonably achievable. In no case shall the liquid exceed one percent of the total volume of a container;

7.1.3.4.4 Dense packed RMW stored in containers must not be capable of generating toxic gases, vapors, or fumes in quantities harmful to persons transporting, handling, or disposing of the waste or in quantities that could compromise the integrity of the container;

7.1.3.4.5 RMW containing pyrophoric wastes are prohibited from dense packed storage. Pyrophoric materials contained in waste shall be treated, prepared, and packaged to be nonflammable;

7.1.3.4.6 RMW in gaseous form are prohibited from dense pack storage;

7.1.3.4.7 RMW containing hazardous, biological, pathogenic, or infectious materials must be treated to reduce, to the maximum extent practicable, the potential hazard from the nonradiological materials prior to dense packing;

7.1.3.4.8 Dense packed containers identified as containing RMW are inspected weekly by visual overview of the array; and,

7.1.3.4.9 RMW dense packed storage area air samples must be collected and analyzed for airborne radioactive materials on a quarterly basis (i.e., at least once in every 90 day period); if any sampling group indicates a statistically significant presence of airborne radioactivity above background concentrations (measured during the same sampling interval) immediate and continuing efforts will be initiated to identify the source of this activity. This will include suspension of affected operations and a survey of all containers to determine if any container failures have occurred. Any container determined to be leaking will be subject to appropriate corrective action such as repackaging contents to a new container or overpack of the leaking container.

7.2 WASTE ANALYSIS

7.2.1 6 NYCRR § 373-3.2(d) requires that "before an owner or operator treats, stores, or disposes any hazardous waste, he must obtain a detailed chemical and physical analysis of a representative sample of the waste that contains all the information which must be known to treat, store, or dispose the waste in accordance with the requirements of this Subpart."

7.2.2 Further work needs to be undertaken to determine whether certain materials currently in storage contain hazardous wastes. In an effort to definitively characterize these wastes, DOE will conduct:

7.2.2.1. An extensive historic and informational search which will rely on process knowledge to the extent appropriate to adequately make hazardous waste determinations, due to the

dose rates of some of the wastes and the need to incorporate the As Low As Reasonably Achievable (ALARA) radiation exposure concept in accordance with DOE Order 5480.11.

7.2.2.2 This extensive historic and informational search will analyze the data for all materials stored in the following units:

SWMU 11 - NDA Storage Building
SWMU 14 - CPC Waste Storage Area
SWMU 15 - LAG Storage Building
SWMU 16 - LAG Storage Areas 1 & 2
SWMU 16a - LAG Storage Areas 3 & 4

7.2.2.3 This historic and informational search shall be completed, and a report submitted to the LRA for review within 120 days of the effective date of this Agreement.

7.2.2.4 Upon review of the report submitted pursuant to Section 7.2.2.3, the LRA will notify DOE or NYSERDA, as appropriate, in writing, as to whether the report has been found acceptable, whether additional information collection and review is necessary, and whether sampling of wastes will be required. All sampling of wastes shall be in accordance with the employee safety measure of DOE Order 5480.11, or other appropriate radiation safety standards.

7.2.2.5 Within fourteen (14) days of receipt of approval of the report in Section 7.2.2.3 a schedule shall be developed by DOE or NYSERDA, as appropriate, to move all containers identified containing mixed wastes to an onsite interim status mixed waste storage facility(s).

7.2.2.6 Within 30 days of receipt of comments from the LRA requiring sampling, DOE or NYSERDA, as appropriate, shall initiate sampling. Within sixty (60) days of moving containers into the mixed waste storage unit pursuant to Section 7.2.2.5, DOE or NYSERDA, as appropriate, shall complete sampling of those containers requiring additional sampling per section 7.2.2.4.

7.2.2.7 Within thirty (30) days of receipt by DOE or NYSERDA of analytical results for containers

sampled pursuant to Section 7.2.2.6, DOE or NYSERDA shall submit the sampling results to the LRA.

7.2.3. Notwithstanding any other provision of this agreement, it is understood that due to high levels of radioactivity or the form of the wastes (e.g. large vessels, compressed solids) it may be extremely difficult to sample certain wastes or impossible to obtain a representative sample. If the LRA determines that sampling of such wastes is necessary, the LRA shall amend the schedule, as appropriate, for sampling or obtaining analytical reports to account for the development of any appropriate sampling methodology.

