# IAG COVER SHEET

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
REGION VII,
AND THE
DEPARTMENT OF ENVIRONMENTAL QUALITY OF THE
STATE OF NEBRASKA,
AND THE
UNITED STATES DEPARTMENT OF THE ARMY

| | | |
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| IN THE MATTER OF: | ) | |
| | ) | |
| The U.S. Department of the Army | ) | INTERAGENCY |
| Former Naval Ammunition Depot | ) | AGREEMENT UNDER |
| Hastings, Nebraska | ) | CERCLA SECTION 120 |
| | ) | |
| | ) | Administrative |
| | ) | Docket Number: VII-98-F-0021 |

## TABLE OF CONTENTS


PRELIMINARY STATEMENT ..... 1

I. JURISDICTION ..... 1

II. SCOPE OF AGREEMENT ..... 2

III. PARTIES ..... 3

IV. DEFINITIONS ..... 3

V. PURPOSE ..... 9

VI. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION ..... 11

VII. FINDINGS OF FACT ..... 12

VIII. DETERMINATIONS OF LAW ..... 17

IX. WORK TO BE PERFORMED ..... 18
- A. Remedial Investigation and Feasibility Study ..... 18
- B. Operable Unit Remedial Actions ..... 20
- C. Remedial Action Selection ..... 20
- D. Removal Actions ..... 22
- E. Ground Water Well Survey/Monitoring ..... 23
- F. Divisible Releases ..... 24

X. CONSULTATION WITH EPA and NDEQ ..... 26
- A. Applicability ..... 26
- B. General Process for RI/FS and RD/RA Documents ..... 27
- C. Primary Documents ..... 27
- D. Secondary Documents ..... 29
- E. Meetings of the Project Managers ..... 30
- F. Identification and Determination of Potential ARARs ..... 30
- G. Review and Comment on Draft Reports ..... 31
- H. Availability of Dispute Resolution for Draft Final Primary Documents ..... 33
- I. Finalization of Reports ..... 33
- J. Subsequent Modifications of Final Reports ..... 34

XI. RESOLUTION OF DISPUTES ..... 35

XII. EXTENSIONS ..... 39

XIII. CREATION OF DANGER ..... 41

XIV. REPORTING ..... 42

XV. MONITORING AND QUALITY ASSURANCE ..... 43

XVI. SAMPLING AND DATA/DOCUMENT AVAILABILITY ..... 44

XVII. CONFIDENTIAL BUSINESS INFORMATION ..... 46

XVIII. PROJECT MANAGERS ..... 47

XIX. ACCESS ..... 50

XX. RECORD PRESERVATION ..... 51

XXI. RESERVATION OF RIGHTS ..... 51

XXII. OTHER APPLICABLE LAWS ..... 52

XXIII. PERMITS ..... 53

XXIV. FIVE YEAR REVIEW ..... 55

XXV. OTHER CLAIMS ..... 56

XXVI. AMENDMENT OF THE AGREEMENT ..... 56

XXVII. PUBLIC PARTICIPATION ..... 56

XXVIII. PUBLIC COMMENT ON AGREEMENT ..... 58

XXIX. DEADLINES ..... 60

XXX. TARGET DATES ..... 63

XXXI. ENFORCEABILITY ..... 64

XXXII. STIPULATED PENALTIES ..... 66

XXXIII. FORCE MAJEURE ..... 68

XXXIV. FUNDING ..... 69

XXXV. REIMBURSEMENT OF STATE EXPENSES ..... 70

XXXVI. TERMINATION ..... 70

XXXVII. EFFECTIVE DATE ..... 71

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## PRELIMINARY STATEMENT

Based on the information available to the Parties on the effective date of this INTERAGENCY 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 (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), 42 U.S.C. § 9620(e)(1), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499 (hereinafter jointly referred to as CERCLA/SARA or CERCLA) and Executive Order 12580;

B. 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 and Executive Order 12580;

C. The Department of the Army (henceforth "Army," or "the Army") enters into those portions of this Agreement that relate to the RI/FS pursuant to Section 120(e)(1) of CERCLA, Executive Order 12580 and the Defense Environmental Restoration Program (DERP), 10 U.S.C. § 2701 et seq.;

D. The Army 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, Executive Order 12580 and the DERP.

E. The Nebraska Department of Environmental Quality (NDEQ), enters into this Agreement pursuant to Sections 120(f) and 121(f) of CERCLA/SARA, 42 U.S.C. § 9620(f) and 9621(f) and the Nebraska Environmental Protection Act, Nebraska Revised Statutes §§ 81-1501 et seq.

## II. SCOPE OF AGREEMENT

A. This Agreement covers the response actions including removal and remedial actions as these terms are defined by CERCLA, to be undertaken by the Army at the Site.

B. The actions to be taken pursuant to this Agreement cover the Operable Units defined in Part IV.O. (Definitions) of this Agreement.

## III. PARTIES

A. The Parties to this Agreement are EPA, NDEQ and the Army. The terms of this Agreement shall apply to and be binding upon the signatories to this Agreement and upon their successors and assigns, and upon their authorized representatives performing work pursuant to this Agreement. The undersigned representative 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 legally bind that party to it.

B. Each party shall provide a copy of this Agreement to all primary contractors retained to perform work pursuant to this Agreement. The Army will notify EPA and NDEQ of the identity of each proposed contractor as soon as possible; such notification shall indicate in a general manner the work to be performed by each. The Army shall provide notice to all present owners and any subsequent owners of any property upon which any work under this Agreement is performed, if not owned by the Department of the Army or the United States, that a copy of this Agreement is available upon request.

## IV. DEFINITIONS

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

A. "Agreement" means this Interagency Agreement, and any attachments and appendices hereto which are referenced and adopted herein, as well as all reports, work plans, notices, and

other documents developed and approved pursuant to this Agreement.

B. "ARAR" or "Applicable or Relevant and Appropriate Requirement" means 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. "Army" means the United States Department of the Army and its authorized representatives.

D. "Authorized representative" means a person designated to act on behalf of a Party to this Agreement for a specific purpose.

E. "CDAP" shall be defined as the Army's Chemical Data Acquisition Plan. The CDAP describes all field activities, sampling procedures, and quality assurance protocols that will be followed to conduct environmental field investigations. In order to make the document applicable to the multiple subsites and investigations at the former NAD, the CDAP is structured in a three-part format, as follows:

1. "Part I: Sampling Plans and Objectives (SPO)" contains descriptions of the scope of work to be conducted during each distinct investigation at the former NAD. For each new investigation to be conducted a SPO document will be generated. Each SPO will become a chapter of Part I and will contain a description of the purpose and scope, the general approach to be used, and the field activities to be conducted for each investigation. At a minimum each Part I chapter will identify the analytical parameters, number and types of samples and sample locations. The chapters will cross-reference the appropriate detailed sampling procedures and quality assurance requirements described in Parts II and III of the CDAP, which will be revised as necessary.

2. "Part II: Field Protocols" contains detailed descriptions of field procedures that may be applied to investigations at any or all subsites at the former NAD. Part II is a description of standard operating procedures for field activities.

3. "Part III: Quality Assurance Plan" contains the quality assurance and quality control (QA/QC) procedures to be followed for laboratory analyses of samples collected during the various investigations. Part III will also apply to all investigations at the former NAD.

F. "CERCLA" or "CERCLA/SARA" 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. §§ 9601-9675. "SARA" means the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499.

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

H. "Days" means calendar days, unless business days are specified. The term "business day" means all calendar days except Saturdays, Sundays, and federal holidays. Any Submittal, Written Notice of Position or Written Statement of Dispute pursuant to this Agreement which, under the terms of this Agreement, would be due on a Saturday, Sunday or federal holiday, shall be due on the next business day.

I. "Engineering Evaluation/Cost Analysis" or "EE/CA" means that study which analyzes available data and develops removal action alternatives to prevent or mitigate the migration or the release of hazardous substances, pollutants or contaminants at and from the Site.

J. "EPA" or "U.S. EPA" means the United States Environmental Protection Agency and its authorized representatives.

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

L. "NAD" means the former Naval Ammunition Depot in Hastings, Nebraska.

M. "NDEQ" means the Nebraska Department of Environmental Quality and its authorized representatives.

N. "National Contingency Plan" or "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300.

O. "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.

1. "Operable Unit 4" (Army Operable Unit 1) shall mean the surface soils operable unit at the Hastings East Industrial Park portion of the NAD.

