UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII AND
THE STATE OF KANSAS

IN THE MATTER OF:	)	
	)	
THE U.S. DEPARTMENT OF THE ARMY	)	
1ST INFANTRY DIVISION	)	DOCKET NO. VII-90-F-0015
(MECHANIZED) AND FORT RILEY	)	
FORT RILEY, KANSAS	)	
	)	
	)	

FEDERAL FACILITY AGREEMENT

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(MECHANIZED) AND FORT RILEY	)	
FORT RILEY, KANSAS	)	
	)	
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PRELIMINARY STATEMENT

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

I. JURISDICTION

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

A. The U.S. Environmental Protection Agency (U.S. EPA), Region VII, enters into those portions of this Agreement that relate to the Remedial Investigation/Feasibility Study (RI/FS) pursuant to Section 120(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499, 42 U.S.C. § 9620(e)(1) (hereinafter jointly referred to as CERCLA/SARA or CERCLA), and Sections 6001, 3008(h) and 3004(u) and (v) of the Resource Conservation and Recovery Act

(RCRA), 42 U.S.C §§ 6961, 6928(h) and 6924(u) and (v), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) (hereinafter jointly referred to as RCRA/HSWA or RCRA) and Executive Order 12580;

B. U.S. EPA, Region VII, enters into those portions of this Agreement that relate to Operable Unit remedial actions and final remedial actions pursuant to Section 120(e)(2) of CERCLA/SARA, Sections 6001, 3008(h) and 3004(u) and (v) of RCRA and Executive Order 12580;

C. the U.S. Department of the Army (DA), 1st Infantry Division (Mechanized) and Fort Riley (hereinafter "Fort Riley"), enters into those portions of this Agreement that relate to the RI/FS pursuant to Section 120(e)(1) of CERCLA, Sections 6001, 3008(h) and 3004(u) and (v) of RCRA, Executive Order 12580, the National Environmental Policy Act, 42 U.S.C. § 4321, and the Defense Environmental Restoration Program (DERP), 10 U.S.C § 2701 et seq.;

D. DA enters into those portions of this Agreement that relate to Operable Unit remedial actions and final remedial actions pursuant to Section 120(e)(2) of CERCLA/SARA, Sections 6001, 3008(h) and 3004(u) and (V) of RCRA, Executive Order 12580 and the DERP.

E. the State of Kansas, through the Kansas Department of Health and Environment (KDHE), enters into those portions of this Agreement that relate to the RI/FS pursuant to Sections 120 of

CERCLA/SARA, 42 U.S.C. § 9620, and K.S.A. 65-3552a et seq., K.S.A. 65-3430 et seq., and K.S.A. 65-161 et seq.

F. the State of Kansas through KDHE, enters into those portions of this Agreement that relate to Operable Unit remedial actions and final remedial actions pursuant to Sections 120 and 121 of CERCLA/SARA, 42 U.S.C. §§ 9620 and 9621, and K.S.A. 65-3552a et seq., K.S.A. 65-3430 et seq., and K.S.A. 65-161 et seq.

II. PARTIES

The Parties to this Agreement are DA, U.S. EPA, and the State of Kansas. The terms of this Agreement shall apply to and be binding upon the signatories to this Agreement and upon their successors and assigns. The undersigned representative(s) of each Party to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to bind legally that Party to it. Each party shall provide a copy of this Agreement to all primary contractors retained to perform work pursuant to this Agreement. DA shall provide a copy of this Agreement to the present owner and any subsequent owner of any property upon which any work under this Agreement is performed, if not owned by DA or the United States.

III. SCOPE OF AGREEMENT

It is the intention of the Parties that this Agreement shall apply to all releases and threats of release of hazardous substances, pollutants or contaminants at or from Fort Riley,

including such releases and threats of release at or from solid waste management units at Fort Riley, to which the provisions of CERCLA and RCRA or CERCLA alone applies.

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 Site are thoroughly investigated and appropriate remedial action is taken as necessary to protect the public health, welfare and the environment;

2. establish a procedural framework and schedule for developing, implementing and monitoring appropriate response actions at the Site in accordance with CERCLA/SARA, the NCP, Superfund guidance and policy, RCRA, RCRA guidance and policy, and applicable state law;

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

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

1. Identify Operable Unit remedial action alternatives which are appropriate at the Site prior to the implementation of final remedial action(s) for the Site. These alternatives shall be identified and proposed to the Parties as early as possible prior to formal proposal of Operable Unit remedial actions by DA to U.S. EPA and KDHE pursuant to CERCLA/SARA and applicable state law. This process is designed to promote cooperation among the

Parties in identifying Operable Unit remedial action alternatives prior to selection of final Operable Unit remedial actions.

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

3. Identify the nature, objective and schedule of response actions to be taken at the Site. Response actions at the Site shall attain that degree of cleanup of hazardous substances, pollutants or contaminants mandated by CERCLA/SARA and applicable state law.

4. Implement the selected Operable Unit and final remedial action(s) in accordance with CERCLA and applicable state law and meet the requirements of Section 120(e)(2) of CERCLA for an interagency agreement among the Parties.

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

6. Coordinate response actions at the Site with the

mission and support activities at Fort Riley.

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

8. Provide State of Kansas through KDHE involvement in the initiation, development, selection and enforcement of remedial actions to be undertaken at Fort Riley, including the review of all applicable data as it becomes available and the development of studies, reports, and action plans; and to identify and integrate state ARARs into the remedial action process.

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

V. DEFINITIONS

Except as otherwise explicitly stated herein, terms used in this Agreement which are defined in CERCLA shall have the meaning as defined in CERCLA. The following definitions shall apply for purposes of this Agreement:

A. "Agreement" means this Federal Facility Agreement, all attachments to this Agreement and all reports, plans, notices, and other documents developed pursuant to this Agreement.

B. "ARAR" or "Applicable or Relevant and Appropriate Requirement" shall mean legally "applicable or relevant and appropriate" standards, requirements, criteria, or limitations

as those terms are used in Section 121(d)(2)(A) of CERCLA, 42 U.S.C. § 9621(d)(2)(A).

C. "Authorized representative" means a person designated to act on behalf of a Party to this agreement for a specific purpose, including inter alia, if so designated, contractors retained to perform work at or relating to the Site.

D. "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq.

E. "Conceptual Program Plan" means a document which describes the overall project management plan for the Site, including all major Site activities (eg. operable unit designation, anticipated removal actions, generalized field efforts, etc.) and an approximate timeline for their accomplishment.

F. "DA" means the United States Department of the Army, its employees and authorized representatives.

G. "Days" means calendar days, unless business days are specified. Any Submittal, Written Notice of Position or Written Statement of Dispute that, under the terms of this Agreement, would be due on a Saturday, Sunday or holiday shall be due on the next business day.

H. "Emergency removals" means a removal action taken because of an imminent and substantial endangerment to human

health or the environment which requires implementation of a response action in such a timely manner that consultation with U.S. EPA and KDHE would be impractical.

I. "Feasibility Study" or "FS" means that study which fully evaluates and develops remedial action alternatives to prevent or mitigate the release or the migration of hazardous substances, pollutants or contaminants at and from the Site.

J. "KDHE" means the Kansas Department of Health and Environment, its employees and authorized representatives.

K. "National Contingency Plan" or "NCP" means the implementing regulations for CERCLA found in the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300.

L. "Operable Unit" as defined in 40 C.F.R. 300.5 means a discrete action that comprises an incremental step toward comprehensively addressing site problems. This discrete portion of a remedial response manages migration, or eliminates or mitigates a release, threat of a release, or pathway of exposure. The cleanup of a site can be divided into a number of operable units, depending on the complexity of the problems associated with the site. Operable units may address geographical portions of a site, specific site problems, or initial phases of an action, or may consist of any set of actions performed over time or any actions that are concurrent but located in different parts of the site.

M. "Parties" or "Party" shall include the U.S. EPA, DA and/or KDHE.

N. "Record of Decision" or "ROD" means the document which selects the remedial action for a site or operable unit.

O. "Remedial Design" or "RD" means that design that details and addresses the technical requirements of the Remedial Action by establishing the general size, scope and character of a project. Remedial Design begins with preliminary design and ends with the completion of the final detailed set of engineering plans and specifications.

P. "Remedial Investigation" or "RI" means that investigation conducted to fully determine the nature and extent of the release or threat of release of hazardous substances, pollutants or contaminants and to gather necessary data to support the Feasibility Study and Baseline Risk Assessment.

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

R. "Responsiveness Summary" is a document which responds to significant public comment relative to community preferences regarding both the remedial alternatives and general concerns about a site. A Responsiveness Summary is a component of the ROD.

S. "Site" means the 1st Infantry Division (Mechanized) and Fort Riley ("Fort Riley") and any areas contaminated by the

migration of hazardous substances from Fort Riley.

T. "State" means the State of Kansas, its employees and authorized representatives, represented by the Kansas Department of Health and Environment (KDHE) as the lead agency.

U. "Submittal" means each document, report, schedule, deliverable, work plan or other item to be submitted to EPA or KDHE pursuant to this Agreement.

V. "Timetables and Deadlines" means schedules, or the time limitations contained therein, that are applicable to certain documents denoted by the Parties as Primary Documents pursuant to this Agreement and certain action completion dates during the implementation of this Agreement established by the Parties.