7.3 STORAGE OF RADIOACTIVE MIXED WASTE (RMW)

This Agreement shall apply to the RCRA Land Disposal Restriction (LDR) requirements pertaining to past, ongoing and future generation, storage, treatment and/or disposal of RMW at the Center. The storage and disposal prohibitions of the LDRs apply only to those hazardous wastes subject to LDRs which are placed in, or removed from, storage units or disposal facilities after the effective dates of the LDR regulations with regard to those particular wastes. The transportation of stored waste from one storage unit at the Facility to another does not constitute removal from storage.

7.3.1 The DOE has generated through past practices and may continue to generate, and NYSERDA may generate, through processes and related operations designed to treat and reduce the volume of existing radioactive and hazardous waste on-site, RMW that is subject to the LDRs for which there currently is no treatment or disposal option.

7.3.2 The DOE and NYSERDA will be required to store any such RMW on-site until a suitable treatment facility is available and DOE or NYSERDA, as applicable, obtains any necessary permission from such receiving facility to ship its waste there, provided shipment is required.

7.3.3 Until such time as a suitable treatment facility is available and DOE or NYSERDA, as applicable, obtains any necessary permission

from the receiving facility to ship its waste there, DOE and NYSERDA will continue to store any such waste on-site and manage such waste in an environmentally responsible manner including the following:

7.3.3.1 Waste subject to the LDRs shall be stored in RCRA interim status units, and DOE and NYSERDA shall maintain inventories of such interim status storage units, and shall assure compliance with applicable RCRA storage requirements and the provisions of this Agreement.

7.3.3.2 DOE and NYSERDA shall maintain records of all RMW at the Center including sources, waste codes, generation rates and volumes in storage.

7.3.3.3 DOE and NYSERDA shall develop a RMW minimization plan, or, shall demonstrate through documentation that waste minimization is not feasible for their RMW.

7.3.3.4 DOE and NYSERDA each shall document annually that it has made good faith efforts to ascertain the availability of treatment capacity for its RMW.

7.3.3.5 DOE and NYSERDA shall cooperate with requests from NYSDEC and EPA to provide complete and accurate information upon request.

8.0 DESIGNATED PROJECT COORDINATORS

8.1 The Parties will each designate a Project Coordinator ("PC") to coordinate the implementation of this Agreement and shall notify the other Parties in writing of the designation within ten (10) days of the effective date of this Agreement. Any Party may unilaterally change its designated PC by notifying the other Parties in writing.

8.2 Except where otherwise specified in the Agreement, communications between the Parties and all documents and notices, including reports, agreements and other correspondence concerning the activities performed pursuant to the terms and conditions of this Agreement, shall be directed through the PCs. Each PC shall be responsible for assuring the prompt internal dissemination and processing of all communications and documents received from the other PCs.

9.0 ENFORCEMENT

9.1 DOE, WVNS, and NYSERDA recognize their respective obligations to comply with all applicable federal and state laws and regulations, including RCRA, as set forth in Section 6001 of RCRA, 42 U.S.C. § 6961 and 6 NYCRR Parts 370 through 374, and 376, and to faithfully discharge the requirements described in Section 7 of this Agreement.

9.2 The provisions of this Agreement, including those related to statutory requirements, regulations, permits, or closure plans, including recordkeeping, reporting and schedules of compliance, shall be enforceable under citizen suits pursuant to Section 7002 of RCRA, 42 U.S.C. § 6972, including actions or suits by the State and its agencies. DOE, WVNS and NYSERDA agree that the New York Department of Law and NYSDEC are each a "person" within the meaning of Section 7002(a) of RCRA.

9.3 In the event of any action filed under Section 7002(a) of RCRA alleging any violation of any requirement of this Agreement, it shall be presumed that the provisions of this Agreement including those provisions which address recordkeeping, reporting, and schedules of compliance are related to statutory requirements, regulations, permits, or closure plans, and are thus enforceable under Section 7002(a) of RCRA.

9.4 If any provision of the Agreement is determined to be invalid, illegal or unconstitutional, the remainder of the Agreement shall not be affected by such determination and shall remain fully enforceable.