2. "Operable Unit 8" (Army Operable Unit 2) shall mean the vadose zone operable unit at the Hastings East Industrial Park portion of the NAD.

3. "Operable Unit 14" (Army Operable Unit 2) shall mean the ground water operable unit at the Hastings East Industrial Park portion of the NAD.

4. "Operable Unit 15" shall mean that portion of the NAD identified for investigation in the EPA-approved PCAS for OU 15. The parties understand that the outcome of investigatory

activities within this Operable Unit will ultimately determine the extent and character of the operable unit(s) now referred to as Operable Unit 15.

5. "Operable Unit 16" shall mean that portion of the NAD identified for investigation in the EPA-approved PCAS for OU 16, which includes the former bomb/mine production area; the former yard dump area; and the former explosives disposal area.

6. All deliverables submitted pursuant to this Agreement shall use the Operable Unit designations set forth in items O.1. through O.5. above when referring to Operable Units within the NAD. If the Army's Operable Unit designations are used, the designations set forth above shall also be used. The Army may satisfy this requirement by providing a table with each document showing the Army's and EPA's designations for each operable unit.

P. "Parties" means the EPA, the Army, and the NDEQ.

Q. "PCAS" means the Army's Preliminary Contamination Assessment Summary. A PCAS is a secondary document which identifies areas for field investigations and presents the chemical data generated therefrom. PCAS data will be used to determine the need for further investigations and/or the need for remediation. Based on the scope of the summary, a PCAS may be an extensive narrative report or a letter report. A PCAS can also include maps, tables, data and text which may be incorporated into subsequent Remedial Investigation Reports.

R. "Proposed Plan" means that document in which a proposed remedy for the Site, or for a particular operable unit of the Site, is put before the public, in accordance with Section 117 of CERCLA and in compliance with 40 C.F.R. § 300.430(f)(2).

S. "Remedial Design" or "RD" has the meaning given in 40 C.F.R. § 300.5. Remedial Design normally begins with preliminary design and ends with the completion of the final

detailed set of engineering plans and specifications.

T. "Remedial Investigation" or "RI" has the meaning given in 40 C.F.R. § 300.5. The RI is that investigation conducted to determine the nature and extent of release or threat of release of hazardous substances, pollutants or contaminants and to gather necessary data to support the Feasibility Study and the Baseline Risk Assessment.

U. "Record of Decision" means that document in which a remedy for the Site, or for a particular operable unit of the Site, is selected, and the selection documented, in accordance with the NCP, including particularly the NCP requirements for remedy selection, which are set forth in 40 C.F.R. § 300.430.

V. "Site" means OUs 4, 8, 14, 15 and 16 at the former Naval Ammunition Deport in Hastings, Nebraska, as they are defined in paragraph O, above, and any additional areas contaminated by the migration of hazardous substances from any OUs, as defined in paragraph O, above.

W. "Timetables and Deadlines" mean 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 as established by the Parties.

X. "Written Statement of Dispute" means a written statement by a Party of its position with respect to a matter about which dispute resolution has been invoked pursuant to Part XI (Resolution of Disputes) of this Agreement.

## V. PURPOSE

A. The general purposes of this Agreement are to:

1. Examine environmental impacts associated with the Site to insure that they are thoroughly investigated and to insure that 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, applicable State law; and

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

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

1. Establish requirements for the performance of all necessary Operable Unit Remedial Investigations to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at the Site in accordance with CERCLA/SARA and applicable State law.

2. Establish requirements for the performance of the Feasibility Studies for the Site to identify, evaluate, and select alternatives for the appropriate remedial action(s) to prevent, mitigate, or abate the release and 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. 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 the Army to the EPA and NDEQ 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.

5. 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.

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

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

8. Provide NDEQ involvement in the initiation, development, selection and enforcement of remedial actions to be undertaken at the Site, including the review of all applicable data as it becomes available and the development of studies, reports, and action plans; 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.

## VI. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

A. The Parties intend to integrate the Army's CERCLA response obligations, and RCRA corrective action obligations if any, which relate to the release 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 any corrective action requirements of Sections 3004(u) and (v) of RCRA, 42 U.S.C. § 6924(u) and (v) and Section 3008(h), 42 U.S.C. § 6928(h), which apply to the Army at this Site; 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 by the Department of Defense under RCRA at the Site. 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 hazardous waste management activities by parties other than the Army, if any, at the Site (for example, handling of currently generated hazardous waste by the property owners) may require the issuance of permits and/or adherence with other regulatory

requirements under Federal and State laws. This Agreement does not affect the requirements, if any, for such owners and/or operators to obtain such permits and/or adhere to such requirements.

## VII. FINDINGS OF FACT

This paragraph contains findings of fact determined by the EPA, NDEQ and the Army as the basis for this Agreement. None of these findings are admissions by the Army for any purpose, nor are they in any other way legally binding on any Party.

A. The former Naval Ammunition Depot (NAD) site consists of approximately 48,800 acres in eastern Adams and western Clay counties approximately 2 miles east of Hastings Nebraska.

B. The former NAD is underlain by unconsolidated deposits of Recent, Pleistocene and Pliocene age having a combined thickness of about 250 to 400 feet. The aquifer of major importance to the region's ground water supply has been termed the Pleistocene Aquifer. This aquifer consists of the sand and gravel deposits found above the bedrock formations. Ground water in this region is generally encountered at depths of 100 to 130 feet below the ground surface. Recharge of the aquifer is primarily from precipitation and irrigation waters from the ground surface and subsurface inflow from upgradient areas outside the region. Ground water flows generally east to southeast.

C. The former NAD was a load, assemble and pack (LAP) facility. Most or all of the ingredients used to produce the ordnance types at the NAD were manufactured at other locations and shipped to the Hastings, Nebraska facility. Over 1,800 buildings were constructed on the project site. The principal production areas included the 20mm Load and Fill Plant, 40mm Load

and Fill Plant, Bag Charge Fill Plant, Bomb & Mine Drill & Fuse Area, Bomb & Mine Load and Fill Plant, Major Caliber Breakdown Area, Major Caliber Projectile Load Plant, Medium Caliber Projectile Load Plant, Case and Tank Repair Facility, and Case Filling Plant. In addition to the production areas, ancillary buildings including boiler houses, supply buildings, inert storage, and lunch and locker room buildings were constructed. Sanitary sewers, septic tile fields, water distribution system, gas, steam and electrical utilities as well as two sewage treatment plants were all constructed on-site.

D. The first operations began in 1943 with the production of munitions for World War II. These operations continued until August of 1945. Storage and rework of fleet ammunition began in late 1945 and continued until 1949, when the NAD was reduced to stand-by status while continuing to rework fleet ammunition. In the early 1950's the Korean conflict generated increased activity. The NAD was placed on maintenance status in 1957 and was subsequently used for receiving, renovating, maintaining, storing and issuing ammunition, explosives and technical ordnance materials.

E. Explosive compounds were used in the production operations that were conducted at the former NAD. Data are limited concerning specific ordnances that were loaded or assembled at the facility. Several of the production areas feature storage magazines for smokeless powder, black powder, TNT, fuses, and detonators.

F. In 1958, the NAD was decommissioned. The 8-to 9-year period that followed was used for demilitarization of obsolete ammunition, processing of scrap sales, outloading ammunition, decontamination of facilities and disposal of land, buildings and associated equipment.

G. Parcels of land from the former NAD were sold or transferred to various private and federal entities during the decommissioning period. A 3,600 acre tract in the northwest quadrant of the NAD, which contained most of the production areas and buildings, was purchased by the City of Hastings and then immediately sold to a group of investors (HADCO). This area is locally known as the Hastings Industrial Park East. The Hastings East Industrial Park (HEIP) subsite of the Hastings Groundwater Contamination NPL site includes 2,900 acres of the original HADCO land purchase. Over 20 businesses and industries are located on the HEIP subsite. The Hastings Campus of the Central Nebraska Community College now occupies the former Administrative Complex of the former NAD. The majority of the land comprising the former NAD was transferred and/or leased to the U.S. Department of Agriculture, National Guard, U.S. Air Force and the U.S. Fish and Wildlife Service.