W. "U.S. EPA" means the United States Environmental Protection Agency, its employees and authorized representatives.

X. "Written Notice of Position" means a written statement by a Party of its position with respect to any matter about which any other Party may initiate dispute resolution pursuant to Part XXIII of this Agreement.

VI. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

A. The Parties intend to integrate DA's CERCLA response obligations and RCRA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes, pollutants or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will achieve compliance with

CERCLA, 42 U.S.C. § 9601 et seq.; satisfy the corrective action requirements of Sections 3004(u) and (v) of RCRA, 42 U.S.C. § 6924(u) and (v), for a RCRA permit, and Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), for interim status facilities; and meet or exceed all applicable or relevant and appropriate federal and state laws and regulations, to the extent required by Section 121 of CERCLA, 42 U.S.C. § 9621, and applicable state law.

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

C. The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties further recognize that on-going hazardous waste management activities at Fort Riley may require the issuance of permits under federal and state laws. This Agreement does not affect the requirements, if any, to obtain such permits. However, if a permit is issued to Fort Riley for on-going

hazardous waste management activities at the Site, U.S. EPA and/or KDHE shall reference and incorporate any appropriate provisions, including appropriate schedules (and the provision for extension of such schedules), of this Agreement into such permit. With respect to those portions of this Agreement incorporated by reference into permits, the Parties intend that judicial review of the incorporated portions shall, to the extent review is authorized by law, only occur under the provisions of CERCLA.

VII. FINDINGS OF FACT

This paragraph contains findings of fact determined by the U.S EPA and KDHE as the basis for this Agreement. None of these findings are admissions by Fort Riley or the DA for any purpose, including the extent of Fort Riley compliance with applicable federal or state environmental laws, nor are they in any other way legally binding on any Party.

A. General

1. Fort Riley is located in Geary and Riley Counties in north-central Kansas, approximately 105 kilometers (km) west of Topeka and 80 km east of Salina.

2. Fort Riley was established in 1853. At all times the United States of America has owned and the Department of the Army has occupied Fort Riley. The major tenant and responsible organization at Fort Riley is the 1st Infantry Division

(Mechanized). Fort Riley consists of Marshall Army Airfield and five cantonments including the Main Post, Camp Funston, Camp Forsyth, Camp Whitside, and Custer Hill.

3. On or about August 18, 1980, Fort Riley submitted to the U.S. EPA a "Notification of Hazardous Waste Activity" pursuant to Section 3010 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6930.

4. On or about November 18, 1980, Fort Riley filed with the U.S. EPA Part A of a Hazardous Waste Permit Application pursuant to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), thereby qualifying Fort Riley for operation under Interim Status for storage for those hazardous wastes and activities identified in the Part A. Fort Riley submitted a revised Part A of a Hazardous Waste Permit Application to the U.S. EPA on or about May 5, 1983.

5. On or about March 11, 1985, Fort Riley submitted to the U.S. EPA Part B of a Hazardous Waste Permit Application pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), with a revised Part A.

6. Fort Riley submitted a revised Part B of a Hazardous Waste Permit Application on or about September 26, 1988, and a revised Part A and Part B on or about March 28, 1989.

7. In the revised Part A submitted on or about March 28, 1989, Fort Riley identified hazardous waste storage, treatment and disposal processes, including the following processes:

a. an open burning and detonation area used in the thermal

treatment of unexploded ordnance waste (process code T04); and

b. two (2) hazardous property storage buildings and one hazardous waste storage facility (process code S01).

8. Fort Riley uses eight groundwater wells to supply potable water to the facility. These wells are located in the alluvial deposits north of the Republican River near the confluence of the Smokey Hill River with the Republican River. These wells are located within the Main Post and Camp Forsyth. According to a 1981 Department of Army Report, Fort Riley has a population of 17,500 military personnel and 28,000 dependents.

9. Fort Riley was proposed for inclusion on the National Priorities List pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, on July 14, 1989; see 54 Fed. Reg. 143 (1989).

B. Contamination

1. As reported in the Environmental Science and Engineering, Inc., "Installation Assessment of the Headquarters, 1st Infantry Division (Mechanized) and Fort Riley, Kansas" dated December 1984 (hereinafter "USATHAMA Report 1984") a drycleaning plant was located in Building 180 (previously numbered as Building 109) in the Main Post from the 1940's to 1983. Tetrachloroethene has been used as the drycleaning solvent since 1966. The drycleaning plant recycled tetrachloroethene by distillation. The still bottoms from the distillation process were disposed on the ground behind Building 180 prior to 1980.

2. Two soil samples were taken in the suspected spill area behind (west of) Building 180 in June 1986. The Army Environmental Hygiene Agency (AEHA) reported in a letter dated August 7, 1986 that no tetrachloroethene was detected in either sample.

3. Prior to 1982, mercury wastes resulting from the breakage of medical instruments were disposed in an on post sanitary landfill (USATHAMA Report, 1984).

4. Prior to 1970, pesticide wastewaters and spills occurring during mixing were discharged to the ground in the equipment washing area behind Building 348 (previously numbered Building 292) the pesticide formulation and storage facility (USATHAMA Report, 1984).

5. As outlined in the USATHAMA Report, during routine sampling under the Army Pesticide Monitoring Program, soil sampling in the area behind Building 348 (previously numbered Building 292) was conducted on July 1, 1974. Additional sampling in this area was conducted on November 23, 1974. The compounds detected in the soil samples included the following, up to a maximum concentration indicated for each:

COMPOUND	July 1, 1974 CONCENTRATION (mg/kg)	November 23, 1974 CONCENTRATION (mg/kg)
Chlordane	423.53	12.8
Methoxychlor	824.04	370.0
Malathion	87.70	0.58
Diazinon	29.85	ND
p,p'-DDT	53.78	30.0
o,p'-DDT	47.75	8.8
p,p'-DDE	1.30	2.0
p,p'-DDD	37.87	ND
o,p'-DDD	16.98	ND

ND - not detected

6. The November 23, 1974 sampling also found that pesticide contamination of soils extended behind the pesticide storage and mixing facility (building 348) into the sediments of a small ditch that runs behind this area. The soil sample that was taken 75 feet from the rear of the formulating and storage area is summarized below:

COMPOUND	CONCENTRATION (mg/kg)
Chlordane	544.6
Methoxychlor	118.5
Malathion	0.29
Diazinon	0.41
p,p'-DDT	159.5
o,p'-DDT	50.0
p,p'-DDE	12.5
p,p'-DDD	ND
o,p'-DDD	ND

ND - not detected

7. The furniture repair shop located in Building 8100 has used acetone and tetrachloroethene as solvents. Spent solvents from this location have been disposed in an on-post sanitary landfill (USATHAMA Report, 1984).

8. The print shop located in Building 263 (previously numbered Building 54) has used tetrachloroethene as a solvent. Waste rags which had been soaked with solvent from this location have been disposed in an on post sanitary landfill (USATHAMA Report, 1984).

9. Metal drums of solvents combined with waste oils were accepted in the Southwest Camp Funston Landfill until 1970 (USATHAMA Report, 1984).

10. The Directorate of Industrial Operations vehicle maintenance shop uses a carburetor cleaner containing methylene chloride, phenol, and a petroleum distillate. After use, the 5-gallon container and residual cleaner were disposed in an on-post sanitary landfill. (RCRA Inspection Report dated January 8, 1986).

11. Tetrachloroethene, trichloroethene, and carbon tetrachloride have been used as solvents for vehicle maintenance activities. Prior to 1970, waste solvents from these activities were disposed in an on-post sanitary landfill (USATHAMA Report, 1984).

12. The drycleaning shop located in Building 183 (previously numbered Building 216) disposed spent tetrachloroethene filters in the sanitary landfill from 1983 until 1985 (RCRA Inspection Report, January 8, 1986).

13. Surface soil samples were obtained on December 1, 1984 from the fire training pit and an adjacent drum storage

area. The surface soils were found to contain the following compounds up to a maximum concentration indicated for each (USATHAMA Report 1984):

COMPOUND	CONCENTRATION (mg/kg)
Chloroform	2
Trans-1,2-Dichloroethene	3
Tetrachloroethene	1
Fuel oil	300
Methyl Naphthalenes	50
Dimethyl Naphthalenes	50
Diethyl Phthalate	150

14. Fort Riley has operated seven solid waste landfills. The first landfill was located within the Main Post and was operated from the late 1800's to early 1900's. A second landfill was operated from 1917 to the mid 1950's and was located south of the Main Post. A third landfill was located in the southeast corner of Camp Funston and was operated from 1941 to the mid-1950's. The fourth landfill was operated as a sanitary landfill from 1943 to 1957 and was located west of Camp Forsyth. The fifth landfill (hereinafter referred to as "the Southwest Camp Funston Landfill") was operated as a sanitary landfill from the mid-1950's to 1981 and was located in the southwest portion of Camp Funston. The Southwest Camp Funston Landfill was closed under a closure plan administered by the Kansas Department of Health and Environment under KDHE Permit Number 370. The sixth landfill (hereinafter referred to as "the Custer Hill Landfill") has been operating since 1981 and is located east of Custer Hill. The Custer Hill Landfill is currently operating as a sanitary

landfill under KDHE Permit Number 385. The seventh landfill accepts construction debris under KDHE Permit Number 366 and is located north of Camp Whitside (USATHAMA Report, 1984).