10.0 EXTENSIONS

10.1 Any of the schedules or other requirements identified in Section 7 of this Agreement, or any modified Agreement under Section 16.0 of this Agreement, shall be extended upon receipt by the LRA of a timely request from DOE, WVNS or NYSERDA for extension and when the LRA determines that good cause exists for the requested extension. The request for an extension shall be made at least thirty (30) days prior to the date that the requirement at issue should have been commenced or completed, as appropriate. Such request shall be written or oral, with a written follow-up request within ten (10) days of the initial request. The request for an extension shall not operate to extend the schedule until receipt of the LRA's written position concerning the request. Any oral or written

request shall be communicated to the other Parties pursuant to Article 8.0 of this Agreement (Designated Project Coordinators). The written request shall, at a minimum, include: the length of the extension sought; the schedule that is sought to be extended; the good cause(s) for the extension; and any related schedule that would be affected if the extension were granted.

10.2 Extension requests shall be negotiated and resolved between the project coordinators in consultation with the appropriate supervisors. Any extension granted by the LRA shall be set forth in writing. Where the parties are unable to agree on the appropriate extension, such disagreement may be subject to Dispute Resolution (Section 18).

11.0 COMPLIANCE WITH OTHER LAWS

All actions undertaken pursuant to this Agreement by DOE, WVNS, or NYSERDA shall be done in accordance with all applicable federal laws, regulations and Executive Orders, and all applicable state and local laws and regulations, except as otherwise provided in Section 7.

12.0 FORCE MAJEURE

12.1 Respondent shall perform all the requirements of this Agreement within the time limits set forth, approved, or established herein, unless the performance is prevented or delayed solely by events which constitute a force majeure. A force majeure is defined as an event arising from causes not reasonably foreseeable and beyond the control of the Respondents which could not be overcome by due diligence and which delays or prevents performance by a date required by this Agreement. Such events do not include unanticipated or increased costs or expenses of response actions, whether or not anticipated at the time such performance or response action was initiated. Nor does Force majeure include changed economic circumstances, normal precipitation events, or failure to exercise due diligence in obtaining federal, state, or local permits.

12.2 Force majeure shall include acts of God; fire; war; insurrection; civil disturbance; explosion; restraint by court order or order of an existing public authority; inability to obtain, after due diligence, any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority other than the DOE or NYSERDA; delays caused by compliance with applicable statutes or

regulations governing contracting, procurement or acquisition procedures, despite the exercise of due diligence; any strike or other labor dispute, whether or not within the control of the Parties affected thereby; and insufficient availability of appropriated funds, provided DOE or NYSERDA, as appropriate, made timely request for such funds as part of the budgetary process as set forth in Section 14 (Funding) of this Agreement; and for WVNS only, insufficient availability of appropriated funds from DOE required to fund activities for which WVNS is responsible pursuant to the WVNS Contract.

12.3 The Respondents shall notify the LRA's Project Coordinator within seventy-two (72) hours, if possible, but in no event after forty (40) days, after Respondent(s) first becomes aware of an event, which it knows or should have known, constitutes a force majeure. Within five (5) business days, if possible, but in no event after thirty (30) business days after Respondent(s) provides such initial notice, the Respondent shall submit to the LRA a written report detailing the estimated length of delay, including necessary demobilization and remobilization, its causes, measures taken or to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Respondents must adopt all reasonable measures to avoid and minimize the delay. Failure to comply with the forty (40) day notice provision of this section shall constitute a waiver of Respondents' right to assert a force majeure and shall be grounds for LRA to deny Respondents an extension of time for performance. Such a waiver of a force majeure under this Agreement shall not be deemed to be a waiver of any other defense the Respondent may have at law with regard to the performance of obligations of contracts that become impossible.

12.4 If a force majeure has occurred, the time for performance shall be extended, upon LRA approval, for a period equal to the delay resulting from such circumstances. This shall be accomplished through written amendment to this Agreement pursuant to Section 10. Such an extension does not alter the schedule for performance or completion of any other tasks required by this Agreement unless these are also specifically altered by amendment of this Agreement.

13.0 RESERVATION OF RIGHTS

13.1 EPA and NYSDEC expressly reserve, subject only to Section 13.12 of this Agreement, all of their statutory

and regulatory powers, authorities, rights, remedies and defenses, both legal and equitable, including, without limitation the right to seek injunctive relief, cost recovery, monetary penalties or punitive damages.

