

C. Primary Documents:

1. The Navy shall complete and transmit the draft and final Site Management Plan (SMP) and draft of the following primary documents, if such document(s) are required under the SMP, to U.S. EPA and GEPA for review and comment in accordance with the provisions of this Section. Unless otherwise specified, the documents shall be for a specific Operable Unit(s).

- a. Site Community Relations Plan (CRP)
- b. Remedial Investigation and Feasibility Study (RI/FS Work Plans)
- c. Risk Assessments Report
- d. Remedial Investigation (RI) Reports
- e. Feasibility Study (FS) Reports
(including Detailed Analysis of Alternatives)
- f. Proposed Remedial Action Plans (PRAP) (PP)
- g. Records of Decision (ROD)
- h. Remedial Design (RD) Reports
(including Design Plans and Specifications)
- i. Remedial Action (RA) Work Plans
- j. Final Remediation Reports
(including Notices of Intent to Delete)
- k. Five Year Review Reports
- l. NPL Close-Out Report

2. Only the draft final primary documents identified above shall be subject to dispute resolution. The Navy shall complete and

transmit draft primary documents in accordance with the timetable and deadlines established in Section XXIII (Deadlines) of this Agreement.

D. Secondary Documents:

1. The Navy shall complete and transmit draft documents of the following secondary documents, if such documents are required under the Site Management Plan, to U.S. EPA and GEPD for review and comment in accordance with the provisions of this Section. Unless otherwise specified, the documents shall be for specific operable unit(s). Secondary documents include:

- a. Preliminary Characterization Summary Reports
- b. Site Health and Safety Plan
- c. Baseline Risk Assessment
- d. Site Sampling and Analysis Plan
(including Quality Assurance Project Plan (QAPP) and
Field Sampling Plan)
- e. Site Quarterly Progress Reports
- f. Treatability Study Reports
- g. Remedial Action (RA) Progress Reports
- h. Remedial Design (RD) Implementation Plan
- i. Remedial Pre-Design Reports
- j. Remedial Action (RA) Post-Construction Reports

2. Although U.S. EPA and GEPD may comment on the draft documents for the secondary documents listed above, such documents

shall not be subject to dispute resolution except as provided by Paragraph B hereof. Target dates shall be established for the completion and transmission of draft secondary documents pursuant to Section XXIII (Deadlines) of this Agreement.

E. Coordination of the Project Managers on Development of Documents:

The Project Managers shall confer monthly 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 document described in Paragraphs C and D above, the Project Managers shall discuss the data to be reported in an effort to reach a common understanding with respect to the results to be presented in the draft document, to the maximum extent practicable.

F. Identification and Determination of Potential ARARs:

1. For those primary or secondary documents that consist of or include ARAR determinations, prior to the issuance of a draft document, the Project Managers shall confer to identify and propose, to the best of their ability, all potential ARARs pertinent to the document being addressed. The Navy shall consider any written interpretation of ARARs provided by GEPD. Draft ARAR determinations shall be prepared by the Navy in accordance with Section 121(d)(2) of CERCLA, 42 U.S.C. § 9621(d)(2), the NCP, RCRA and pertinent guidance and policy consistently applied by U.S. EPA and GHWMA guidance and policy relevant to remediation.

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

G. Review and Comment on Draft Documents:

1. The Navy shall complete and transmit each draft primary document to U.S. EPA and GEPD on or before the corresponding deadline established for the issuance of the document. The Navy shall complete and transmit the draft secondary documents in accordance with the target dates established for the issuance of such documents pursuant to Section XXIII (Deadlines) of this Agreement.

2. Unless the Parties mutually agree to another time period, all draft documents shall be subject to a ninety (90) calendar days period for review and comment. Review of any document by the U.S. EPA and GEPD may concern all aspects of the document including completeness and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP, RCRA and pertinent guidance and policy consistently applied by U.S. EPA and GHWMA guidance and policy relevant to

remediation. Comments by the U.S. EPA and GEPD shall be provided with adequate specificity so that the Navy may respond to the comment and, if appropriate, make changes to the draft document. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of the Navy, the U.S. EPA and GEPD shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy documents, U.S. EPA or GEPD may extend the ninety (90) calendar day comment period for an additional twenty (20) calendar days by written notice to the Navy prior to the end of the ninety (90) calendar day period. On or before the close of the comment period, U.S. EPA and GEPD shall transmit their written comments to the other Parties by registered return receipt mail.