15. The six groundwater monitoring wells installed around the Southwest Camp Funston Landfill have been sampled since the landfill was closed. Samples were analyzed for volatile organic compounds on April 27, 1984 , January 6, 1987, October 26, 1987 and August 24, 1989. The groundwater was found to contain the following volatile organic compounds, up to a maximum concentration indicated for each:

Samples taken on or about April 27, 1984:

COMPOUND	CONCENTRATION (ug/l)
Vinyl chloride	5
Trans-1,2-Dichloroethene	1
Trichloroethene	ND
Benzene	ND
Ethyl Benzene	ND

Samples taken on or about January 6, 1987:

COMPOUND	CONCENTRATION (ug/l)
Vinyl chloride	54
Trans-1,2-Dichloroethene	7
Trichloroethene	ND
Benzene	ND
Ethyl Benzene	ND

Samples taken on or about October 26, 1987:

COMPOUND	CONCENTRATION (ug/l)
Vinyl chloride	20
Trans-1,2-Dichloroethene	7
Trichloroethene	6
Benzene	10
Ethyl Benzene	8

Samples taken on or about August 24, 1989:

COMPOUND	CONCENTRATION (ug/l)
Vinyl chloride	ND
Trans-1,2-Dichloroethene	ND
Trichloroethene	ND
Benzene	ND
Ethyl Benzene	ND

ND - not detected

16. As stated in the "Evaluation of Solid Waste Management Units" report completed by the U.S. Army Environmental Hygiene Agency dated May 1988 (hereinafter "May 1988 AEHA Report"), the Custer Hill landfill is a trench type landfill currently operating as a sanitary landfill.

17. An AEHA survey team observed leachate emanating from the north side of the Custer Hill landfill, outside the security fence northward several hundred feet. The leachate was a dark reddish liquid that colored the soil in a drainage channel dark red (May 1988 AEHA Report).

18. Mercury waste from broken laboratory instruments was disposed of in the Custer Hill landfill prior to 1982 (May 1988 AEHA Report).

19. Bead Blaster Waste was periodically disposed of in a dumpster located near the vehicle maintenance shop. The dumpster was emptied at the Custer Hill landfill.

20. The potential exists for offpost migration of toxic or hazardous materials from the Southwest Camp Funston Landfill.

21. Fort Riley is an area where one or more of the

substances identified in this Part have been deposited, stored, disposed of, or placed or otherwise come to be located.

22. The U.S. EPA has set standards for public water supplies. These standards are set under the Safe Drinking Water Act P.L. 99-339. The National Primary Drinking Water Maximum Contaminant Level (MCL) for vinyl chloride and mercury are both set at 2.0 µg/l (micrograms per liter). The MCL for trichloroethene and carbon tetrachloride are set at 5.0 µg/l. The MCL for methoxychlor is set at 100 µg/l. The proposed MCL for tetrachloroethene is 5.0 µg/l.

VIII. DETERMINATIONS

This paragraph contains determinations of law made solely by the U.S. EPA and KDHE. As with the Findings of Fact, infra, they are not admissions by Fort Riley or the DA for any purpose.

A. Fort Riley is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

B. DA is a person as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

C. The substances identified in Parts VII. B are hazardous substances and pollutants or contaminants within the meaning Sections 101(14) and 101(33) of CERCLA, 42 U.S.C. §§ 9601(14) and (33).

D. The presence of hazardous substances and pollutants or contaminants at the Site constitutes a release or threatened release of hazardous substances and pollutants or contaminants

into the environment as defined at Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

E. The Site is a federal facility within the meaning of Section 120 of CERCLA, 42 U.S.C. § 9620, and the response actions addressed by this Agreement are under the jurisdiction of DA.

F. The actions required to be taken pursuant to this Agreement are necessary to protect the public health and welfare and the environment and are consistent with the NCP.

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

IX. WORK TO BE PERFORMED

It is hereby agreed by the Parties that DA shall conduct each of the following activities in accordance with the schedules set forth below and the deadlines established pursuant to Part XI of this Agreement:

A. Site Assessment

1. The DA shall conduct a Site Assessment to identify all potential areas of contamination located at Fort Riley. The Site Assessment shall include all potential and known, past and present, solid and hazardous waste treatment, storage, or disposal areas where hazardous substances could have been released or come to be located, including the Custer Hill Landfill and the inactive dry cleaning facility. Also included

in the Site Assessment shall be a discussion of, for each potential area of contamination: the location, types of waste treatment/storage/disposal activities, dates of those activities, the hazardous substances potentially present, the potential migration pathways for releases of hazardous substances, and any potential receptors of hazardous substance migration.

2. The DA has identified two potential areas of contamination (the inactive Camp Funston Landfill and the pesticide storage building) at Fort Riley to be addressed during the RI and FS processes required by Part IX. B, and therefore, the DA is not required to address these areas during the Site Assessment.

3. The Site Assessment Report shall be a primary document for purposes of Parts X and XI of this Agreement. The Custer Hill Landfill Groundwater Monitoring Report and the Inactive Dry Cleaning Facility Preliminary Assessment Report shall be primary documents for purposes of Parts X and XI of this Agreement.

4. The DA shall complete the Site Assessment in accordance with the schedule established pursuant to Part XI. of this Agreement.

5. The DA, during the performance of the Site Assessment, or the U.S. EPA or KDHE, during their review of the draft or final Site Assessment Reports, may determine additional potential areas of contamination are in need of further

investigation or response efforts. Initially, for each such additional area of contamination, the DA shall propose or provide, within twenty-one (21) days of notification that the U.S. EPA and KDHE have approved the final Site Assessment Report, deadlines for the completion of all appropriate primary documents and target dates for the submittal of appropriate secondary documents, in accordance with Parts X.D and XI.C and D of this Agreement. Upon this event, the requirements of Parts IX., X. and XI shall thereafter apply.

6. With respect to each additional area of contamination, the establishment of proposed deadlines for primary documents completed after the issuance of the ROD, final deadlines for all primary documents and target completion dates for secondary documents shall be in accordance with Part XI of this Agreement.

B. Remedial Investigation and Feasibility Study

1. DA shall conduct, in compliance with the deadlines established pursuant to Part XI of this Agreement, a Remedial Investigation (RI) and Feasibility Study (FS) in accordance with the guidelines set forth in the document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA", OSWER Directive 9355.3-01 (October 1988), or more recent version thereof as EPA shall make available to DA during the course of the RI/FS. The RI shall include, inter alia: the design and implementation of a monitoring program to define the

extent and nature of soil contamination, surface water contamination, groundwater contamination, and air contamination, if any, at the Site, and the extent and nature of releases of hazardous substances from the Site.

2. In accordance with Parts X and XI of this Agreement, DA shall submit to the U.S. EPA and KDHE for review and approval the RI and FS Work Plans.

3. DA shall implement the RI and FS in accordance with the schedule established pursuant to Part XI of this Agreement.

4. The Parties agree that final Site cleanup level criteria will only be determined following completion of a Site or Operable Unit Risk Assessment(s) to be prepared by the DA as part of the Remedial Investigation. The RI shall be coordinated with the Feasibility Study such that both activities are completed in a timely and cost effective manner.

C. Operable Unit Remedial Actions

1. In accordance with Part XI of this Agreement, DA shall propose deadlines for the completion of work plans for any Operable Unit remedial actions currently anticipated. These work plans shall be reviewed in accordance with Part X of this Agreement.

2. All Operable Unit remedial actions undertaken pursuant to this Agreement shall comply with all NCP requirements and U.S. EPA guidelines governing such actions.

3. All requirements for remedial action selection and

implementation pursuant to this Agreement shall apply to the selection and implementation of Operable Unit remedial actions, including the preparation of an Operable Unit Feasibility Study and Record of Decision for all Operable Unit remedial actions.

4. Removal actions may be conducted on portions of the Site included within Operable Units in the same manner and to the same extent as if Operable Units had not been identified at the Site.

D. Remedial Action Selection

1. Upon approval of a FS Report including an Operable Unit Feasibility Study Report, by the U.S. EPA, the DA shall, after consultation with the U.S. EPA and KDHE pursuant to Part X of this Agreement, publish a proposed plan for public review and comment in accordance with the public participation requirements of Part XXXI of this Agreement.

2. Within sixty (60) days of the completion of the public comment period on the proposed plan, DA shall submit its proposed Record of Decision (ROD), including its response to all significant comments received from the public during the public comment period (Responsiveness Summary), to the U.S. EPA. The proposed ROD and Responsiveness Summary shall be written in accordance with the guidance document entitled, "Guidance on Preparing Superfund Decision Documents", EPA/540/G-89/007 (July 1989) or more recent version thereof. In accordance with 40 C.F.R. Section 300.430(f)(4)(iii), the selection of the remedial

action(s) at the Site shall be jointly made by the DA and the U.S. EPA, in consultation with KDHE in accordance with Section X. of this Agreement. If mutual agreement on the remedy is not reached, selection of the remedy shall be made by the U.S. EPA. The remedial action selected by the Administrator of the U.S. EPA shall be final and is not subject to dispute resolution under Part XXIII, herein.

3. As specified in Section 120(e)(2) of CERCLA, DA shall commence substantial continuous physical onsite remedial action at the Site within fifteen (15) months of receipt of written notice of final approval of the ROD by the U.S. EPA.