13.2 Subject only to Section 13.12, this Agreement and Respondents' consent to its issuance shall not limit or otherwise preclude EPA and NYSDEC from taking any additional legal action against Respondents should EPA and NYSDEC determine that any such additional legal action is necessary or warranted.

13.3 This Agreement shall not relieve Respondents of their obligation to obtain and comply with any federal, state, county or local permit nor is this Agreement intended to be, nor shall it be construed to be, a ruling or determination on, or of, any issue related to any federal, state, county or local permit.

13.4 After providing notice to DOE and NYSERDA, EPA and NYSDEC reserve any rights they may have under law to perform any and all work required by this Agreement including any action deemed necessary to protect human health or the environment.

13.5 Notwithstanding compliance with the terms of this Agreement, Respondents are not released from liability for the costs of any response actions taken by EPA or NYSDEC. EPA and NYSDEC reserve any rights each may have to seek reimbursement from the Respondents for any such costs incurred by the EPA and/or NYSDEC.

13.6 By entering into this Agreement, neither DOE nor NYSERDA waives any claim of immunity from payment of fines or penalties, nor does either waive any claim of jurisdiction over matters reserved to DOE under the Atomic Energy Act ("AEA").

13.7 Respondents do not waive any defenses Respondents may have or wish to pursue in any action beyond the scope of this Agreement.

13.8 Nothing in this Agreement and no determination made or action taken (including any failure to act) pursuant to the Agreement, including, without limitation, any determination or resolution resulting from Dispute Resolution under Section 18.0, shall constitute an admission or evidence of an admission by Respondents or otherwise constitute an adjudication of any fact or conclusion of law, except in an action or proceeding by EPA or NYSDEC to enforce the terms of this Agreement, nor shall anything in this Agreement release, waive, or

otherwise affect or diminish any right, defense, authority, responsibility, immunity or claim for relief which Respondents may have against each other (or any person or entity not a party to this Agreement) under applicable provisions of law or contract, including, without limitation, NYSERDA and DOE's respective rights, authorities and responsibilities under the WVDP Act or the Cooperative Agreement.

13.9 The Parties acknowledge the existence of the DOE's Management and Operating Contract, and the Cooperative Agreement between DOE and NYSERDA.

13.10 DOE and NYSERDA reserve the right to seek judicial review of disputes between them concerning their respective authority and responsibility arising from or related to the WVDP Act or the Cooperative Agreement (including disputes concerning the SDA and the NDA). Nothing in this Section will diminish the responsibility of DOE or NYSERDA to take the steps required by this Agreement, and to implement the final resolution of any dispute as provided in Section 18.0 in a timely manner as set forth in this Agreement.

13.11 Nothing in this section shall diminish, impair, or otherwise adversely affect the authority of EPA or DEC to enforce the provisions of this Agreement.

13.12 Based on the facts and circumstances known to EPA and NYSDEC as of the effective date of this Agreement, and as set forth in this Agreement, EPA and NYSDEC hereby agree not to initiate any further administrative enforcement action (or to refer a civil judicial enforcement action to the Department of Justice or the State Attorney General) for violations of the specific regulations cited and addressed in Section 7 for so long as this Agreement remains effective and for so long as DOE and NYSERDA are in compliance with the requirements of this Agreement. However, in the event that any Party is delayed in fulfilling its obligations as set forth in this Agreement as a result of insufficient availability of funding or other reasons, and the Parties are unable to agree to an extension of schedules as provided for in section 10, the covenant set forth above shall terminate.

13.13 Nothing herein shall preclude any actions by EPA or NYSDEC to enforce the terms of this Agreement, or to address or bring any available legal or equitable claim for: (1) any pre-existing, current or future violations or conditions at the facility not specifically cited or covered by this Agreement; (2) any emergency conditions

or imminent hazard which may exist or arise at the facility; (3) any corrective action pursuant to the Act or ECL not inconsistent with the specific requirements set forth in Section 7 of this Agreement; or (4) any response action pursuant to CERCLA, as amended.