H. The following discussion summarizes the types of chemicals used in each of the principal function areas of the former NAD. Paint and "oil" ready locker buildings were typically located immediately adjacent to each principal production building. The term "oil" is possibly a generic expression that may include petroleum products, solvents, cleaning solutions, and/or acids. Reserves of fuel oil initially used to fire the boilers were reportedly stored in above and below ground tanks. The vacuum buildings are believed to have been used to control fugitive dust.

I. Smokeless powders probably included single-based (nitrocellulose) and double-based (nitrocellulose and nitroglycerin) powders. Smokeless powder was sewn into cloth bags, typically made of sail cloth or some other tightly woven fabric. The bags were then placed in projectile assemblies. Ammonium picrate ("yellow D") was apparently one of the ingredients

used in projectiles based on the presence of a "D" powder sifting building in the Medium Caliber Projectile Loading Plant.

J. PETN or RDX may have been used as a booster. Inhibitors were likely painted on the end of the rocket motor to desensitize the explosive. Typical inhibiting agents for the period of interest included ethlycellulose and cellulose acetate. Fuses for rocket powders typically contained tetryl, mercury fulminate or lead azide.

K. The Case Overhaul and Tank Repair Facility was used to clean and refurbish shells not meeting inspection criteria and to repair mixing or holding tanks. The cleaning of shells and casings reportedly involved dipping steel and brass cases, cartridges, or shells into a series of tubs or vats containing oakite, a strongly alkaline detergent, or a stripping solution of caustic soda. After cleaning and rinsing in water some of the cases went through a "bright wash" where they were dipped into solutions of chromic or sulfuric acid followed by rinsing or drying. Historical information indicated that other industrial solvents may have been used in the case overhaul facility.

L. Wastewaters generated by production processes and daily washdown activities were discharged through a system of floor drains, exterior baffled catch basins, and into open drainages adjacent to the buildings. Solids contained in the wastewater settled in the catch basins. In some production areas, wastewaters were discharged to surface impoundments where ponded wastewater evaporated or infiltrated to the subsurface. Solids contained in the impounded wastewater settled in the surface impoundment.

M. Based on available information, the most probable source areas for ground water and surface contamination at the site are the areas of the former principal production buildings, the

drainage pathways on the site, the trenches, burn areas and impoundments. Other probable source areas include buried utilities and isolated areas of the site which may have been utilized for disposal of wastes.

N. The Hastings Ground Water Contamination Site was included on the National Priorities List pursuant to Section 105 of CERCLA, 42 U.S.C. 9605, in May, 1986. The NAD is included in the NPL site.

O. The RI/FS is complete for Operable Unit 4. RI/FS activities are ongoing for Operable Units 8, 14 and 16. Analysis of the samples collected during the U.S. Army Corps of Engineers field investigations at the Hastings East Industrial Park Subsite indicate the presence of the following contaminants in both the subsite's surface soil (0-10 feet) and the ground water beneath the subsite. Minimum, maximum, and mean concentration levels for the compounds detected at the Hastings East Industrial Park Subsite are shown in Table 1.

P. EPA obtained split samples from the U.S. Army Corps of Engineers during sampling of monitoring wells located on the O.U. 16 NAD Explosives Disposal Area, Yard Dump, and former Bomb and Mine Filling Area on November 13, 1990. Analysis of those samples showed the following:

| Location | Compound (µg/l) | Concentration |
|---|---|---|
| MW204B* | RDX | 0.76 |
| | trichloroethene | 16 |
| MW301BB | trichloroethene | 60 |

µg/l- microgram per liter or part per billion
* MW = Monitoring Well

Q. HMX, chemical name 1,3,5,7-tetranitro-1,3,5,7-tetrazine, is an explosive nitramine compound with applications in military ordnance. HMX is present as a contaminant in Type B RDX, which typically contains 8 to 12 percent HMX. HMX is an acronym for "high melting explosive."

R. RDX (hexahydro-1,3,5-trinitro-1,3,5-triazine) is an explosive compound with applications in military ordnance, and is chemically classified as a nitramine.

S. TNT (trinitrotoluene), 2,4-DNT (2,4-Dinitrotoluene), 2,6-DNT (2,6-Dinitrotoluene), trichloroethene (TCE), dichloroethene (DCE), carbon tetrachloride ($CCl_4$), tetrachloroethene (PCE), chloroform, arsenic, chromium, cadmium and lead are also chemicals used in the production of ordnance.

T. Exposure to each of the foregoing substances may have adverse consequences to human health and the environment.

## VIII. DETERMINATIONS OF LAW

This paragraph contains determinations of law made solely by the EPA and NDEQ. As with the Findings of Fact, infra, they are not admissions by the Army for any purpose.

A. The Site and every portion thereof where a hazardous substance has been deposited, stored, disposed of, placed or has otherwise come to be located, constitutes a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

B. The Army, as an agency of the United States government, is a person as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

C. Hazardous substances and pollutants or contaminants within the meaning of Sections

101(14) and 101(33) of CERCLA, 42 U.S.C. §§ 9601(14) and (33), have been released and disposed of at the NAD, or there is a substantial threat of release of hazardous substances and pollutants and contaminants at the Site as defined in Section 101(22) of (CERCLA), 42 U.S.C. § 9601(22).

D. The Site is a former federally-owned facility within the meaning of Section 120 of CERCLA, 42 U.S.C. § 9620. Environmental restoration of this facility is authorized under the Defense Environmental Restoration Program pursuant to Section 211 of SARA, 10 U.S.C. § 2701, et. seq..

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

F. The schedule for completing the actions required by this Agreement shall comply 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 the Army shall conduct each of the following activities in accordance with the schedules set forth below and the deadlines established pursuant to Part XXIX (Deadlines) of this Agreement:

### A. Remedial Investigation and Feasibility Study

1. The Army shall conduct, in compliance with the deadlines established pursuant to Part XXIX (Deadlines) of this Agreement, the Remedial Investigation and Feasibility Study activities outlined herein at the former NAD. A RI/FS has been completed for Operable Unit 4. The Army shall complete RI/FS activities currently planned for Operable Units 8, 14 and 16. In

addition, the Army shall conduct RI/FS activities for Operable Unit 15, if necessary. All RI/FS activities carried out pursuant to this Agreement shall be conducted 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 which EPA shall make available to the Army, unless adhering to such more recent version would cause modification or redoing of a significant portion of the work which is already completed. (At the commencement of each Remedial Investigation and Feasibility Study, the project managers shall mutually confirm the applicability of any new guidance.) The Remedial Investigations shall include, inter alia, the design and implementation of a monitoring program to define the extent and nature of the contamination in the surface soil, ground water and vadose zone at the Site and the extent and nature of releases of hazardous substances and pollutants and contaminants at or from the Site.

2. In accordance with Parts IX (Consultation with EPA) and XXIX (Deadlines) of this Agreement, the Army shall submit to the EPA and NDEQ for review and approval all RI and FS work plans and reports.

3. The Army shall implement all RI and FS actions in accordance with the schedule established pursuant to Part XXIX (Deadlines) of this Agreement.

4. The Parties agree that final cleanup level criteria for contaminants of concern at the NAD will only be determined following completion of the Risk Assessment portion of each Remedial Investigation to be prepared by the Army. Except for the Risk Assessment for Operable Unit 4, which is already completed, the Risk Assessments shall be completed in accordance with the guidelines set forth in the documents entitled "Risk Assessment Guidance

for Superfund, Volume 1, Human Health Evaluation Manual" (December 1989) and "Risk Assessment Guidance for Superfund, Volume II, Environmental Evaluation Manual" (March 1989), or such more recent version(s) thereof as EPA shall make available to the Army pursuant to this Agreement. If adhering to such more recent version would cause modification or redoing of a significant portion of the work which is already completed, the earlier version may be used. (At the commencement of each Remedial Investigation and Feasibility Study, the project managers shall mutually confirm the applicability of any new guidance.) The RI shall be coordinated with the FS such that both activities are completed in a timely and cost effective manner.

B. Operable Unit Remedial Actions

1. In accordance with Part XXIX (Deadlines) of this Agreement, the Army shall propose deadlines for the completion of Operable Unit Work Plans for any Operable Unit remedial actions. These work plans shall be reviewed in accordance with Part X (Consultation with EPA and NDEQ) of this Agreement.