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

4. In commenting on a draft document which contains a proposed ARAR determination, the objecting Party shall include a reasoned statement whenever it objects to any portion of the proposed ARAR determination. Whenever the U.S. EPA or GEPD objects, the objecting Party shall explain the basis for its objection(s) 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 document, the Navy shall give full consideration to all written comments on the draft document submitted during the comment period. Within sixty (60) calendar days, or such shorter period as agreed to by the Parties, of the close of the comment period on a draft primary document, the Navy shall transmit to U.S. EPA and GEPA its written response to comments received within the comment period. Within sixty (60) calendar days of the close of the Navy's response period to EPA and GEPA comments on a draft primary document or such shorter period as agreed to by the Parties, the Navy shall transmit to U.S. EPA and GEPA a draft final primary document, which shall include the Navy's response to all written comments received within the comment period. While the resulting draft final document shall be the responsibility of the Navy, it shall be the product of consensus to the maximum extent possible.

6. The Navy may extend the sixty (60) calendar day period(s) for either responding to comments in a draft document or for issuing the draft final primary document for an additional twenty (20) calendar days by providing written notice to U.S. EPA and GEPA. In appropriate circumstances, these time periods may be further extended in accordance with Section XXIV (Extensions) of this Agreement.

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

1. Dispute resolution shall be available to the Parties for draft final primary documents as set forth in Section XXVI (Resolution of Disputes) of this Agreement.

2. When dispute resolution is invoked on a draft final primary document, work may be stopped in accordance with the procedures set forth in Section XXVI (Resolution of Disputes) of this Agreement.

I. Finalization of Primary Documents:

The draft final primary document shall become the final primary document if no party invokes dispute resolution within thirty (30) calendar days of issuance of the document or, if invoked, at completion of the dispute resolution process should the Navy's position be sustained. If the Navy's determination is not sustained in the dispute resolution process, the Navy shall prepare, within not more than sixty (60) calendar days, a revision of the draft final document which conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Section XXIV (Extensions) of this Agreement.

J. Subsequent Modifications of Final Primary Documents:

Following finalization of any primary document pursuant to

Paragraph I above, any Party to this Agreement may seek to modify the document, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in Subparagraphs 1 and 2 below.

1. A Party may seek to modify a primary document after finalization if it determines, based on Significant New Information/Significant New Site Conditions 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 provide justification for such modification.

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 document shall be required only upon a showing that: (1) The requested modification is based on Significant New Information/Significant New Site Conditions, and (2) the requested modification could be of significant assistance in evaluating impacts on the public health, welfare or the environment, in evaluating the selection of remedial alternatives, or in protecting human health, welfare and the environment.

3. Nothing in this Section shall alter U.S. EPA's or GEPD's ability to request the performance of additional work that was not

contemplated by this Agreement. The Navy's obligation to perform such work must be established by either a modification of a report or document or by amendment to this Agreement pursuant to Section XXXI (Amendment of Agreement).

IX. SCOPE OF THE AGREEMENT

A. This Agreement shall apply to all releases and threats of release of hazardous substances, pollutants, contaminants or constituents for which response authorities are provided under CERCLA/SARA and Sections 3008(h) and 3004(u) and (v) of RCRA, 42 U.S.C. § 6928(h) and 6924(u) and (v) and O.C.G.A. 12-8-66(e) and .71(b) of GHWMA.

B. The Navy shall conduct the work identified within the scope of this Agreement in accordance with the authorities cited in Section I (Jurisdiction) of this Agreement, and all provisions of RCRA, CERCLA, the NCP, and pertinent written guidance and policy consistently applied by U.S. EPA and GHWMA guidance and policy relevant to remediation.

C. The U.S. EPA and GEPD shall identify all pertinent written guidance in response to written requests by the Navy for said guidance to assist the Navy in satisfying the requirements pursuant to this Agreement.

X. PERMITS

A. The Parties recognize that under Sections 121(d) and 121(e)(1) of CERCLA/SARA, 42 U.S.C. § 9621(d) and 9621(e)(1), and

the NCP, 40 CFR Part 300 et seq. (1988) as amended, portions of the response actions called for by this Agreement and conducted entirely on-site are exempted from the procedural requirement to obtain a federal, state, or local permit but must satisfy applicable or relevant and appropriate federal and state standards, requirements, criteria, or limitations which would have been included in any such permit.