4. DA shall implement the remedial action in accordance with the provisions, time schedule, standards and specifications set forth in the approved Remedial Action Work Plan.

5. Prior to commencement of any remedial action, DA shall provide for public participation in accordance with Part XXXI of this Agreement.

E. Removal Actions

1. Any removal action undertaken by the DA at the Site shall be conducted in a manner consistent with CERCLA including the notice and consultation provision of 10 U.S.C. § 2705, the NCP, and applicable state law.

2. For all removal actions except emergency removals, prior to undertaking the action, DA shall advise the U.S. EPA and

KDHE, in writing, as to the basis for the action, the nature of the action, the expected time period during which the action will be implemented, and the impact, if any, on any remedial action contemplated at the Site. For emergency removals, DA shall provide as much advance notice to EPA and KDHE as the circumstances leading to the removal action allow.

3. Prior to the initiation of any removal action which is not an emergency removal, the DA shall provide the U.S. EPA and KDHE with an adequate opportunity for timely review and comment on any such proposed removal action. Following consideration of U.S. EPA and KDHE comments, the DA shall provide to the U.S. EPA a written response to those comments, as soon as practicable. DA determination as to the necessity for taking emergency removal action shall not be subject to Parts XXIII and XXIV of this Agreement.

4. Upon completion of a removal action, DA shall provide to the U.S. EPA and KDHE, in writing, notification of the completion of the removal action and a description of the action taken.

5. If the U.S. EPA determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of actual or threatened release of a hazardous substance, pollutant or contaminant at or from the Site, including but not limited to discovery of contamination of drinking water wells at concentrations that

exceed any state or federal drinking water standards or action levels, the U.S. EPA may request, or KDHE may request EPA to request, that the DA take such response actions as may be necessary to abate such endangerment or threat and to protect the public health or welfare or the environment.

6. The U.S. EPA reserves such rights as it may have under CERCLA and the NCP to undertake any such response actions necessary, for which DA fails to undertake such response actions and, to the extent permitted by law, to seek reimbursement from DA for costs incurred in so responding.

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

X. CONSULTATION WITH U.S. EPA and KDHE

A. Applicability

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

dispute in accordance with Paragraphs B through J below.

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

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

1. Primary documents include those reports that are major, discrete portions of RI/FS or RD/RA activities. Primary documents are initially issued by the DA in draft subject to review and comment by the U.S. EPA and KDHE. Following receipt of comments on a particular draft primary document, the DA will respond in writing 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 thirty (30) days after issuance, if dispute resolution is not invoked, or as modified by decision of the dispute resolution process.

2. Secondary documents include those reports that are discrete portions of the primary documents and are typically input or feeder documents. Secondary documents are issued by the DA in draft subject to review and comment by the U.S. EPA and KDHE. Although the DA will respond to comments received, the draft secondary documents may be finalized in the context of the

corresponding primary documents. A secondary document may be disputed at the time the corresponding draft final primary document is issued.

C. Primary Reports

The following documents have been submitted to the U.S. EPA for the purpose of allowing the U.S. EPA to provide technical review and comment:

a. Remedial Investigation/Feasibility Study Scope of Work for the Funston Landfill Dated: November 5, 1989; and

b. Preliminary Assessment/Site Investigation Scopes of Work for the Dry Cleaning Facility and the Pesticide Storage Building Dated: November 5, 1989.

The following documents have been provided to the U.S. EPA for informational purposes:

a. Installation Assessment of the Headquarters, 1st Infantry Division (Mechanized) and Fort Riley, Kansas AMXTH-AS-IA-82341, accomplished by Environmental Science and Engineering, Inc., Gainesville, Fl., dated December 1984; and

b. Interim Final Report, Hazardous Waste Management Consultation No. 37-26-0190-89, Evaluation of Solid Waste Management Units, accomplished by the U.S. Army Environmental Hygiene Agency, Aberdeen Proving Grounds, Md., 9 - 13 May 1988.

2. The DA shall complete and transmit draft reports for the following primary documents to the U.S. EPA and KDHE for review and comment in accordance with the provisions of this Part:

a. Custer Hill Landfill Groundwater Monitoring Report;

b. Inactive Dry Cleaning Facility Preliminary Assessment Report;

c. Site Assessment Report;

d. Conceptual Program Plan;

e. Remedial Investigation Work Plans, including Sampling and Analysis Plans and QAPPs;

f. Remedial Investigation Reports, including a Baseline Risk Assessment;

g. Feasibility Study Work Plans;

h. Feasibility Study Reports;

i. Proposed Plans;

j. Records of Decision;

k. Operable Unit Work Plans and Reports;

l. Remedial Design Work Plans;

m. Final Remedial Designs;

n. Remedial Action Work Plans;

o. Remedial Action Reports; and

p. Community Relations Plan.

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

D. Secondary Documents

1. The DA shall complete and transmit draft reports

for the following secondary documents to the U.S. EPA and KDHE for review and comment in accordance with the provisions of this Part:

a. Operable Unit Remedial Action Objectives/ Data Quality Objectives;

b. Health and Safety Plan for RI/FS Activities;

c. Initial Screening of Alternatives;

d. Detailed Analysis of Alternatives;

e. Pre-design Technical Summary;

f. Preliminary Design (35% completion);

g. Intermediate Design (65 % completion);

h. Pre-final Design (95% completion);

i. Health and Safety Plan for Field Construction Activities;

j. Contingency Plan;

k. Operation and Maintenance Plan; and

l. Treatability Studies (if necessary).

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

E. Meetings of the Project Managers on Development of Reports

The Project Managers shall meet approximately every 30 days, except as otherwise agreed by the Parties, to review and discuss

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

F. Identification and Determination of Potential ARARs

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

2. In identifying potential ARARs, the Parties recognize that actual ARARs can be identified only on a site-specific basis and that ARARs depend on the specific hazardous substances, pollutants and contaminants at a site, the particular actions proposed as a remedy and the characteristics of a site. The Parties recognize that ARAR identification is

necessarily an iterative process and that potential ARARs must be re-examined throughout the RI/FS process until a ROD is issued.

G. Review and Comment on Draft Reports

1. The DA shall complete and transmit each draft primary report to the U.S. EPA and KDHE on or before the corresponding deadline established for the issuance of the report. The DA shall complete and transmit the draft secondary document in accordance with the target dates established for the issuance of such reports established pursuant to Part XI of this Agreement.

2. Unless the Parties mutually agree to another time period, all draft reports shall be subject to a 45-day period for review and comment. Review of any document by the U.S. EPA and KDHE may concern all aspects of the report (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP and any pertinent guidance or policy issued by the U.S. EPA, and with applicable state law. Comments by the U.S. EPA and KDHE shall be provided with adequate specificity so that the DA may respond to the comments and, if appropriate, make changes to the draft report. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of the DA, the U.S. EPA or KDHE shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy

reports, U.S. EPA or KDHE may extend the 45-day comment period for an additional 20 days by written notice to the DA prior to the end of the 45-day period. On or before the close of the comment period, U.S. EPA and KDHE shall transmit by next day mail their written comments to the DA.

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

4. In commenting on a draft report which contains a proposed ARAR determination, U.S. EPA or KDHE shall include a reasoned statement of whether it objects to any portion of the proposed ARAR determination. To the extent that the U.S. EPA or KDHE does object, it shall explain the basis for their objection in detail and shall identify any ARARs which it believes were not properly addressed in the proposed ARAR determination.

5. Following the close of the comment period for a draft report, the DA shall give full consideration to all written comments on the draft report submitted during the comment period. Within 45 days of the close of the comment period on a draft secondary report, the DA shall transmit to the U.S. EPA and KDHE its written response to comments received within the comment period. Within 45 days of the close of the comment period on a

draft primary report, the DA shall transmit to the U.S. EPA and KDHE a draft final primary report, which shall include the DA's response to all written comments received within the comment period. While the resulting draft final report shall be the responsibility of the DA, it shall be the product of consensus to the maximum extent possible.

6. The DA may extend the 45-day period for either responding to comments on a draft report or for issuing the draft final primary report for an additional 20 days by providing notice to the U.S. EPA and KDHE. In appropriate circumstances, this time period may be further extended in accordance with Part XXI hereof.

H. Availability of Dispute Resolution for Draft Final Primary Documents

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

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

I. Finalization of Reports

The draft final primary report shall serve as the final primary report if no Party invokes dispute resolution regarding the document or, if invoked, at completion of the dispute resolution process should the DA's position be sustained. If the

DA's determination is not sustained in the dispute resolution process, the DA shall prepare, within not more than 35 days, a revision of the draft final report which conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Part XXI hereof.

J. Subsequent Modifications of Final Reports

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

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

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

upon a showing that:

a. the requested modification is based on significant new information; and

b. the requested modification could be of significant assistance in evaluating impacts on the public health or the environment, in evaluating the selection of remedial alternatives, or in protecting human health and the environment.

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

XI. DEADLINES

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

a. Custer Hill Landfill Groundwater Monitoring Report;

b. Inactive Dry Cleaning Facility Preliminary Assessment Report;

c. Site Assessment Report;

d. Conceptual Program Plan;

e. Remedial Investigation Work Plans, including Sampling and Analysis Plans and QAPPs;

f. Remedial Investigation Reports, including a Baseline Risk Assessment;

g. Feasibility Study Work Plans;

h. Feasibility Study Reports;

i. Proposed Plans;

j. Records of Decision;

k. Operable Unit Work Plans and Reports; and

l. Community Relations Plan.