2. All Operable Unit remedial actions undertaken pursuant to this Agreement shall comply with all NCP requirements and EPA guidance governing such actions and with applicable State laws.

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.

C. Remedial Action Selection

1. Upon approval of any final FS Report by the EPA and NDEQ, the Army shall,

after consultation with the EPA and NDEQ pursuant to Part X (Consultation with EPA and NDEQ) of this Agreement, publish the proposed plan for public review and comment in accordance with the public participation requirements of Part XXVII (Public Participation) of this Agreement.

2. Unless otherwise agreed by the parties, within sixty (60) days of the completion of the public comment period on the proposed plan, the Army 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 EPA and NDEQ. The proposed ROD and Responsiveness Summary shall be written in accordance with the guidance document entitled, "Interim Final Guidance on Preparing Superfund Decision Documents", OSWER Directive No. 9355.3-02 (June 1989) or more recent version thereof which is in effect and made available by EPA at the time the ROD and Responsiveness Summary are begun. (At the time of submission of the draft FS, the project managers shall mutually confirm the applicability of any new guidance.)

3. As specified in Section 120(e)(2) of CERCLA, the Army shall commence substantial and 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 EPA.

4. The Army shall implement the selected response actions for the Site in accordance with the provisions, time schedule, standards and specifications set forth in the approved Remedial Action Work Plans.

5. Prior to commencement of any remedial action, the Army shall provide for public participation in accordance with Part XXVII (Public Participation) of this Agreement.

D. Removal Actions

1. All removal actions conducted at the Site shall be conducted in a manner consistent with this Agreement, applicable EPA guidance, CERCLA, and the NCP.

2. Any party which discovers or becomes aware of an emergency or other situation which may present an immediate and serious danger to human health or welfare or the environment at the Site shall immediately orally notify all other Parties.

3. If EPA, either separately or in consultation with NDEQ, determines that there may be an endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance, pollutant or contaminant at or from the Site, EPA may request that the Army take such response actions as may be necessary to abate such danger or threat and to protect the public health or welfare or the environment. If the Army fails to take such response actions, EPA or NDEQ may undertake such response actions and, to the extent permitted by law, seek reimbursement from the Army for all costs incurred in so responding.

4. For all removal actions where delay would pose a serious danger to human health or welfare or the environment, the Army shall immediately undertake response actions to abate such endangerment.

5. Prior to undertaking any removal action, the Army shall provide as much notice of its intention to undertake such actions as the circumstances leading to the actions allow. Such notice shall include the basis for the action, a description of the proposed 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.

6. Upon completion of all removal actions, the Army shall provide to the EPA

and NDEQ, in writing, notification of the completion of the removal action and a detailed description of all actions taken.

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

E. Ground Water Well Survey/Monitoring

1. The Army shall complete a ground water well inventory of existing wells across the former NAD. A Well Inventory Summary report shall be completed and submitted to EPA and NDEQ. Information included in the report shall identify each well by location, well type and use, well construction details if available, and name and address of the property owner. The inventory shall include all government ground water monitor wells and privately-owned water wells. The parties recognize that some privately-owned wells may be out of service, abandoned, or inaccessible for sampling.

2. The Well Inventory Summary will be updated every two (2) years.

3. The Army shall collect ground water samples from selected inventoried wells in accordance with the approved Well Monitoring Plan, for volatile organic compounds and additional contaminants of concern identified in remedial investigations conducted at the NAD. Some privately owned wells have been abandoned, removed from service, or are only available for sampling on a seasonal basis. Furthermore, some water supply wells are completed with pump systems which preclude access. Therefore, the full inventory of private wells will not be accessible for sampling. Best efforts will be made to coordinate ground water sampling events with the accessibility of wells. Results of each periodic sampling event shall be provided to EPA.

F. Divisible Releases

1. Known Divisible Releases

The parties acknowledge that plumes that are separate from DoD plumes are emanating from the following subsites: Well #3, Second Street, Colorado Avenue, South Landfill, North Landfill, and FarMarCo. The parties also acknowledge that the North Landfill and FarMarCo subsite plumes have migrated onto the NAD. The FarMarCo, Well #3, Second Street, Colorado Avenue plumes originate from sources other than the Department of Defense. Currently, there is an administrative order on consent with private responsible parties for the response action to contain and address the FarMarCo plume. If, however, any of these plumes nevertheless commingles with DoD plume(s), the parties agree to determine at that time whether to address the FarMarCo plume through the current response action being performed by the Army; under this IAG, with anticipated participation by other responsible parties, or whether to address the plume through a separate mechanism such as a multi-party consent decree or other enforcement/funding mechanisms. In the event of commingling, the Army agrees to assist EPA in identifying and encouraging other responsible parties to participate in any response actions taken to address the plume. Should the parties determine that response actions on any commingled plume will be addressed through a separate mechanism, EPA reserves sole discretion in determining the appropriate enforcement mechanism to use and remedy selection.

2. All Other Divisible Releases

a. The Army will complete each necessary RI and Engineering Evaluation (EE) in accordance with this agreement. Upon completion of each RI or EE, the Army may seek to establish that DoD is not liable for wholly divisible releases caused by other responsible parties. If the Army seeks to establish that DoD is not liable for such releases, the Army shall submit to EPA appropriate documentation and analysis in support of this conclusion.

b. In addition, with regard to divisible releases for which no viable responsible parties exist, the Army reserves the right to request, prior to completion of the RI or the EE, that EPA perform response actions addressing such releases. Any Army request for EPA performance of response actions in advance of completion of the RI or EE must be made in writing by the Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health) (DASA (ESOH)) to the Administrator of Region VII.

c. EPA will review the supporting documentation and issue a written determination to the Army regarding whether EPA agrees that the agreement should be modified. NDEQ will not dispute EPA's determination regarding wholly divisible releases. Furthermore, if EPA decides to take over work based on EPA's determination that a wholly divisible release exists, NDEQ will not dispute EPA's decision in this regard. In the case of a request from the DASA (ESOH) for EPA performance of response actions in advance of completion of an RI or EE, the Region VII Administrator shall issue the written determination. Otherwise, the written determination shall be made by the EPA Region VII Waste Management Division Director. Regardless of the EPA official issuing it, the written determination shall set out the reasoning underlying the decision. Such a determination will not be subject to dispute prior to the

completion of the RI report or the EE report. The time period for completion of work involving the allegedly divisible release shall be extended for a period of time usually not to exceed the actual time taken by Region VII to issue the written determination discussed above, unless otherwise agreed among the Parties.

d. Upon the completion of the RI or EE, if the Army wishes to dispute EPA's determination as to modification of the agreement, the Army may invoke the dispute resolution procedures established by provision XI of this agreement.

e. To the extent that viable responsible parties exist for divisible releases, EPA will take the lead in pursuing any appropriate cost recovery actions against those responsible parties. In addition, EPA agrees to coordinate with the Army as EPA deems appropriate in pursuing cost recovery actions against those responsible parties.

## X. CONSULTATION WITH EPA and NDEQ

### 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 Army will normally be responsible for issuing primary and secondary documents to the EPA and NDEQ. 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 EPA and NDEQ in accordance with this Part. Such designation does not affect the obligation of the Parties to issue documents, which may be referred to herein as "final", to the public for review and comment as appropriate and as required by law.

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

1. Primary documents include those reports that are major, discrete portions of RI/FS or RD/RA activities. Primary documents are initially issued by the Army in draft subject to review and comment by EPA and NDEQ. Following receipt of comments on a particular draft primary document, the Army 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 sixty (60) days after issuance if dispute resolution is not invoked or if the documents are not modified by decision of the dispute resolution process.