B. When the Navy proposes a response action other than an emergency removal action to be conducted entirely on-site, which in the absence of Section 121(e)(1) of CERCLA/SARA and the NCP would require a federal or state permit, the Navy shall include in the Remedial Action Work Plan:

1. Identification of each permit which would otherwise be required;

2. Identification of the standards, requirements, criteria, or limitations which would have had to have been met to obtain each such permit;

3. Explanation of how the response action proposed will meet the standards, requirements, criteria or limitations identified in subparagraph (2) immediately above, but only to the extent that this information is not covered by the statutory obligations of the Parties to identify ARARs Upon request of the Navy, U.S. EPA and GEPD will provide their position with respect to B(2) and B(3) above in a timely manner.

C. Paragraph A above is not intended to relieve the Navy from complying with federal, state, or local hazardous waste management requirements whenever it proposes a response action involving the shipment or movement of a hazardous substance or waste off the facility.

D. The Navy shall provide U.S. EPA and GEPA Project Managers written notice of any permits or other approvals required for off-site activities as soon as it becomes aware of the requirement. Upon request, the Navy shall provide U.S. EPA and/or GEPA Project Managers copies of all such permit applications and other documents related to the permit or approval process.

E. If a permit or other authorization necessary for implementation of this Agreement is not issued/granted (or is proposed to be issued or renewed in a manner which is materially inconsistent with the requirements of any Work Plan reached pursuant to this Agreement), the Navy agrees to notify U.S. EPA and GEPA of the inconsistency as soon as possible. The Project Managers shall then meet to consider the appropriate course of action.

F. During the pendency of any delay pursuant to Paragraph E above, the Navy shall continue to implement those portions of the applicable Work Plan which are not directly or indirectly dependent upon a permit/approval in question and which can be implemented pending final resolution of the permit/approval issue(s).

G. Neither this Paragraph nor any other Paragraph of this Agreement shall obviate the need for Hazardous Waste Facility Permit No. HW-050(ST) or for any other permit required by GHWMA, except to the extent that Section 121(e)(1) of CERCLA/SARA, 42 U.S.C. § 9621(e)(1), eliminates the need for such permit. Similarly, nothing in this Agreement shall obviate the need for strict compliance with the terms of all permits issued.

XI. IMMINENT AND SUBSTANTIAL ENDANGERMENT

A. An authorized Navy Official, can order a temporary cessation of work (on either his own volition or at the request of a U.S. EPA or GEPA Project Manager) in order to respond to a situation creating an imminent and substantial endangerment to human health, welfare and the environment.

B. In the event the Navy Project Manager does not concur with the U.S. EPA or GEPA Project Managers on the need to cease work, the U.S. EPA Project Manager shall provide the Navy Project Manager with a written directive to cease work. The written directive shall include the reason for ceasing work, the authority U.S. EPA or GEPA's is acting under to order the cessation and the signature of the authorizing official. After a written directive is issued to the Navy, the Parties agree to discontinue work and to toll relevant deadlines for such period of time as needed to take appropriate action, to abate the danger. Any dispute regarding the existence of an imminent and substantial endangerment or any action necessary to

abate such condition will be resolved pursuant to Section XXVI (Resolution of Disputes) of this Agreement.

C. Notwithstanding any other provision of this Agreement, the Navy retains the right, consistent with Executive Order 12580, to conduct such emergency actions as may be necessary to alleviate immediate threats to human health, welfare or the environment from the release or threat of release of hazardous substances, pollutants, contaminants or constituents at or from the site. Such actions may be conducted at any time and shall be conducted in accordance with all applicable laws and Hazardous Waste Permit No. HW-050(ST). Consistent with 10 U.S.C. § 2705, the Navy shall provide an adequate opportunity for timely review and comment by U.S. EPA, GEPA and local officials for any proposal to carry out response actions with respect to any releases or threatened releases of hazardous substances creating an imminent and substantial endangerment and before undertaking such response actions. The preceding sentence does not apply if the action is an emergency removal taken because of imminent and substantial endangerment to human health, welfare or the environment and consultation would be impractical.

D. The Navy shall provide the other Parties with oral notice as soon as possible, but no later than the following business day after the Navy determines that an emergency action is necessary due to an imminent and substantial endangerment to human health, welfare or

the environment. In addition, within five (5) days of initiation of such action, the Navy shall provide written notice to the other Parties explaining why such action is or was necessary to abate an imminent and substantial endangerment. Promptly thereafter, the Navy shall provide the other Parties with the written basis (factual, technical, scientific) for such action and any available documents supporting such action. Upon completion of such an emergency action, the Navy shall notify the Parties in writing that the emergency action has been implemented. Such notice shall state whether, and to what extent, the emergency action varied from the description of the action provided in the written notice provided pursuant to the second sentence of this Paragraph.