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

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

1. Remedial Design Work Plans;

2. Final Remedial Designs;

3. Remedial Action Work Plans; and

4. Remedial Action Reports.

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

C. Within twenty-one (21) days after the effective date of this Agreement, the DA shall provide target dates for the secondary documents that are necessary to conduct the RI and FS processes as required by Part X.D.

D. Within twenty-one (21) days of issuance of the Record of Decision, the DA shall provide target dates for the secondary documents that are necessary to implement the Remedial Design and Remedial Action processes as required by Part X.D.

E. Target dates for secondary documents are not subject to Parts XXI, XXIII, XXIV, and XXXIII of this Agreement, and may be adjusted by the DA after consultation with the U.S. EPA and KDHE.

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

XII. REPORTING

A. Throughout the course of the activities required by this Agreement, DA shall submit to EPA and KDHE written quarterly progress reports, which shall include, at a minimum, the following:

1. a description of the actions completed during the quarter towards compliance with this Agreement;

2. a description of all actions scheduled for completion during the quarter which were not completed along with a statement indicating why such actions were not completed and an anticipated completion date;

3. copies of all data and sampling and test results and all other laboratory deliverables received by DA and completed pursuant to this Agreement during the quarter if not previously provided; and

4. a description of the actions which are scheduled for the following quarter.

B. These quarterly reports shall be due on or before the tenth (10th) day of the month following the quarter for which the report is submitted.

C. The U.S. EPA reserves the right to make reasonable requests for raw data and all other laboratory deliverables at any time during the project.

XIII. MONITORING AND QUALITY ASSURANCE

A. In accordance with Part X of this Agreement, DA shall develop a Quality Assurance Project Plan (QAPP) for each Remedial Investigation, including investigations conducted for an Operable Unit, for review and comment by EPA and KDHE. The QAPPs shall be prepared in accordance with EPA Document QAMS-005/80 and applicable guidance as developed and provided by EPA, and shall include, but is not limited to: sampling methodology, sample storage and shipping methods, documentation, sampling and chain-of-custody procedures, calibration procedures, and laboratory quality control/quality assurance procedures and frequency. The DA shall use the quality assurance/quality control and chain of custody procedures specified in the QAPPs throughout all field investigation, monitoring, sample collection and laboratory analysis activities. The DA shall inform and obtain the approval of EPA and KDHE in planning all sampling and analysis.

B. DA shall submit all methods and protocols used for sampling and analysis to the U.S. EPA and KDHE for review and approval. The DA shall ensure that the laboratory(s) utilized for sample analysis participate in the U.S. Army Corps of Engineers quality assurance/quality control (QA/QC) program outlined in ER 1110-1-263 or another QA/QC program equivalent to that specified in the documents entitled "U.S. EPA Contract Laboratory Program Statement of Work for Organic Analysis", October 1986 and "U.S. EPA Contract Laboratory Program Statement

of Work for Inorganic Analysis", July 1985. All laboratories analyzing samples pursuant to this Agreement shall perform analyses of samples provided by the U.S. EPA to demonstrate the quality of each such laboratory's analytical data.

C. The DA shall ensure that U.S. EPA and KDHE and their authorized representatives are allowed access to the laboratory(s) and personnel utilized by the DA for sample collection and analysis and other field work.

XIV. SAMPLING AND DATA/DOCUMENT AVAILABILITY

A. The DA shall make available to the U.S. EPA and KDHE all results of sampling, tests and other data collection, including quality assurance documentation obtained by it, or on its behalf, with respect to the implementation of this Agreement, within thirty (30) days of receipt of such results. This includes, but is not limited to, sampling of all areas known or suspected to have been contaminated by hazardous substances, and any water supply wells and systems, included in the remedial investigation. If quality assurance on data is not completed within thirty (30) days of the receipt of results, summarized raw data or results shall be submitted within the thirty (30) day period and quality assured data or results shall be submitted as soon as they become available.

B. At the request of the U.S. EPA or KDHE, DA shall allow the Party making the request to collect split or duplicate samples of all samples collected pursuant to this Agreement. To

the maximum extent practicable, DA shall notify EPA and KDHE at least fourteen (14) days prior to any sample collection. If it is not possible to provide fourteen (14) days advance notice, DA shall provide as much notice as possible of the date and time that samples will be collected. The U.S. EPA and KDHE will make the quality assured results of all sampling, tests, or other data available to each other and to DA within thirty (30) days of receipt of such results.

XV. PROJECT MANAGERS

A. The following individuals are designated as Project Manager for the respective Party:

For U.S. EPA:

Cecilia Tapia
Waste Management Division
U.S. Environmental Protection Agency
Region VII
726 Minnesota Avenue
Kansas City, Kansas 66101
Telephone Number: 913/551-7733

For DA:

Philip B. Woodford
Chief Environmental and Natural Resources Division
Directorate of Engineering and Housing
Building 408
Fort Riley, Kansas 66442-6000
Telephone Number: 913/239-3962

For KDHE:

Marvin Glotzbach
Section Chief, Remedial Section
Bureau of Environmental Remediation
Kansas Department of Health and Environment
Forbes Field, Building 740
Topeka, Kansas 66620-7500
Telephone Number: 913/296-1675

B. All verbal notices and written documents, including, but not limited to, written notices, reports, plans, and schedules, requested or required to be submitted pursuant to this Agreement shall be directed to the designated Project Managers with copies sent to the Corps of Engineers representative. To the maximum extent possible, all communications between the Parties concerning the terms and conditions of this Agreement shall be directed through the Project Managers. Each Project Manager shall be responsible for assuring that all communications from the other Project Managers are appropriately disseminated and processed by the entities which the Project Managers represent.

C. The U.S. EPA and KDHE Project Managers shall have the authority to:

1. take samples, request split samples of DA samples, and ensure that work is performed properly and pursuant to EPA protocols, as well as pursuant to the Attachments and plans incorporated into this Agreement;

2. observe all activities performed pursuant to this Agreement, take photographs or have photographs taken, and make such other reports on the progress of the work as the Project

Manager deems appropriate, subject to the limitations set forth in Part XVI of this Agreement;

3. review records, files and documents relevant to this Agreement; and

4. recommend and request minor field modifications to the work to be performed pursuant to this Agreement, or in techniques, procedures or design utilized in carrying out this Agreement, which are necessary to the completion of the project.

D. The DA Project Manager may recommend and request minor field modifications to the work to be performed pursuant to this Agreement, or in techniques, procedures or design utilized in carrying out this Agreement, which are necessary to the completion of the project.

E. Any field modifications proposed under this Part by any Party must be approved orally by all three (3) Project Managers to be effective. If agreement cannot be reached on the proposed additional work or modification to work, dispute resolution as set forth in Part XXIII may be used in addition to this Part. Within five (5) business days following a modification made pursuant to this Part, the Project Manager who requested the modification shall prepare a memorandum detailing the modification and the reasons therefore and shall provide or mail a copy of the memorandum to the other Project Managers. The Parties recognize that modifications and corresponding changes to remedial investigation and response action contracts may

necessitate extensions of timetables and deadlines.

F. The Project Manager for the DA, or his authorized designated representative, shall be physically present on the site or reasonably available to supervise work performed at the site during implementation of the work performed pursuant to this Agreement and shall be available to the U.S. EPA and KDHE for the pendency of this Agreement. The U.S. EPA and KDHE Project Managers need not be present at the Site and their absence from the Site shall not be cause for work stoppage.

G. Any Party may change its designated Project Manager, or other designated representative under this Agreement, by notifying the other Parties, in writing, within five (5) days of the change.

XVI. ACCESS

A. Subject to any statutory and regulatory requirements as may be necessary to protect national security, DA shall provide access to the U.S. EPA and KDHE to all property upon which any activities are being conducted or have been conducted pursuant to this Agreement such that the U.S. EPA and KDHE and their authorized representatives are able to enter and move freely about such property at all reasonable times for the purposes related to activities conducted pursuant to this Agreement, including, inter alia, the following:

1. inspecting and copying records, files, photographs, operating logs, contracts and other documents relative to the

implementation of this Agreement;

2. reviewing the status of activities being conducted pursuant to this Agreement;

3. collecting such samples or conducting such tests as the U.S. EPA or KDHE determines are necessary or desirable to monitor compliance with the terms of this Agreement or to protect the public health, welfare, or the environment;

4. using sound, optical or other types of recording equipment to record activities which have been or are being conducted pursuant to this Agreement; and

5. verifying data and other information submitted by DA pursuant to this Agreement.

B. The DA shall provide an escort whenever EPA or KDHE require access to restricted areas of Fort Riley for purposes consistent with the provisions of this Agreement. The U.S. EPA and KDHE shall provide reasonable notice to the DA Project Manager of dates of proposed site inspections. The U.S. EPA and KDHE shall not use any camera, sound recording or other electronic recording device at Fort Riley without the permission of the DA Project Manager. The DA shall not unreasonably withhold such permission.