13.14 Except as otherwise specifically provided herein, all Parties reserve all other rights they may have under law with respect to any person. Notwithstanding any provision in Sections 18.1 or 18.13, the Respondents, including WVNS, shall have the same rights to appeal the Commissioner's decision under New York law, including seeking judicial review, as any party subject to final agency action. For purposes of this Section, the decision of the Commissioner of NYSDEC, pursuant to Section 18.9, shall constitute final agency action as to all Respondents.

13.15 Nothing contained in this Agreement shall prevent or preclude Respondents from disputing any characterization made by EPA or DEC with respect to any materials stored, treated or disposed of at the Facility.

13.16 Except as otherwise provided in Section 19.0, "Consent," in the event of any judicial action by EPA or DEC, all Parties reserve all rights, claims, and defenses, available under law.

14.0 FUNDING

14.1 It is the expectation of the Parties to this Agreement that all obligations of DOE or NYSERDA arising under this Agreement will be fully funded (in no event shall WVNS be required under this Agreement to fund any work to be undertaken pursuant to this Agreement). Consistent with Congressional and State Legislative limitations on future funding, NYSERDA and DOE shall take all necessary steps and make best efforts to obtain timely funding to meet their obligations under this Agreement.

14.2 Any requirement for the payment or obligation of funds by DOE or NYSERDA established by the terms of this Agreement shall be subject to the availability of appropriated funds and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, or New York State Finance Law. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, or the New York State Finance Law, the dates established requiring the payment or

obligation of such funds shall be appropriately adjusted, but such adjustment shall not by itself extend the life of this Agreement.

14.3 If appropriated funds are not available to fulfill NYSERDA's or DOE's obligations under this Agreement, EPA and NYSDEC reserve the right to initiate any other action which they deem to be appropriate absent this Agreement.

14.4 Nothing herein shall affect NYSERDA's or DOE's authority over, or responsibility for, its budget and funding level submissions.

15.0 DOE FIVE YEAR PLAN AND PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT

15.1 DOE prepares an Environmental Restoration and Waste Management Five-Year Plan ("the Five-Year Plan") to identify, integrate and prioritize DOE's compliance and cleanup activities at all DOE nuclear facilities and sites. DOE will update the Five-Year Plan on an annual basis.

15.2 The terms of the Five-Year Plan shall be consistent with the provisions of this Agreement, including all requirements and schedules contained herein; it is the intent of DOE that the Five-Year Plan be drafted and updated in a manner that ensures that the provisions of this Agreement are incorporated into the DOE planning and budget process. Nothing in the Five-Year Plan shall be construed to affect the provisions of this Agreement.

15.3 DOE is developing a national prioritization system for inclusion in the Five-Year Plan. DOE's application of its national prioritization system may indicate to DOE that amendment or modification of the provisions and/or milestones established by this Agreement is appropriate. In that event, DOE may request, in writing, amendment or modification of this Agreement, including deadlines established herein. NYSDEC and/or EPA may contend that the Five-Year Plan should accommodate the milestones established by this Agreement. Where the parties are unable to reach agreement on a requested amendment or modification, the Parties may invoke the dispute resolution provisions of this Agreement. Pending resolution of any such dispute, the provisions and deadlines in effect pursuant to this Agreement shall remain in effect and enforceable in accordance with the terms of this Agreement. Any amendment or modification of this Agreement will be

incorporated, as appropriate, in the annual update to DOE's Five-Year Plan.

15.4 DOE is currently preparing a Programmatic Environmental Impact Statement ("PEIS") that addresses the DOE national policy and strategy for environmental restoration and waste management activities pursuant to NEPA. EPA recognizes that the outcome of the PEIS and DOE's national policy may influence the "choice of treatment technologies" scheduled for implementation at the WVDP. Any changes shall be proposed and made in accordance with Section 10 (Extensions) and Section 16 (Modification of Agreement).

16.0 MODIFICATION OF AGREEMENT

16.1 This Agreement may be modified by agreement of all the Parties. All modifications shall be in writing and shall be effective when signed by all Parties. DEC shall be the last signatory to any modifications to the Agreement. Disagreements regarding the modifications shall be resolved by the Project Coordinators in consultation with the appropriate supervisors, or may be negotiated during the drafting of any succeeding Agreement following the expiration of this Agreement. Any such modification is, on its effective date, hereby incorporated into this Agreement.