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

C. Primary Documents

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

a. Conceptual Program Plan

b. Remedial Investigation Work Plans, including Applicable Part I CDAP Chapters

c. Chemical Data Acquisition Plan (CDAP)

d. Remedial Investigation Reports

e. Baseline Risk Assessments

f. Feasibility Study Work Plans

g. Feasibility Study Reports

h. Proposed Plans

i. Records of Decision, including Responsiveness Summaries

j. Operable Unit Work Plans and Reports

k. Remedial Design Work Plans

l. Final Remedial Designs

m. Remedial Action Work Plans

n. Remedial Action Reports

o. Community Relations Plans

p. Well Monitoring Plan, including Applicable Part I CDAP Chapter

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

D. Secondary Documents

1. The Army shall complete and transmit draft reports for the following secondary documents to EPA and NDEQ 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. Preliminary Designs (30% completion)

e. Intermediate Designs (60% completion)

f. Pre-final Designs (90% completion)

g. Health and Safety Plans for Field Construction Activities

h. Contingency Plans

i. Operation and Maintenance Plans

j. Treatability Studies

k. EE/CAs and associated removal work plans

l. Well Inventory Summary (including map)

m. Sampling Plans for Operable Unit 15 Scoping Activities

n. Preliminary Contamination Assessment Summaries (PCAS)

2. Although the EPA and NDEQ 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 herein. Target dates shall be established for the completion and transmission of draft secondary reports pursuant to Part XXX (Target Dates) of this Agreement.

E. Meetings of the Project Managers

The Project Managers shall meet approximately every thirty (30) days, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the site on the primary and secondary documents. Prior to preparing any draft report specified in 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. NDEQ shall identify all potential state ARARs as early in the remedial process as possible consistent with the requirements of CERCLA Section 121 and the NCP. The Army shall consider any written interpretations of ARARs provided by the State. Draft ARAR

determinations shall be prepared by the Army in accordance with Section 121(d)(2) of CERCLA, the NCP and pertinent guidance issued by the 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 Army shall complete and transmit each draft primary report to EPA and NDEQ on or before the corresponding deadline established for the issuance of each report. The Army shall complete and transmit all draft secondary documents in accordance with the target dates established for the issuance of such reports established pursuant to Part XXX (Target Dates) of this Agreement.

2. Unless the Parties mutually agree to another time period, all draft primary reports shall be subject to a sixty (60)-day period for review and comment and all draft secondary reports shall be subject to a forty five (45)-day period for review and comment. Review of any document by the EPA and NDEQ 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 EPA and with applicable State law. Comments by the EPA and NDEQ shall be provided with adequate

specificity so that the Army 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 Army, the EPA shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy reports, EPA or NDEQ may extend the applicable comment period for an additional 20 days by written notice to the Army prior to the end of the comment period. On or before the close of the comment period, EPA and NDEQ shall transmit their written comments by next-day mail to the Army.

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

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

5. Following the close of the comment period for a draft report, the Army shall give full consideration to all written comments on the draft report submitted by EPA and NDEQ during the comment period. Within forty five (45) days of the close of the comment period in the case of a draft secondary report, the Army shall transmit to EPA and NDEQ its written response to comments received within the comment period. Within sixty (60) days of the close of the comment period. in the case of draft primary reports, the Army shall transmit to EPA and

NDEQ a draft final primary report, which shall include the Army's response to all written comments received within the comment period. The Parties will meet within ten (10) days of the Army's receipt of primary and secondary document comments, unless otherwise agreed. While the resulting draft final report shall be the responsibility of the Army, it shall be the product of consensus to the maximum extent possible.

6. The Army may extend the period for either responding to comments on a draft report or for issuing the draft final primary report for an additional twenty (20) days by providing notice to the EPA and NDEQ. In appropriate circumstances, this time period may be further extended in accordance with Part XII (Extensions) 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 XI (Resolution of Disputes).

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 XI (Resolution of Disputes).

I. Finalization of Reports

The draft final primary report shall serve as the final primary report if no party invokes dispute resolution regarding the document or, if invoked, at completion of the dispute resolution process should the Army's position be sustained. If the Army's determination is not sustained in the dispute resolution process, the Army shall prepare, within not more than thirty five (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 XII (Extensions) 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 J.1. and J.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: (1) the requested modification is based on significant new information, and (2) the requested modification could be of significant assistance in evaluating impacts on the public health or the environment, in evaluating the selection of remedial alternatives, or in protecting human health and the environment.

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

document or by amendment to this Agreement.

## XI. 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 sixty (60) days after: (1) issuance of a draft final primary document pursuant to Part X (Consultation with EPA and NDEQ) of this Agreement, or (2) any action which leads to or generates a dispute, the disputing Party shall submit to the other Parties a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute and the information the disputing Party is relying upon to support its position.

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 Dispute Resolution Committee (DRC) will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. Each Party shall designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (Senior Executive Service

(SES) or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The EPA representative on the DRC is the Waste Management Division Director of EPA's Region 7. The Army's designated member is the District Engineer, U.S. Army Corps of Engineers, Kansas City District. The NDEQ designated representative is the Assistant Director for Air and Waste Management. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Part XVIII (Project Managers).

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 EPA representative on the SEC is the Regional Administrator of EPA Region VII. The NDEQ representative on the SEC is the Director of NDEQ. The Army's representative on the SEC is the Chief of the Environmental Restoration Division, Directorate of Military Programs, Headquarters, United States Army Corps of Engineers. 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, EPA's Regional Administrator shall issue a written position on the dispute. The Army or NDEQ may, within twenty-one (21) days of the Regional Administrator's issuance of EPA's position, issue a written notice elevating the dispute to the

Administrator of 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, the 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 EPA pursuant to Subpart E, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the EPA Administrator shall meet and confer with the NDEQ Director and the Army Secretariat Representative 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 Army's responsibility for timely performance of the work required by this Agreement, except that the time period for completion of work affected by such dispute shall be extended for a period of time usually not to exceed the actual time taken to resolve any good faith dispute in accordance with the procedures specified herein. All elements of the work required by this Agreement which are not affected by the dispute shall continue and be completed in accordance with the applicable schedule.

I. When dispute resolution is in progress, work affected by the dispute will immediately

be discontinued if the Hazardous Waste Division Director for EPA's Region VII requests in writing, that work related to the dispute be stopped because, in EPA's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. The State may request the EPA's Region VII Division Director to order work stopped for the reasons set out above. To the extent possible, the Party seeking 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 work stoppage to discuss the work stoppage. Following this meeting, and further consideration of the issues, the EPA Division Director will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the EPA 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 Army shall incorporate the resolution and final determination into the appropriate plan, schedule or procedures and proceed to implement this Agreement according to the amended plan, schedule or procedures.

K. Resolution of a dispute pursuant to this Part of the Agreement constitutes a final resolution of a dispute arising under this Agreement. EPA and the Army shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Part of this Agreement. NDEQ agrees to exhaust the dispute resolution procedures set forth in this Part of the Agreement

prior to exercising any other rights it may have.

## XII. 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 Army 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 XXXIII (Force Majeure) 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.

Additionally, the parties agree to meet, at least annually, to review progress toward

milestone, deadline and project end dates; to determine whether milestones, deadlines or project end dates that extend further out than two fiscal years (collectively "long-term milestones"), require adjustment; and, by mutual agreement, to adjust such long-term milestones as necessary. Such adjustment shall be put in writing, signed by the Parties' Project Mangers, and incorporated in this Agreement. In accordance with the process set forth in this Section XII ("Extensions"), if long-term milestones are set pursuant to this Agreement and are later adjusted in accordance with the requirements of this provision, the new adjusted date, not the original long-term milestone date, shall be the only applicable, enforceable date for the milestone, deadline, or project accomplishment.

C. Absent agreement of the Parties with respect to the existence of good cause, the Army 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, the EPA and NDEQ shall advise the Army in writing of their respective positions on the request. Any failure by the EPA and NDEQ to respond within the seven day period shall be deemed to constitute concurrence in the request for extension. If either the EPA or NDEQ do not concur in the requested extension, EPA or NDEQ shall include in its statement of nonconcurrence an explanation of the basis for its position.

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

mination resulting from the dispute resolution process.

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

## XIII. CREATION OF DANGER

A. In the event the EPA determines that activities conducted pursuant to this Agreement, or any other circumstance or activity within the Army's control, may present an imminent and substantial endangerment to the health or welfare of the people on- or off-Site or to the environment, the EPA may direct, by written notice, or the NDEQ Director may request the EPA to direct, the Army to cease further implementation of work at the Site for such period of time as necessary to abate the endangerment.

B. The EPA, within 24 hours of directing the Army to cease work pursuant to this provision, shall provide a written statement of the basis for its directing the cessation of work.