C. The rights to access by the U.S. EPA and KDHE, granted in Paragraph A of this Part, shall be subject to those regulations as may be necessary to protect national security. Upon denying any aspect of access the DA shall provide an

explanation within 48 hours of the reason for the denial and, to the extent possible, provide a recommendation for accommodating the requested access in an alternate manner. The Parties agree that this Agreement is subject to Section 120(j) of CERCLA, 42 U.S.C. § 9620(j), regarding the issuance of site specific Presidential Orders as may be necessary to protect national security.

D. All Parties with access to Fort Riley pursuant to this Part shall comply with all applicable health and safety plans.

E. To the extent that activities pursuant to this Agreement must be carried out on other than DA property, the DA shall use its best efforts to obtain access agreements from the owners which shall provide reasonable access for the DA, U.S. EPA, KDHE and their representatives. In the event that the DA is unable to obtain such access agreements, the DA shall notify the U.S. EPA and KDHE as to the steps being taken to secure such access.

XVII. RECORD PRESERVATION

DA shall, without regard to any document retention policy to the contrary, preserve during the pendency of this Agreement and for a minimum of seven (7) years after its termination, all records and documents in its possession, custody or control which relate in any way to hazardous substances generated, stored, treated or disposed of on the Site, the release or threatened release of hazardous substances from the Site or work performed

pursuant to this Agreement. After this seven-year period has lapsed, DA shall notify the U.S. EPA at least sixty (60) days prior to the destruction of any such document. DA shall make available the documents or copies of such documents unless withholding is authorized and determined appropriate by law.

XVIII. FUNDING

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

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

C. Any requirement for the payment or obligation of funds, including stipulated penalties, by the DA 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.

D. If appropriated funds are not available to fulfill the

DA's obligations under this Agreement, U.S. EPA and KDHE reserve the right to initiate an action against any other person, or to take any response action, which would be appropriate absent this Agreement.

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

XIX. CREATION OF DANGER

A. In the event the U.S. EPA determines that activities conducted pursuant to this Agreement, or any other circumstance or activity within DA control, are creating an imminent and substantial endangerment to the health or welfare of the people at the Site or in the surrounding area or to the environment, the

U.S.EPA may direct, or KDHE may request the U.S. EPA to direct the DA to stop further implementation of work under this Agreement for such period of time as necessary to abate the danger.

B. If directed by the U.S. EPA to stop work pursuant to this Part, the DA shall immediately comply without regard to the invocation of the Dispute Resolution provisions of this Agreement. The U.S. EPA may direct DA to stop further implementation of this Agreement for such period of times as needed to abate the danger.

C. The U.S. EPA within 24 hours of directing DA to stop work pursuant to this provision shall provide a written statement of the basis for its directing the work stoppage. DA shall have three business days from receipt of this written statement to request a review of the work stoppage. This request shall include a statement as to DA's basis for recommending that the work stoppage cease and as to possible measures to abate or mitigate the danger. Within 72 hours of a DA request for review, the U.S. EPA Division Director shall determine in writing whether continued work stoppage is necessary. This final decision shall be subject to Resolution of Disputes procedures.

D. Any work stoppages as directed by the U.S. EPA under this Part may be a basis for modifying the schedule of activities affected by such work stoppage.

XX. CONFIDENTIAL BUSINESS INFORMATION

A. The DA may assert a business confidentiality claim covering all or part of the information submitted pursuant to this Agreement. Analytical data shall not be claimed as confidential by the DA. The information covered by such a claim will be disclosed by the U.S. EPA only to the extent and by the procedures specified in Subpart B, 40 C.F.R. Part 2, and by KDHE only to the extent and by the procedures specified in K.S.A. 44-210 et seq. and K.S.A. 65-3447 et seq. Such a claim may be made by placing on or attaching to the information, at the time it is submitted to the U.S. EPA or KDHE, a cover sheet, stamped or typed legend or other suitable form of notice employing language such as "trade secret", "proprietary", or "company confidential". Allegedly confidential portions of otherwise non-confidential documents should be clearly identified and may be submitted separately to facilitate identification and handling by the U.S. EPA and KDHE. If confidential treatment is sought only until a certain date or occurrence of a certain event, the notice should so state. If no such claim accompanies the information when it is received by the U.S. EPA or KDHE, the information may be made available to the public without further notice to DA. The U.S. EPA and KDHE will, to the extent practical, honor claims of confidentiality received after the submittal of the information.

B. Information determined to be confidential by the U.S. EPA pursuant to 40 C.F.R. Part 2 shall be afforded the protection

specified therein. Information determined to be confidential by KDHE pursuant to K.S.A. 44-210 et seq and K.S.A 65-3447 et. seq. shall be afforded the protection specified therein.

XXI. 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 DA 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, as defined in Part XXII of this Agreement;

2. a delay caused by another Party's failure to meet any requirement of this agreement;

3. a delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;

4. a delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and deadline or schedule; and

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

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

D. Within seven (7) days of receipt of a request for an extension of a timetable and deadline or a schedule, U.S. EPA and KDHE shall advise the DA in writing of their respective positions on the request. Any failure by the U.S. EPA or KDHE to respond within the 7-day period shall be deemed to constitute that Party's concurrence in the request for extension. If either the U.S. EPA or KDHE does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its positions.

E. If there is consensus among the Parties that the requested extension is warranted, the DA shall extend the affected timetable and deadline or schedule accordingly and submit the extended timetable or schedule in writing. 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 determination resulting from the dispute resolution process.

F. Within seven (7) days of receipt of a statement of nonconcurrence with the requested extension, the DA 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.

XXII. 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 DA; 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 DA shall have made timely request for such funds as part of the budgetary process as set forth in Part XVIII of this Agreement. A Force Majeure shall also include any strike or other labor dispute, whether or not within the control of the Parties affected thereby. Force Majeure shall not include increased costs or expenses of Response Actions, whether or not anticipated at the time such Response Actions were initiated.

XXIII. RESOLUTION OF DISPUTES

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

A. Within thirty (30) days after: (1) issuance of a draft final primary document pursuant to Part X 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 Parties in informal dispute resolution among the Project Managers and/or their immediate supervisors. During this informal dispute resolution period the Parties shall meet as many times as are necessary to discuss and attempt resolution of the dispute.

C. The DRC will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (Senior Executive Service (SES) or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The U.S. EPA representative on the DRC is the Waste Management Division Director of U.S. EPA's Region 7. The DA's designated member is the Fort Riley Garrison Commander. The KDHE designated representative is the Director of Environment. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Part XV

G. (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 signed by all Parties. If the DRC is unable to unanimously resolve the dispute within this twenty-one (21) day period, the written statement of dispute shall be forwarded to the Senior Executive Committee (SEC) for resolution, 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 U.S. EPA representative on the SEC is the Regional Administrator of U.S. EPA's Region VII. The DA's representative on the SEC is the Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I,L, & E). The KDHE representative on the SEC is the Secretary of KDHE. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision signed by all Parties. If unanimous resolution of the dispute is not reached within twenty-one (21) days, U.S. EPA's Regional Administrator shall issue a written position on the dispute. The DA or KDHE may, within twenty-one (21) days of the Regional Administrator's issuance of U.S. EPA's position, issue a written notice elevating the dispute to the Administrator of U.S. EPA for resolution in accordance with all applicable laws and

procedures. In the event that a Party elects not to elevate the dispute to the Administrator within the designated twenty-one (21) day escalation period, that Party shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.

F. Upon escalation of a dispute to the Administrator of U.S. EPA pursuant to Paragraph E above, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the U.S. EPA Administrator shall meet and confer with the DA Secretariat Representative and the Secretary of KDHE to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the other Parties with a written final decision setting forth resolution of the dispute. The duties of the Administrator set forth in this Part shall not be delegated.

G. The State reserves its right to maintain an action under Section 121 (f)(3)(B) of CERCLA, 42 U.S.C. §9621(f)(3)(B), to challenge the selection of a remedial action that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria or limitation.

H. The pendency of any dispute under this Part shall not affect the DA'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.

I. When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Hazardous Waste Division Director for U.S. EPA's Region VII requests, in writing, that work related to the dispute be stopped because, in U.S. EPA's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. KDHE may request the U.S. EPA's Region VII Division Director to order work stopped for the reasons set out above. To the extent possible, the Party seeking a work stoppage shall consult with the other Parties prior to initiating a work stoppage request. After stoppage of work, if a Party believes that the work stoppage is inappropriate or may have potential significant adverse impacts, the Party may meet with the Party ordering a work stoppage to discuss the work stoppage. Following this meeting and further consideration of the issues, the U.S. EPA Division Director will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the Division Director may immediately be subjected to formal dispute resolution. Such dispute may be

brought directly to either the DRC or the SEC, at the discretion of the Party requesting dispute resolution.

J. Within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this Part, the DA 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.

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

XXIV. STIPULATED PENALTIES

A. In the event that the DA fails to submit a primary document to U.S. EPA 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 or final remedial action, U.S. EPA may assess a stipulated penalty against the DA. 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 DA has failed in a manner set

forth in Paragraph A, U.S. EPA shall so notify the DA in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the DA 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 DA shall not be liable for the stipulated penalty assessed by U.S. EPA if the failure is determined, through the dispute resolution process, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.

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 DA under this Agreement, each of the following:

1. the facility responsible for the failure;

2. a statement of the facts and circumstances giving rise to the failure;

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

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

5. the total dollar amount of the stipulated penalty

assessed for the particular failure.