16.2 Where the parties are unable to agree on the appropriate modification of this Agreement, such disagreement may be subject to Dispute Resolution (Section 18).

16.3 If any new federal and/or state regulations are issued that conflict with the requirements of this Agreement, the Project Coordinators (in consultation with appropriate supervisors) shall discuss any proposed modification of the Agreement resulting from such regulatory change. Based on these discussions, the LRA may issue a revised Agreement that is modified only to account for such regulatory change. Subject to Respondents' invocation of the procedures contained in Section 18 of this Agreement, Respondents shall have 90 days from the date of receipt of such modified Agreement, to execute that Agreement. If any Respondent fails to timely execute the modified Agreement, the Agreement shall terminate on the 91st day, with regard to any such Respondent.

16.4 If any new federal or applicable state law is passed that contains provisions that conflict with the terms of this Agreement or that have new requirements for

compliance agreements between federal or state agencies, the Project Coordinators (in consultation with appropriate supervisors) shall discuss any proposed modification of the Agreement resulting from such new laws. Based on these discussions, the LRA may issue a revised Agreement that is modified only to account for such statutory change. Subject to Respondents' invocation of the procedures contained in Section 18 of this Agreement, Respondents shall have 90 days from the date of receipt of such modified Agreement, to execute that Agreement. If any Respondent fails to timely execute the modified Agreement, the Agreement shall terminate on the 91st day, with regard to any such Respondent.

17.0 TERMINATION AND SATISFACTION

17.1 Unless otherwise modified, this Agreement shall remain in effect for five (5) years from the effective date of this Agreement or until such time that all activities conducted under this Agreement are completed, whichever occurs first.

17.2 This Agreement may be extended (and concurrently modified, as necessary) for periods of one year, or longer, upon approval of the LRA of a request for an extension by any Party to this Agreement. The request for an extension must be sent to the LRA no later than 210 days prior to the expiration of this Agreement. If the LRA decides to deny the request the LRA will use its best efforts to send the denial to the requesting Party no later than 120 days prior to the expiration of this Agreement. If the LRA denies the request for an extension or fails to act on the request by 120 days prior to expiration of this Agreement, Respondents, except for WVNS, may invoke the dispute resolution procedures in Section 18. The invocation of the dispute resolution process, as a result of either the LRA's denial of or failure to act on a request for an extension under this Section, shall not extend the life of this Agreement beyond the expiration date of this Agreement, unless the disputing Parties unanimously agree to extend the life of the Agreement by the amount of time necessary to resolve the dispute. Any such extension of this Agreement can incorporate additional or revised compliance requirements and schedules, as necessary, to address additional or revised work requirements and/or newly effective regulations. WVNS may elect not to participate in an extension of the Agreement by notifying the other Parties of its intention, the Agreement shall terminate as of the end of the then current term with regard to WVNS.

18.0 DISPUTE RESOLUTION

18.1 All Parties to this Agreement shall make reasonable efforts to informally resolve all disputes arising under any part of this Agreement at the Project Coordinator (PC) or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this section shall be available to all parties except WVNS and shall be implemented to resolve a dispute.

18.2 Within forty-five (45) days of the EPA or NYSDEC action that leads to or generates a dispute, the disputing Party shall submit to the other Parties a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute and the information the disputing Party is relying upon to support its position. If the disputing Party does not provide such written statement within this forty-five (45) day period, that Party shall be deemed to be in agreement with EPA and NYSDEC.

18.3 Prior to Respondents' issuance of a written statement of dispute, the disputing Party shall engage the other Parties in informal dispute resolution among the PC and/or their immediate supervisors. During this thirty (30) day informal dispute resolution period the Parties shall meet as many times as are necessary to discuss and attempt resolution of the dispute.

18.4 If agreement cannot be reached on the issue within the thirty (30) day informal dispute resolution period, the disputing Party may, within a fifteen (15) day period following the end of the thirty (30) day informal dispute resolution period, forward the written statement of dispute to the Dispute Resolution Committee (DRC) thereby elevating the dispute to the DRC for resolution. Alternatively, the Parties may, within the forty-five (45) day period noted above, unanimously decide to escalate the dispute directly to the Senior Executive Committee (SEC).