C. Within five (5) business days from the date of receipt of this written statement the Army may request a review of the work cessation. This request shall include a statement as to

the Army's basis for recommending that the work be resumed and as to possible measures to abate or mitigate the endangerment. Within seventy two (72) hours of an Army request for review, the EPA Division Director shall determine in writing whether continued work cessation is necessary. This final decision shall be subject to the provisions of Part XI (Resolution of Disputes) herein.

D. Any such work ceased as directed by the EPA under this Part may be a basis for modifying the schedule of activities affected by such work cessation.

## XIV. REPORTING

A. Throughout the course of the activities required by this Agreement, the Army shall submit to the EPA and NDEQ written quarterly progress reports, which shall be submitted by the thirtieth (30th) day after the end of each calendar quarter following the effective date of this Agreement. Progress reports shall include:

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

2. A description of all actions scheduled for completion during the calendar 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 result summaries with any QA/QC summary reports received or produced by the Army and completed pursuant to this Agreement during the quarter, if not previously provided. In addition, the Army shall make available to EPA all other laboratory deliverables, including all analytical data which has passed through

quality assurance/quality control (QA/QC) procedures, upon request; and

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

5. The Parties recognize and agree that such reports may be comprised, in part, of other reports which specifically contain the information required by subparagraphs 1 through 4 above. If other reports are used, the Army shall highlight, excerpt or otherwise clearly identify those portions of the reports containing the information required herein.

B. The Parties recognize that data from sampling and analysis which has not yet received quality assurance/quality control review may not be reliable. Accordingly, provision of unreviewed data under this Agreement is limited as set forth in Part XVI (Sampling and Data/Document Availability) below.

## XV. MONITORING AND QUALITY ASSURANCE

A. In accordance with Part X (Consultation with EPA and NDEQ) of this Agreement, the Army shall review and update as necessary its three-part Chemical Data Acquisition Plan (CDAP), for each Investigation, including investigations conducted for each Operable Unit, for review and comment by the EPA and NDEQ. Each QAPP or CDAP shall be a primary document, and shall be prepared in general accordance with the EPA Document QAMS-005/80, or, in the alternative, Engineer Regulation (ER) 1110-1-263 may be followed subject to the comments set out in Appendix A of this Agreement; and each shall include 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 as well as any other items covered by the selected guidance.

The Army shall use the quality assurance/quality control and chain of custody procedures specified in the QAPPs or CDAPs throughout all field investigation, sample collection and laboratory analysis activities. The Army shall inform and obtain the concurrence of the EPA and NDEQ in planning all sampling and analysis.

B. The Army shall submit all methods and protocols used for sampling and analysis to the EPA and NDEQ for review and concurrence. The Army 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 a 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). Upon request by EPA and NDEQ, all laboratories analyzing samples pursuant to this Agreement shall analyze performance evaluation samples provided by the EPA and NDEQ to demonstrate the quality of analytical data from each laboratory used by the Army. Upon request by EPA and NDEQ, the Army shall provide the items of supporting laboratory documentation for review by EPA and NDEQ which are set forth in Appendix B.

C. The Army shall allow the EPA and NDEQ and their authorized representatives access to the laboratory(s) and personnel utilized by the Army for sample collection and analysis and other field work.

## XVI. SAMPLING AND DATA/DOCUMENT AVAILABILITY

A. The Army shall transmit to EPA and NDEQ within 20 days of the Army's receipt or generation thereof, all results of sampling, tests and other data collection activities. For data

resulting from sampling and analysis, subject to the qualifications set forth below, this shall include all data which has been verified by quality assurance/quality control (QA/QC) procedures established in accordance with the previous section, along with all QA/QC documentation. Data to be provided shall include, but not be limited to, results of sampling all areas known or suspected to have been contaminated by hazardous substances, and any water supply wells and systems, included in the remedial investigation.

B. Notwithstanding the previous paragraph, all results of sampling, tests and other data collection activities shall be transmitted to EPA no later than one hundred twenty (120) days after the original field sampling activity. In the event that, because of QA/QC delays, QA/QC review for a particular sample or analysis is not completed within one hundred twenty (120) days of the original field sampling, the unreviewed data corresponding to each such sample will be immediately transmitted to EPA pending completion of the QA/QC review, with the corresponding QA/QC-reviewed data transmitted to EPA and NDEQ within 20 days of its becoming available to the Army, along with all QA/QC documentation.

C. At the request of the EPA or NDEQ, the Army shall allow the Party making the request to collect split or duplicate samples of all samples collected pursuant to this Agreement. The Army shall notify the EPA and NDEQ at least fourteen (14) days prior to any field work including but not limited to sample collection, well drilling, installation, or testing. The EPA and NDEQ will make the quality assured results of all sampling, tests, or other data available to each other and to the Army within twenty (20) days of receipt of such results.

## XVII. CONFIDENTIAL BUSINESS INFORMATION

A. If applicable, the Army may assert a business confidentiality claim covering any confidential business information submitted pursuant to this Agreement. Except as provided otherwise in Section 104(e)(7) of CERCLA, the information covered by such a claim will be disclosed by the EPA only to the extent and by the procedures specified in 40 C.F.R. Part 2, Subpart B. A claim of business confidentiality concerning information submitted to EPA may be made by placing on or attaching to the information, at the time it is submitted to the EPA, 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 EPA. 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 EPA, the information may be made available to the public without further notice to the Army. Results of environmental analysis shall not be claimed as confidential by the Army.

B. Information determined to be confidential by the EPA pursuant to 40 C.F.R. Part 2 shall be afforded the protection specified therein. A copy of the request for confidentiality shall be provided to NDEQ without the accompanying attachments. At such time as a claim for confidentiality is denied by EPA, the information will be transmitted to NDEQ.

## XVIII. PROJECT MANAGERS

A. The following individuals are designated as Project Managers for the respective parties:

For the EPA:

Ron King
Superfund Division
U.S. Environmental Protection Agency
Region VII
726 Minnesota Avenue
Kansas City, Kansas 66101
Telephone Number (913) 551-7568

For the Army:

Vincenzo Crifasi
Programs and Project Management Division
U.S. Army Corps of Engineers,
Kansas City District
601 E. 12th Street
Kansas City, Missouri 64106-2896
Telephone Number (816) 983-3358

Mirek Towster
Toxic and Hazardous Waste Management Branch
U.S. Army Corps of Engineers
Kansas City District
601 E. 12th Street
Kansas City, Missouri 64106-2896
Telephone Number (816) 983-3886

Brian Roberts
Toxic and Hazardous Waste Management Branch
U.S. Army Corps of Engineers
Kansas City District
601 E. 12th Street
Kansas City, Missouri 64106-2896
Telephone Number (816) 983-3892

For NDEQ:

Supervisor
Superfund Section
Air and Waste Management Division
Nebraska Department of Environmental Quality
The Atrium
1200 N Street Suite 400
Lincoln, NE 68509-8922
Telephone Number (402) 471-3388

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. 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 EPA and NDEQ Project Managers shall have the authority to:

1. Take samples, including split samples of the Army samples and ensure that work is performed properly, pursuant to the 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; and

3. Review all records, files and documents relevant to this Agreement.

## XIX. ACCESS

A. The parties agree that EPA and NDEQ shall have access to all property upon which any activities are being conducted or have been conducted pursuant to this Agreement. The EPA and NDEQ and their authorized representatives shall be 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 EPA or NDEQ 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 the Army pursuant to this Agreement.

B. For any property at the Site owned by the Army or the U.S. Department of Defense or an agency thereof, the Army agrees to provide access to the property to carry out all work under this Agreement and for EPA and NDEQ to carry out all of the activities described in Paragraph A. above. For property at the Site not owned by the Army or the U.S. Department of Defense or an agency thereof, the Army shall use its best efforts to obtain access agreements from the property owners, and any lessees. Such access shall provide the right to carry out all work under

this Agreement for the Army, and for EPA, NDEQ and their representatives to carry out all of the activities described in Paragraph A. above. In the event that the Army is unable to obtain such access agreements in a timely manner, the Army shall promptly notify the EPA and NDEQ.

C. All Parties with access to the Site pursuant to this section shall comply with all applicable health and safety plans.