D. Stipulated penalties assessed pursuant to this Part shall be payable to the Hazardous Substances Response Trust Fund only in the manner and to the extent expressly provided for in Acts authorizing funds for, and appropriations to, the DOD.

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

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

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

H. In the event that the DA fails to pay any stipulated penalty as provided hereunder based upon the lack of appropriated or authorized funds, the DA shall do the following:

1. inform EPA of the specific basis for failure to pay; and

2. request funding for such stipulated penalties by submitting requests for appropriation and authorization of funds for the payment of the penalties in the first annual budget request following the assessment through the Department of Defense budgetary process.

XXV. REIMBURSEMENT OF EXPENSES

A. Reimbursement of U.S. EPA Expenses

The Parties agree to amend this Agreement at a later date in accordance with any subsequent national resolution of the issue of U.S. EPA cost reimbursement.

B. Reimbursement of State Expenses

1. Subject to the conditions and limitations set forth in this Part and in Part XVIII, Funding, the DA agrees to request funding and to reimburse KDHE for all reasonable costs it incurs in providing services which are not inconsistent with the NCP and are in direct support of the DA's environmental restoration activities pursuant to this Agreement at Fort Riley.

2. Reimbursable expenses shall include only actual expenditures incurred in providing the following assistance at Fort Riley:

a. Timely technical review and substantive comment on reports or studies which Fort Riley prepares in support of its removal response, operation and maintenance, and monitoring actions which it submits to KDHE;

b. Identification and explanation of State requirements applicable to performing response actions, especially State ARARs;

c. Field visits including costs associated with quality control sampling, and sampling designed to ensure that cleanup and operation and maintenance activities are implemented

in accordance with appropriate state requirements, or in accordance with conditions agreed upon between KDHE and Fort Riley;

d. Support and assistance to Fort Riley in the conduct of public participation activities in accordance with federal and state requirements for public involvement;

e. Participation in the review and comment functions of the Fort Riley Technical Review Committee.

3. In the event that the State of Kansas or KDHE contracts for services to be provided at Fort Riley that are of the same type performed within KDHE or another state agency, the reimbursable costs for that service shall be limited to the amount that KDHE or such other state agency would have expended if it had performed the service in-house. Neither interest nor profit shall be payable, nor shall costs for any services performed prior to the effective date of this Agreement be reimbursable.

4. The DA shall not be responsible for reimbursing the State for any costs incurred in the implementation of this Agreement in excess of one percent (1%) of the DA's total lifetime Defense Environmental Restoration Account (DERA) eligible project costs incurred through construction of the remedial actions at Fort Riley. Total lifetime DERA-eligible project costs for Fort Riley are currently estimated to be $ 18 million over the life of the Agreement. Total reimbursable costs

payable during any federal fiscal year following the effective date of this Agreement shall not exceed twenty-five percent (25%) of the total lifetime reimbursable costs.

5. Within thirty (30) days after the end of each quarter of the federal fiscal year, the State of Kansas shall submit to the DA through Fort Riley an accounting of all state costs actually incurred during that quarter in providing services under this Part. Such accounting shall be accompanied by cost summaries which set forth employee hours and other expenses by major expenditure classification object code category (this would cover travel, supplies, equipment, and other major object code classes). All costs must be for work directly related to implementation of this Agreement, be supported by documentation which meets federal auditing requirements, and not inconsistent with the requirements described in OMB Circulars A-87 (Cost Principles for State and Local Governments) and A-128 (Audits for State and Local Cooperative Agreements with State and Local Governments) and Standard Forms 424 and 270. The DA has the right to audit cost reports used by the State to develop the cost summaries. Subject to subparagraph 6. below, the DA will, upon timely receipt of properly presented and documented accountings, pay the allowable portion of such accountings within 90 days of proper presentation.

6. In the event that the DA contends that any costs set forth in the accounting provided pursuant to subparagraph 5.

above are not properly payable, or if the DA and KDHE have any other dispute concerning cost reimbursement, including any disagreement over a cap over future annual or lifetime cost reimbursement, the matter shall be resolved through a bilateral dispute resolution process as follows:

a. The DA Project Manager and the KDHE Project Manager shall be the primary points of contact to coordinate resolution of disputes arising under this paragraph.

b. If the DA Project Manager and the KDHE Project Manager are unable to agree, the matter shall be referred to the installation commander or his designated representative and the chief of the designated program office of KDHE as soon as practicable, but in any event, within five (5) working days.

c. Should they be unable to agree within ten (10) working days, the matter shall be elevated to the KDHE Director and the Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), Office of the Assistant Secretary of the Army (Installations and Logistics) (DASA-ESOH).

d. It is the intention of the DA and the State that all disputes shall be resolved in this manner. The use of alternative dispute resolution is encouraged. In the event the KDHE director and the DASA-ESOH are unable to resolve a dispute, the State retains all of its legal and equitable remedies to recover its costs.

7. The State agrees to maintain accounting records

sufficient to identify and support all claimed expenses for support services provided at Fort Riley for a period of ten years from the termination date of this Agreement. The State agrees to provide the DA or its designated representatives reasonable access to all such financial records for the purpose of audit for a period of ten (10) years from the termination date of this Agreement.

8. As of April 1 of each year, the State shall submit to the DA a budget estimate for projected costs for activities reimbursable under this Agreement for the following federal fiscal year in the same level of detail as the billing documents.

9. The State agrees to seek reimbursement for its expenses solely through the mechanisms established in this Part, and reimbursement provided under this Part shall be in settlement of any claims for State response costs relative to the DA's environmental restorations activities at Fort Riley.

10. The DA and the State agree that the terms and conditions of this Part shall become null and void when the State enters into a Defense/State Memorandum of Agreement (DSMOA) with the Department of Defense which addresses State reimbursement.

XXVI. RESERVATION OF RIGHTS

A. Notwithstanding compliance with the terms of this Agreement, DA is not released from liability, if any, for any actions beyond the terms of this Agreement with respect to the Site. With respect to actions beyond the terms of this

Agreement, the U.S. EPA and KDHE reserve the right to take any enforcement action pursuant to RCRA, CERCLA and/or any other available legal authority for relief including, but not limited to, injunctive relief, monetary penalties, and punitive damages for any violation of law. However, nothing in this Agreement shall preclude the U.S. EPA from exercising any administrative, legal, or equitable remedies available to it in the event that:

1. either conditions previously unknown or undetected by the U.S. EPA arise or are discovered at the Site or the U.S. EPA receives information not previously available concerning the premises it employed in reaching this Agreement; and

2. the implementation of the requirements of this Agreement are no longer protective of public health and the environment.

B. The U.S. EPA and KDHE reserve such rights as they may have to undertake response action(s) to address the release or threat of release of hazardous substances from the Site at any time and, to the extent permitted by law, to seek reimbursement from DA thereafter for the costs incurred.

C. The DA reserves the right to raise or assert any defense, whether procedural or substantive, in law or equity, or to raise any issue as to jurisdiction, or standing of any Party, or any other matter in any proceeding related or not related to this Agreement, which the DA might otherwise be entitled to raise or assert.

XXVII. OTHER CLAIMS

A. 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 of 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 Site.

B. The U.S. EPA and KDHE shall not be held as a party to any contract entered into by the DA to implement the requirements of this Agreement.

C. Subject to Part VI, this Agreement shall not restrict the U.S. EPA or KDHE from taking any legal or response action for any matter not specifically part of the work covered by this Agreement.

XXVIII. OTHER APPLICABLE LAWS

A. Except as otherwise provided in Part XXIX, below, with regard to permits, all actions required to be taken pursuant to this Agreement shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations, including, but not limited to, any permitting or licensing requirements.

B. All reports, plans, specifications, and schedules submitted pursuant to this Agreement are, upon approval by EPA with review and concurrence of KDHE, incorporated into this Agreement. Any noncompliance with such approved reports, plans, specifications or schedules shall be considered a failure to achieve compliance with the requirements of this Agreement.

XXIX. PERMITS

A. As provided in Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), no federal, state, or local permit shall be required for those portions of the response actions undertaken pursuant to this Agreement which are conducted entirely onsite. Such onsite response actions must satisfy all applicable or relevant and appropriate federal and state standards, requirements, criteria, or limitations which would have been included in any such permit. For each response action proposed by DA which in the absence of Section 121(e)(1) of CERCLA would require a permit, DA shall include the following information in the Feasibility Study report:

1. the identity of each permit which would otherwise be required;

2. the standards, requirements, criteria, or limitations which would have had to have been met to obtain each such permit, including input received from KDHE in accordance with Section 121(d)(2)(A)(ii) of CERCLA; and

3. a description of how the proposed response action will meet the standards, requirements, criteria or limitations which would be included in each such permit.

B. The DA shall make timely and complete application or request for all permits, licenses or other authorizations necessary to implement those portions of any response actions required by this Agreement which are not conducted entirely onsite. Each work plan shall identify each such permit, license or authorization addressed therein by providing the following information:

1. the agency or instrumentality from whom the permit, license or authorization must be sought and the agency or instrumentality which would grant or issue the permit, license or authorization if not the same as the one from which it must be sought;

2. the activity which would be the subject of the permit, license or authorization; and

3. a description of the procedure to be followed in securing such permit, license or authorization, including the date by which an application must be filed and the anticipated duration of the permit, license or authorization.