18.5 Any party may decide at any level of the dispute resolution process, by written notice to the participating parties, not to participate in dispute resolution concerning any one or more issues. However, any resolution reached by the participating parties shall be binding on all parties to this Agreement.

18.6 The DRC will serve as a forum for resolution of disputes for which agreement has not been reached

through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (SES or equivalent) or be delegated the authority to participate on the DRC for the purpose of dispute resolution under this Agreement. The EPA's representative is the Air and Waste Management Division Director, Region II. The NYSDEC's representative is the Director of the Bureau of Hazardous Waste Facility Management. DOE's representative is the West Valley Project Office Director. NYSERDA's representative is the Program Director, Radioactive Waste Management. Written notice of any delegation of authority for a Party's designated representative on the DRC shall be provided to all other Parties.

18.7 Following the receipt of all statements of dispute or the expiration of the escalation time periods noted above, the DRC shall have twenty-one (21) days to unanimously resolve the dispute and issue a written decision. If the DRC is unable to unanimously resolve the dispute within this twenty-one (21) day period the written statement of dispute shall be forwarded by the disputing party to the SEC for resolution. Alternatively, within the twenty-one (21) day period noted above, the parties may unanimously decide to escalate disputes directly to the Commissioner of DEC.

18.8 The SEC will normally serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The EPA representative is the Regional Administrator of Region II. The NYSDEC representative is the Director of the Division of Hazardous Substances Regulation (the Division Director). The DOE representative is the Idaho Field Office Manager. The NYSERDA representative is the President of NYSERDA. Written notice of any delegation of authority for a Party's designated representative on the DRC shall be provided to all other Parties. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision. If unanimous resolution of the dispute is not reached within twenty-one (21) days, DEC's Division Director shall issue a written position on the dispute. Respondents may, within twenty-one (21) days of the Division Director's issuance of the LRA's position, issue a written notice elevating the dispute to the Commissioner of DEC for resolution in accordance with applicable laws and procedures. In the event that Respondents elect not to elevate the dispute to the Commissioner within the designated twenty-one (21) day

escalation period, Respondents shall be deemed to have agreed with the Division Director's written position with respect to the dispute.

18.9 Upon escalation of a dispute to the Commissioner of DEC pursuant to subpart 8, above, the Commissioner will review and resolve the dispute as expeditiously as possible. Upon request by the Regional Administrator of EPA, the Assistant Secretary for Environmental Restoration and Waste Management of DOE, or the President of NYSERDA, and prior to resolving the dispute, the DEC Commissioner shall meet and confer, as appropriate, to discuss the issue(s) under dispute. Upon resolution, the Commissioner shall provide Respondents with a written final decision setting forth resolution of the dispute.

18.10 The pendency of any dispute under this section shall not affect Respondents' responsibility for timely performance of the work required by this Agreement, except that the time period for completion of work affected by such dispute shall be extended for a period of time usually not to exceed the actual time taken to resolve any good faith dispute in accordance with the procedures specified herein. All elements of the work required by this Agreement which are not affected by the dispute shall continue and be completed in accordance with the applicable schedule. The determination of elements of work, submittals or actions affected by the dispute shall be determined by the LRA pending final resolution of the dispute. If the LRA determines, pursuant to applicable law and guidance, that an actual or potential emergency exists and directs Respondent to take appropriate action (not inconsistent with the requirements of Section 7), timely performance of such action shall not be delayed by the dispute resolution procedures but such direction is subject to the result of these procedures.

18.11 When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Commissioner requests, in writing, that work related to the dispute be stopped because, in the LRA'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 may have a substantial adverse effect on the remedy selection or implementation process. To the extent possible, the LRA shall give Respondents prior notification that a work stoppage request is forthcoming. After stoppage of work, if the Respondents believe that the work stoppage is inappropriate or may have potential

significant adverse impacts, Respondents may meet with the Commissioner to discuss the work stoppage. Following this meeting, and further consideration of the issues, the Commissioner will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the Commissioner may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC at the discretion of Respondents.

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

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

18.14 Disputes between Respondents concerning their respective authority and responsibilities arising from or related to the WVDP Act or the Cooperative Agreement or any cost share arrangement, shall not affect the timely completion of any work pursuant to this Agreement. Respondents may request an extension of time to resolve such disputes. Notwithstanding any other provision of this Agreement, neither such disputes between Respondents, nor any LRA decision with regard to such request for extension of time, shall be subject to Dispute Resolution.