## XX. RECORD PRESERVATION

The Army 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, the Army shall notify the EPA at least sixty (60) days prior to the destruction of any such document. The Army upon request by EPA or NDEQ shall make available documents or copies of such documents unless withholding is authorized as determined by law.

## XXI. RESERVATION OF RIGHTS

A. Notwithstanding compliance with the terms of this Agreement, the Army is not released from liability, if any, for any actions beyond the terms of the Agreement taken by the EPA or NDEQ with respect to the Site.

B. Nothing in this Agreement shall preclude the EPA and NDEQ from exercising any administrative, legal, or equitable remedies available to it in the event that:

1. Either conditions previously unknown or undetected by the EPA arise or are discovered at the Site or the 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.

C. EPA and NDEQ reserve their respective rights to undertake any response action(s), whether on-site or off-site, to address any release or threat of release of hazardous substances or pollutants and contaminants as may be authorized by law, and, to the extent permitted by law, to seek reimbursement from the Army and/or any other liable person for costs incurred. Furthermore, except as specifically provided in Paragraphs III.A, VI, and XXI.D. of this Agreement, nothing in this Agreement shall restrict EPA and NDEQ from pursuing any enforcement or other legal or equitable action against any person or entity under CERCLA or any other applicable law.

D. The Army 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 Army might otherwise be entitled to raise or assert.

## XXII. OTHER APPLICABLE LAWS

A. Except as otherwise provided in Part XXIII (Permits), all actions required to be taken pursuant to this Agreement shall be undertaken in accordance with the requirements of all applicable federal, State and local 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 the EPA and NDEQ, 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.

## XXIII. 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 on-site. Such on-site 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 the Army which in the absence of § 121(e)(1) of CERCLA would require a permit, the Army 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 have to be met to obtain each such permit, including input received from NDEQ 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 Army 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 on-site. 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, the Army shall notify the EPA and NDEQ in writing of its intention to propose modifications to primary documents thereby affected in accordance with Paragraph X.J. (Subsequent Modification of Reports) of this Agreement. Notification by the Army of its intention to propose modifications shall be transmitted within fifteen (15) calendar days after receipt by the Army 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, Army shall notify the EPA and NDEQ of such appeal within fifteen (15) calendar days. Within thirty (30) days from the date the Army submits its notice of intention to propose modifications, the Army shall submit to the EPA and NDEQ its proposed modifications with an

explanation of its reasons in support thereof. Such proposed modifications will be reviewed in accordance with Part X (Consultation with EPA and NDEQ) of this Agreement.

D. If Army submits proposed modifications prior to a final determination of any appeal taken on a permit needed to implement this Agreement, the EPA and NDEQ 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 Army shall continue to implement those portions of this Agreement which can be reasonably implemented pending final resolution of the permit issue(s).

F. The Army will comply with all applicable, relevant and appropriate Federal and State hazardous waste management requirements at the Site, except as otherwise provided in this Agreement.

## XXIV. 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 EPA shall, consistent with Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), review the remedial action no less than every 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 EPA that additional action or modification of the remedial action is appropriate in accordance with Section 104 or 106 of CERCLA, 42 U.S.C. §§ 9604 and 9606, the EPA shall require the Army to implement such additional or modified action.

## XXV. 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 for any liability 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 EPA and NDEQ shall not be held out as a party to any contract entered into by the Army to implement the requirements of this Agreement.

## XXVI. 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 the Parties. Each such amendment shall be effective on the last date such written agreement is signed by all Parties.

## XXVII. 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, the Army 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, the Army 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, a response to each significant comment, criticism, and new data submitted during the public comment on the Proposed Plan.

C. The Army shall develop and implement a Community Relations Plan (CRP) which responds to the need for an interactive relationship with all interested community elements, regarding activities and elements of work undertaken by the Army. The CRP shall recognize and address the need for public information meetings to be held during RI/FS and RD/RA activities. The Army 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 entitled "Community Relations in Superfund: A Handbook", OSWER Directive 92930.0-3B (June 1988), or a subsequent version of this manual which is in effect at the time the CRP is prepared, which EPA will make available upon request. (The project managers shall mutually confirm the applicability of any new guidance at the time the CRP is prepared.)

D. As part of its Community Relations activities, the Army shall maintain a mailing list of interested and affected individuals. In the event of any request for information from the public concerning the Site, the EPA and NDEQ will submit the name of the requester and the specific request to the Army. The Army shall add the name of the requester to the mailing list. The Army shall provide the EPA and NDEQ with annual updates of the mailing list.

E. Any Party planning to issue a 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.

F. Within thirty (30) days of the effective date of this Agreement, the Army shall establish and maintain the Administrative Record File, which will include an index of all documents contained therein. The Administrative Record File shall be maintained at or near the Site in accordance with Section 113(k) of CERCLA, 42 U.S.C § 9613(k). The Administrative Record File shall be established and maintained and routinely updated in accordance with current and future EPA policy and guidelines. A copy of each document placed in the Administrative Record File will be provided to EPA and NDEQ along with an updated index, on at least a quarterly basis beginning with the first calendar quarter following the effective date of this Agreement. The EPA, after consultation with NDEQ, shall have the ability to add documents to the Administrative Record File.

G. The Army shall follow the public participation requirements of Section 113(k) of CERCLA.

## XXVIII. PUBLIC COMMENT ON AGREEMENT

A. Within fifteen (15) days of the date the EPA receives a fully executed copy of this Agreement, the 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, the EPA shall provide copies of all comments received to the Army and NDEQ within seven (7) days.

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 based upon public comments received.

C. Any Party that determines modification of the Agreement is necessary based upon public comments received shall provide a written request for modification to each of the other Parties. This request for modification shall be made within thirty (30) days of the date that Party received copies of the comments from the EPA, or, in the event the EPA requests modification, within thirty (30) 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 above, this Agreement shall be made effective in its present form in accordance with Part XXXVII (Effective Date) hereof.

E. If any Party requests modification of the Agreement as provided in this Part based upon public comments received, 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 XXXVII (Effective Date) hereof. If the Parties are unable to agree upon such modification, any Party reserves the right to withdraw from the Agreement within 60 days of receipt of the written request for modification. Before any Party exercises its right to withdraw from the Agreement by written notice, it shall

make its SEC representative, as identified in Paragraph XI.E. hereof, available to meet with the other Parties' SEC representatives to discuss the withdrawal.

F. In the event of a significant modification to 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 EPA.

## XXIX. DEADLINES

A. "Deadlines" or "Milestones" shall mean a time limitation specifically established or provided for under the terms of the Agreement for the performance of work and submittal of Primary Documents and shall not include Target Dates. Deadlines shall include "Near Term Milestones", "Out Year Milestones", and "Project End Dates," as such terms are defined below.

1. "Near Term Milestones" shall mean the dates established by the Parties for the submittal of Primary Documents and for the performance of work within the current fiscal year and the next fiscal year of "budget year" (FY+1), and the year for which the budget is being developed (i.e., the "planning" year - FY + 2). The Parties recognize that only the near term milestones within the current fiscal year are enforceable and subject to stipulated penalties within the fiscal year they are due until corrected.

2. "Out Year Milestones" shall mean the dates established by the Parties for the submittal of Primary Documents within those years occurring beyond the planning year or FY + 3 for the completion of the cleanup or phase of the cleanup through Project End Date, as defined below.

3. "Project End Date" shall mean the dates established by the Parties for the

completion of major portions of the cleanup or for the completion of the cleanup as a whole.

B. The following deadlines have been established for the submittal of draft primary documents pursuant to this Agreement:

**1. Operable Unit No. 14 (HEIP Ground Water)**

a. Schedules for the Baseline Risk Assessment, Feasibility Study, Proposed Plan and ROD for Operable Unit No. 14 shall be due within 30 days of finalization of the Final Air Sparging Pilot Study Report as set forth in Section XXX. B. 3. below.

**2. Operable Unit No. 15 (Areas of the NAD Not Included In Any Other Operable Unit)**

a. Subsequent Primary Documents, if any, and their corresponding deadlines will be incorporated into and made a part of this Agreement within 21 days of finalization of the Remedial Investigation Report. Subsequent Primary Documents may include Feasibility Study Work Plan(s), Feasibility Study Report(s), Proposed Plan(s) and/or Record(s) of Decision, including Responsiveness Summary(ies), depending upon whether any future remedial action is necessary within Operable Unit 15. Such proposed deadlines shall be proposed, finalized and published utilizing the same procedures set forth in paragraph B. below.