C. If a permit which is necessary for implementation of this Agreement is not issued, or is issued or renewed in a manner which is materially inconsistent with the requirements of this Agreement, DA shall notify the U.S. EPA and KDHE in writing of

its intention to propose modifications to primary documents thereby affected in accordance with Paragraph X.J of this Agreement. Notification by the DA of its intention to propose modifications shall be submitted within seven (7) calendar days of receipt by the DA of notification that: (1) a permit will not be issued; (2) a permit has been issued or reissued in a manner which is materially inconsistent with a remedy selected pursuant to this Agreement; or (3) a final determination with respect to any appeal related to the issuance or reissuance of such a permit has been entered, whichever is later. Whenever such an appeal is filed, DA shall notify the U.S. EPA and KDHE of such appeal within seven (7) calendar days. Within thirty (30) days from the date it submits its notice of intention to propose modifications, the DA shall submit to the U.S. EPA and KDHE its proposed modifications with an explanation of its reasons in support thereof. Such proposed modifications will be reviewed in accordance with Part XXXIV of this Agreement.

D. If DA submits proposed modifications prior to a final determination of any appeal taken on a permit needed to implement this Agreement, U.S. EPA and KDHE may elect to delay review of the proposed modifications until after such final determination is entered.

E. During appeal of any permit required to implement this Agreement or during review of proposed modifications as provided in Subpart D above, the DA shall continue to implement those

portions of this Agreement which can be reasonably implemented pending final resolution of the permit issue(s).

F. Except as otherwise provided in this Agreement and federal law or doctrine sovereign immunity, the DA shall comply with applicable state and federal hazardous waste management requirements at the Site.

XXX. FIVE YEAR REVIEW

If a remedy is selected for the Site which results in any hazardous substances, pollutants or contaminants remaining at the Site, the U.S. EPA shall, consistent with Section 121(c) of CERCLA, review the remedial action no less often than each five years after the initiation of the final remedial action to assure that human health and the environment are being protected by the remedial action being implemented. If upon such review it is the judgment of the U.S. EPA that additional action or modification of the remedial action is appropriate in accordance with Section 104 or 106 of CERCLA, then the U.S. EPA shall require the DA to implement such additional or modified action.

XXXI. PUBLIC PARTICIPATION

A. In accordance with Section 117 of CERCLA, 42 U.S.C. § 9617, before adoption of any plan for remedial action pursuant to this Agreement, DA shall:

1. publish in a local newspaper or newspapers of general circulation a notice and brief analysis of the proposed

plan, including an explanation of the proposed plan and alternatives considered;

2. make such plan available to the public; and

3. provide a reasonable opportunity for submission of written and oral comments and an opportunity for a public meeting at or near the facility regarding the proposed plan and any proposed findings under Section 121(d)(4) of CERCLA, 42 U.S.C. § 9621(d)(4).

B. Before commencement of any remedial action, DA shall publish a notice of the Record of Decision adopted and shall make available to the public the plan, a discussion of any significant changes and the reasons for the changes in the proposed plan, and a response to each significant comment, criticism, and new data submitted during the public comment on the proposed plan.

C. The DA shall develop and implement a Community Relations Plan (CRP) which responds to the need for an interactive relationship with all interested community elements, regarding activities and elements of work undertaken by the DA. The CRP shall recognize the need for public information meetings to be held during RI/FS and RD/RA activities. The U.S. EPA and KDHE may request that the DA hold a public information meeting at any time during the RI/FS and RD/RA activities. The DA agrees to develop and implement a CRP in a manner consistent with Section 117 of CERCLA, the NCP, EPA guidelines set forth in EPA's Community Relations Handbook titled Community Relations in

Superfund: A Handbook, June 1988 OSWER Directive 9230.0-3B, and any modifications thereto.

D. As part of its Community Relations activities, the DA shall maintain a mailing list of interested and affected individuals. The U.S. EPA and KDHE shall report any request for site information to the DA for addition of the requesting party to the mailing list. DA shall provide the U.S. EPA and KDHE with annual updates of the mailing list.

E. 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 two (2) business days before the issuance of such press release and of any subsequent changes prior to release.

F. Within thirty (30) days of the effective date of this Agreement, the DA shall establish and maintain an Administrative Record, which will include an index of all documents contained therein, at or near the Site in accordance with Section 113(k) of CERCLA, 42 U.S.C § 9613(k). The Administrative Record shall be established and maintained in accordance with current and future EPA policy and guidelines. A copy of each document placed in the Administrative Record will be provided to the U.S. EPA and KDHE. The Administrative Record developed by DA shall be routinely updated and copies of documents included within the Administrative Record shall be made available to the U.S. EPA and KDHE on at least a quarterly basis. The DA shall maintain a

current index of the documents in the Administrative Record and shall provide the U.S. EPA and KDHE copies of the current index on at least a quarterly basis. The U.S. EPA after consultation with KDHE, shall make the final determination on whether a document is appropriate for inclusion in the Administrative Record.

G. The DA shall follow the public participation requirements of Section 113(k) of CERCLA and comply with any guidance and/or regulations promulgated by U.S. EPA.

XXXII. PUBLIC COMMENT ON AGREEMENT

A. Within fifteen (15) days of the date EPA receives a fully executed copy of this Agreement, EPA shall announce the availability of the Agreement to the public for review and comment and shall accept comments from the public for a period of forty-five (45) days after such announcement. Upon completion of the public comment period, EPA shall promptly provide copies of all comments received to DA and KDHE.

B. Upon completion of the public comment period, each of the Parties shall review the comments and shall determine either that:

1. the Agreement should be made effective in its present form; or

2. modification of the Agreement is necessary.

C. Any Party that determines modification of the Agreement is necessary shall provide a written request for modification to

each of the other Parties. This request for modification shall be made within twenty (20) days of the date that Party received copies of the comments from EPA, or, in the event EPA requests modification, within twenty (20) days of the date copies of the comments were provided to the other Parties. The request for modification shall include:

1. a statement of the basis for determining the modification is necessary; and

2. proposed revisions to the Agreement addressing the modification.

D. If no request for modification is made within the time period specified in Paragraph C above, this Agreement shall be made effective in its present form in accordance with Part XXXVI hereof.

E. If any Party requests modification of the Agreement as provided above, the Parties shall meet to discuss the proposed modification. If the Parties agree on the modification, the Agreement shall be revised, in writing, in accordance with the agreed upon modification. The revised Agreement shall be signed by representatives of each Party and shall be made effective in accordance with Part XXXVI hereof. If the Parties are unable to agree upon such modifications, any Party reserves the right to withdraw from the Agreement. Before any Party exercises its right to withdraw from the Agreement, it shall make its SEC representative, as identified in Paragraph XXIII.E hereof,

available to meet with the other Parties' SEC representatives to discuss the withdrawal.

F. In the event of significant modification of the Agreement after public comment, notice procedures of Sections 117 of CERCLA and 211 of SARA shall be followed and a responsiveness summary published by the EPA.

XXXIII. 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, 42 U.S.C. § 9659, and any violation of such standard, regulation, condition, requirement or order will be subject to civil penalties under Sections 310(c) and 109 of CERCLA, 42 U.S.C. §§ 9659(c) and 9609;

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 Operable Units or final remedial actions, including corresponding timetables, deadlines or schedules, and all work

associated with the Operable Units or final remedial actions, shall be enforceable by any person pursuant to Section 310(c) of CERCLA, and any violation of such terms or conditions will be subject to civil penalties under Sections 310(c) and 109 of CERCLA; and

4. any final resolution of a dispute pursuant to Part XXIII 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, 42 U.S.C. § 9613(h).

C. Nothing in this Agreement shall be construed as a restriction or waiver of any rights the U.S. EPA or the State of Kansas may have under CERCLA, including, but not limited to, any rights under Sections 113 and 310 of CERCLA, 42 U.S.C. §§ 9613 and 9659. The DA does not waive any rights it may have under Section 120 of CERCLA, 42 U.S.C. § 9620, Section 211 of SARA and Executive Order 12580.

D. The Parties agree to exhaust their rights under Part XXIII, Resolution of Disputes, prior to exercising any rights to

judicial review that they may have.

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

XXXIV. AMENDMENT OF THE AGREEMENT

This Agreement may be amended by the written agreement of all Parties hereto. No such amendment shall be final until signed by all Parties. Each such amendment shall be effective on the last date such written agreement is signed by all Parties.

XXXV. TERMINATION

The provisions of this Agreement shall be deemed satisfied and terminated upon receipt by the DA of written notice from the U.S. EPA and KDHE Director that the DA has demonstrated, to the satisfaction of the U.S. EPA and KDHE, that all the terms of this Agreement have been completed.

XXXVI. EFFECTIVE DATE

This Agreement is effective upon issuance of a notice to the Parties by EPA following implementation of Part XXXII of this Agreement.

IN WITNESS WHEREOF, the Parties have affixed their signatures below:

For the United States Department of the Army:

23 Aug 90
Date

Commander
1st Infantry Division (Mechanized) and
Fort Riley

8/2/90
Date

Deputy Assistant Secretary of the Army
(Environment, Safety and Occupational
Health) OASA (I, L, & E).

For the Kansas Department of Health and Environment:

02/21/91
Date

Secretary, Kansas Department of
Health and Environment

For the U.S. Environmental Protection Agency

2-28-91
Date

Morris Kay
Regional Administrator
U.S. EPA, Region VII