E. This Section shall not be construed to relieve the Navy from compliance with state and federal notice requirements applicable to releases.

XII. REPORTING

A. The Navy shall submit to U.S. EPA and GEPD quarterly during the calendar year written progress reports which identify and briefly describe the actions which the Navy has taken during the previous quarter to implement the requirements of this Agreement. Progress reports shall also identify and briefly describe the activities scheduled to be taken during the upcoming quarter. Progress reports shall be submitted within thirty (30) calendar days following the end of the previous quarter following the effective

date of this Agreement. The progress reports shall include a statement of the manner and extent to which the requirements and time schedules set out in this Agreement and approved Work Plans are being met. In addition, the progress reports shall identify any anticipated delays in meeting time schedules, the reason(s) for the delay and actions taken to prevent or mitigate the delay.

B. The Navy shall submit notice of a Significant New Site Condition/Significant New Information within five (5) days of such determination by the Navy.

XIII. NOTIFICATION

A. Unless otherwise specified in this Agreement, the following shall be sent by certified registered, return, receipt mail, facsimile machine or hand delivery to Project Managers or their designated agent(s):

1. Any document provided pursuant to a schedule or deadline identified in or developed under this Agreement.
2. Any required notice of Significant New Site Conditions/Significant New Information.
3. Any decisions on remedial action selected by the Parties.
4. Any notice of dispute and response thereto submitted under Section XXVI (Resolution of Disputes) of this Agreement.
5. Any request, and response thereto, for extensions under Section XXIV (Extensions) of this Agreement.

6. Any notice of Force Majeure under Section XXV (Force Majeure) of this Agreement.

7. Any notice of cessation of work due to an imminent and substantial endangerment situation under Section XI (Imminent and Substantial Endangerment) of this Agreement.

B. The items listed in Paragraph A above shall be transmitted as shown below:

Mail:

U.S. EPA: U.S. Environmental Protection Agency
Region IV
Waste Management Division
RCRA and Federal Facilities Branch (2nd Flr)
Attn.: MCLB Remedial Project Manager
345 Courtland Street NE
Atlanta, GA 30365

GEPD: Georgia MCLB Project Manager
Georgia Environment Protection Division
Floyd Towers East, Suite 1154
205 Butler Street
Atlanta, Georgia 30334

Navy: Southern Division
Naval Facilities Engineering Command
Code 18217
MCLB Remedial Project Manager
2155 Eagle Drive
Charleston, South Carolina 29411-0068

Information copies of the items listed in Paragraph A above shall be delivered to the MCLB address below.

Director,
Facilities and Services Division
Marine Corps Logistics Base
Code 500
Albany, Georgia 31704

C. Unless otherwise requested, all routine correspondences, including quarterly progress reports, may be sent via regular mail to the above-named persons. Any time limitations shall commence upon receipt.

XIV. PROJECT MANAGERS

A. The U.S. EPA, GEPD and the Navy shall each designate a Project Manager and Alternate for the purpose of overseeing the implementation of this Agreement. Within ten (10) days of the effective date of this Agreement, each Party shall notify the other Parties in writing of the name and address of their Project Manager/Alternate. Any Party may change its designated Project Manager/Alternate by notifying the other Parties, in writing, within five (5) days of the change. To the maximum extent possible, communications between the parties concerning the implementation of this Agreement shall be directed through the Project Managers as set forth in Section XIII (Notification) of this Agreement. As a matter of course, all written communications shall be sent to the primary point of contact as described in Section XIII (Notification) above. Each Project Manager shall be responsible for assuring that all communications from the other Project Managers are appropriately disseminated and processed.

B. The Project Managers or their designees shall have the authority to:

1. Take samples, request split samples and ensure that work is performed properly and pursuant to Section XV (Sampling and Data Document Availability) of this Agreement as well as pursuant to the Appendices and plans incorporated into this Agreement;

2. Observe all activities performed pursuant to this Agreement;

3. Take photographs subject to national security related restrictions that may be imposed by military authorities at specific locations pursuant to Section 120(j) of CERCLA, 42 U.S.C. § 9620(j);

4. Make such other reports on the progress of the work as are appropriate; and

5. Review records, files and documents relevant to this Agreement.

C. Any Project Manager may request minor field modifications to the work to be performed pursuant to this Agreement, or in techniques, procedures or designs utilized in carrying out this Agreement, which are necessary to the completion of the project. Any minor field modifications requested by any Party must be approved orally by all three (3) Project Managers to be effective. If unanimous agreement cannot be reached on the proposed minor field modification, the Parties shall use the procedures of Section XXVI (Resolution of Disputes) of this Agreement. Within five (5) days following a modification made pursuant to this paragraph, the Project Manager who requested the modification shall provide written

notification to the other Project Managers which delineates the modification and reasons therefore.