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

**1. Operable Unit No. 4**

a. Final Remedial Design

b. Remedial Action Work Plan

c. Remedial Action Report

**2. Operable Unit No. 16**

a. Removal Action Decision Document, including Responsiveness Summary.

Within fifteen (15) days of receipt, EPA, in conjunction with NDEQ, shall review and provide comments to the Army regarding the proposed deadlines. Within thirty (30) days following receipt of the comments, the Army 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 the Army's receipt of the comments, the matter shall immediately be submitted for dispute resolution pursuant to Part XI. of this Agreement. The final deadlines established pursuant to this Paragraph shall be published by the EPA in conjunction with NDEQ.

D. Within twenty-one (21) days of issuance of each Record of Decision, except as provided in Paragraphs A and B of this Section, the Army shall propose deadlines for submittal 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 set forth in Paragraph B. above.

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

performance of the Remedial Investigations.

F. In order to ensure that the Work to be performed under this Agreement is accomplished in a timely manner, the Parties have agreed to establish Deadlines consisting of (i) Near Term Milestones for the current fiscal year (FY), the budget year (FY+1), the planning year (FY + 2); (ii) Out Year Milestones for the years occurring after the planning year until the completion of the cleanup or phase of the cleanup (FY+3 and beyond); and (iii) Project End Dates for the completion of major portions of the cleanup or for the cleanup as a whole. Near Term Milestones for performance of work and submittal of Primary Documents within the current fiscal year (FY) are enforceable and shall be subject to stipulated penalties. Near term milestones, Out Year Milestones and Project End Dates will not change without the mutual consent of all Parties to the Agreement. Out Year Milestones and Project End Dates shall not be enforceable until they become Near Term Milestones for the current FY. However, if an activity is fully funded in the current FY, milestones associated with performance of work and submittal of Primary Documents associated with such activity then all future Deadlines associated with such activity (even if they extend beyond the current FY) shall be enforceable. For the purposes of this Agreement, a fiscal year is the yearly time frame used by the United States government that commences on October 1 and ends September 30th of the following calendar year.

## XXX. TARGET DATES

A. Within twenty-one (21) days after the effective date of this Agreement, the Army shall provide target completion dates for the following draft secondary documents:

**1. Operable Unit No. 4**

a. Construction Contingency Plan

b. Operation and Maintenance Plan

**2. Operable Unit No. 16**

a. Engineering Evaluation/Cost Analysis

**3. Operable Unit No. 14**

a. Pilot Study Report

4. Secondary documents required pursuant to Part X.D. (Secondary Documents) during the RI and FS process;

5. Secondary documents associated with the Remedial Design and Remedial Action for Operable Unit 4.

C. Within twenty-one (21) days of issuance of the Record of Decision, except as provided in Paragraph A of this Section, the Army 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.

D. Target dates for secondary documents are not subject to Parts XI (Resolution of Disputes), XII (Extensions), XXXI (Enforceability) and XXXII (Stipulated Penalties) of this Agreement, and may be adjusted by the Army after consultation with the EPA and NDEQ.

## XXXI. ENFORCEABILITY

A. The Parties agree that:

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

under Sections 310(c) and 109 of CERCLA; and,

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

3. All terms and conditions of this Agreement which relate to 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 XI (Resolution of Disputes) of this Agreement which establishes a term, condition, timetable, deadline or schedule shall be enforceable by any person pursuant to Section 310(c) of CERCLA, and any violation of such term, condition, timetable, deadline or schedule will be subject to civil penalties under Sections 310(c) and 109 of CERCLA.

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

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

D. The Parties agree to exhaust their rights under Part XI, 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.

## XXXII. STIPULATED PENALTIES

A. In the event that the Army fails to submit one of the primary documents listed in Section XXIX (Deadlines), Paragraph A, B or C, to either the EPA or NDEQ 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, the EPA may assess a stipulated penalty against the Army, unless such failure is a result of Force Majeure as defined in Section XXXIII (Force Majeure) of this Agreement. A stipulated penalty may be assessed in an amount not to exceed $5,000 for the first week (or part thereof), and $10,000 for each additional week (or part thereof) for which a failure set forth in this Paragraph occurs.

B. Upon determining that the Army has failed in a manner set forth in paragraph A, the EPA shall so notify the Army in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the Army shall have fifteen (15) days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. The Army shall not be liable for the stipulated penalty assessed by 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 Army under this Agreement, each of the following:

1. The facility responsible for the failure;

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

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

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

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

D. Stipulated penalties assessed pursuant to this Part shall be payable to the Hazardous Substance Superfund only in the manner and to the extent expressly provided for in Acts authorizing funds for, and appropriations to, the U.S. Department of Defense (DOD).

E. The Parties understand that at this time Department of Defense (DOD) policy precludes the use of DOD funds for the payment of stipulated penalties under this Agreement. However, where stipulated penalties against the Army have been invoked and assessed in accordance with the terms of this Agreement, the Army will seek such funding through the Office of the Secretary of Defense and/or through the Congress of the United States.

F. 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.

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

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

## XXXIII. FORCE MAJEURE

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

## XXXIV. FUNDING

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

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

D. If appropriated funds are not available to fulfill the Army's obligations under this Agreement, EPA and NDEQ 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 Army will be the source of funds for activities required by this Agreement consistent with Section 211 of SARA, 10 U.S.C. Chapter 160. However, should the Environmental Restoration, Defense appropriation

be inadequate in any year to meet the total Army CERCLA implementation requirements, the DOD shall employ and the Army shall follow a standardized DOD prioritization process which allocates that year's appropriations in a manner which maximizes the protection of human health and the environment. A standardized DOD prioritization model shall be developed and utilized with the assistance of EPA and the states.

## XXXV. REIMBURSEMENT OF STATE EXPENSES

A. If there is no effective Department of Defense/State Memorandum of Agreement (DSMOA) and site-specific cooperative agreement for state cost reimbursement at formerly owned federal facilities in place at any time until termination of this Agreement as set forth in paragraph XXXVI (Termination), the parties agree that the terms and conditions of this Part shall apply.

B. The NDEQ may request management assistance funds from EPA sufficient to reimburse the NDEQ for all reasonable costs it incurs in implementing this Agreement which are not inconsistent with the National Contingency Plan. EPA agrees that this site is eligible for management assistance funds from EPA, subject to 40 C.F.R. Part 35, Subpart O, until such time as the Army agrees to provide state reimbursement.

C. The NDEQ reserves the right to withdraw from this Agreement should adequate funding for reimbursement of state costs not be provided. The NDEQ further retains all of its legal and equitable rights and remedies to recover its costs.

## XXXVI. TERMINATION

The provisions of this Agreement shall be deemed satisfied and terminated upon receipt by

the Army of written notice from the EPA and the NDEQ Director that the Army has demonstrated, to the satisfaction of the EPA and NDEQ, that all the terms of this Agreement have been completed.

## XXXVII. EFFECTIVE DATE

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

IN THE MATTER OF The U.S. Department of the Army
Former Naval Ammunition Depot
Hastings, Nebraska

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

For the United States Department of the Army:

14 July 98
Date

William E. Ryan III
Lieutenant Colonel, U.S. Army
Acting District Engineer
U.S. Army Corps of Engineers
Kansas City District

IN THE MATTER OF The U.S. Department of the Army
Former Naval Ammunition Depot
Hastings, Nebraska

9/30/97
Date

Raymond J. Fatz
Acting Deputy Assistant Secretary of the Army
(Environment, Safety and Occupational Health)
Office of the Assistant Secretary of the Army
for Installations Logistics and Environment

IN THE MATTER OF The U.S. Department of the Army
Former Naval Ammunition Depot
Hastings, Nebraska

For the Nebraska Department of Environmental Quality:

8-7-98
Date

Randolph Wood
Director, Nebraska Department of
Environmental Quality

IN THE MATTER OF The U.S. Department of the Army
Former Naval Ammunition Depot
Hastings, Nebraska

For the U.S. Environmental Protection Agency:

9-9-98
Date

Dennis Grams, P.E.
Regional Administrator
EPA, Region VII