18.15 The procedures of this section shall also not apply to disputes about: (a) EPA's and/or NYSDEC's designation of project coordinators; (b) EPA and/or NYSDEC enforcement actions (such enforcement actions to be subject to Section 13.12, and only after notice to EPA's Office of Enforcement.)

19.0 CONSENT

Respondents consent to the issuance of this Agreement, and agree to undertake all actions required by the terms and conditions of this Agreement. Respondents consent to the issuance of this Agreement, pursuant to the Act, and explicitly waive their right to request a hearing on this matter. In addition, whether brought in an administrative

or judicial proceeding, the Respondents consent to and agree not to contest EPA's or NYSDEC's jurisdiction to enforce or compel compliance with any term of this Agreement or the validity of this Agreement and all of its provisions. Subject to the Reservation of Rights in Section 13, the Respondents agree not to contest, and waive any defense concerning, the validity of this Agreement, or any particular provision contained herein.

20.0 EFFECTIVE DATE

This Agreement is effective on the first business day after the date it is signed by NYSDEC. NYSDEC shall be the final signatory to the Agreement.

IT IS SO AGREED:

Date: 10/26/92

SIGNED: _____
A. A. Pitrolo
U.S. Department of Energy
Idaho Field Office

Date: 9/28/92

SIGNED: F. Wm. Valentino

F. Wm. Valentino
President
New York State Energy Research
and Development Authority

Date: October 26, 1992

SIGNED

W. G. Poulson
President and General Manager
West Valley Nuclear Services
Co., Inc.

Date:_____

SIGNED:_____
William J. Muszynski, P.E.
Acting Regional Administrator
U.S. Environmental Protection
Agency - Region II

Date:_____

SIGNED:_____
Thomas C. Jorling
Commissioner
New York State Department of
Environmental Conservation

ADDENDUM TO THE

FEDERAL AND STATE FACILITY COMPLIANCE AGREEMENT

Docket No. II RCRA - 92 - 0207

4. Page 8, Section 6.3, shall be amended to read:

6.3 RESPONDENT IS A "PERSON"

Respondents DOE and NYSERDA are each a "person" as defined by Section 1004(15) of the Act, 42 U.S.C. § 6905(15), as amended by Section 103 of the Federal Facility Compliance Act, and Title Six (6) New York Codes, Rules and Regulations, Part 370, Section 370.2(b)(102) [6 NYCRR § 370.2(b)]. Pursuant to Section 6001 of the Act, 42 U.S.C. § 6961, and pursuant to Section 102 of the Federal Facility Compliance Act, DOE is subject to all federal, state, interstate, and local requirements, both substantive and procedural, respecting control and abatement of solid waste or hazardous waste disposal and management in the same manner, and to the same extent, as any person is subject to such requirements.

5. Page 16, Section 9.1, shall be amended to read:

9.1 DOE, WVNS, and NYSERDA recognize their respective obligations to comply with all applicable federal and state laws and regulations, including RCRA, as set forth in Section 6001 of RCRA, 42 U.S.C. § 6961, and Section 102 of the Federal Facility Compliance Act, and 6 NYCRR Parts 370 through 374, and 376, and to faithfully discharge the requirements described in Section 7 of this Agreement.

IT IS SO AGREED THAT THE ABOVE ADDENDUM SHALL AMEND THE FEDERAL AND STATE FACILITY COMPLIANCE AGREEMENT AS INDICATED ABOVE.

Date: 1/27/93

SIGNED: _____
A. A. Pitrolo, Manager
U.S. Department of Energy
Idaho Field Office

Date: 1/27/93

SIGNED: _____
F. Wm. Valentino
President
New York State Energy Research
and Development Authority

Date: 1-27-93

SIGNED: W. G. Poulson

W. G. Poulson
President and General Manager
West Valley Nuclear Services
Co., Inc.

Date: 2/27/93

SIGNED: _____
William J. Muszynski, P. E.
Acting Regional Administrator
U.S. Environmental Protection
Agency - Region II

Date: 3/22/97

SIGNED: _____
Thomas C. Jorling
Commissioner
New York State Department of
Environmental Conservation