D. The Facility Installation Restoration (IR) Manager or his designated representative shall be physically present or reasonably available to supervise work performed at MCLB during implementation of the work performed pursuant to this Agreement.

E. Each Project Manager shall make himself reasonably available to the other Project Managers for the pendency of this Agreement.

XV. SAMPLING AND DATA DOCUMENT AVAILABILITY

A. The Parties shall provide as soon as possible, but no later than 120 days after collection, quality assured results of sampling, tests or other data generated by such Party, or on their behalf, with respect to the implementation of this Agreement. The Parties shall use the following U.S. EPA and GEPD approved quality assurance, quality control and chain of custody procedures throughout all sample collection and analysis activities:

- Engineering Support Branch Standard Operating Procedures and Quality Assurance Manual, April 1, 1986.
- Characterization of Hazardous Waste Sites A Methods Manual, Volume 11. EPA-600/4-84-076.
- Test Methods for Evaluating Solid Waste, Current Edition, GPO #955-001-00000-1, EPA #SW-846.

Any deviation from the above referenced procedures shall be submitted and approved as part of the site sampling analysis plan.

B. At the request of any Party the sampling Party shall allow split samples to be taken by any other Party during sample collection conducted during the implementation of this Agreement. Except for sampling performed during the course of routine compliance inspections, the Project Manager obtaining the sample shall notify the other Project Managers not less than twenty-one (21) calendar days in advance of any sample collection to the maximum extent practicable. If it is not possible to provide twenty-one (21) calendar day notification, the Project Manager shall notify the other Project Managers as soon as possible after becoming aware that samples will be collected.

XVI. RETENTION OF RECORDS

Each Party to this Agreement shall preserve all records and documents forming the Administrative Record for a minimum of ten (10) years after termination of this Agreement despite any other document retention policy. Any Party desiring or required to destroy or dispose of document(s) or record(s) shall notify the other Parties at least forty-five (45) days prior to destruction or disposal of any such documents or records. Upon request by any Party, all records or documents pending destruction or disposal shall be made available for the requesting Party's review and retention.

XVII. SITE ACCESS

A. U.S. EPA and GEPD authorized representatives shall have authority to enter and move about the facility at all reasonable times for any purpose consistent with this Agreement including, but not limited to;

1. Inspecting records, operating logs, contracts and other documents relevant to implementation of this Agreement;

2. Reviewing the progress of the Navy, its response action contractors or lessees in implementing this Agreement;

3. Gathering samples and conducting such analyses of those samples as is necessary to implement this Agreement; and

4. Verifying the data submitted to the U.S. EPA and GEPD by the Navy.

The Navy shall honor all reasonable requests for such access by the U.S. EPA and GEPD conditioned only upon presentation of proper credentials. However, such access shall be obtained in conformance with Navy security regulations and in a manner minimizing interference with any military operations at MCLB. The Parties recognize that MCLB is a National Security installation thereby requiring that the U.S. EPA and GEPD shall refrain from using cameras or recording devices at the installation without the prior permission of the Navy. Such permission shall not be unreasonably withheld. The Navy shall provide an escort, for purposes consistent with the provisions of this Agreement.

B. To the extent that access is required to areas of the installation presently owned by or leased to parties other than the Navy, the Navy agrees to initiate negotiations and exercise any authority it may have to obtain access pursuant to Section 104(e) of CERCLA/SARA, 42 U.S.C. § 9604(e), from the present owners and/or lessees within thirty (30) calendar days after the relevant documents which require access are finalized. The Navy shall use its best efforts to obtain access agreements which shall provide reasonable access to the authorized representatives of all Parties.

C. During negotiations with property owners on whose property Navy monitoring wells, pumping wells, treatment facilities or other response actions are to be located, the Navy will request owners to notify the Parties by registered/return receipt mail, at least forty-five (45) calendar days prior to any conveyance or any other transfer of any interest in the property. The Navy will use its best efforts to ensure the continued operation of the monitoring wells, treatment facilities, or other response actions installed pursuant to this Agreement.

D. Should the Navy be denied access to non-federal property, within thirty (30) calendar days of the denial, it will advise the Parties of that denial and will describe those actions taken to gain access. Within sixty (60) days or, such shorter period as may be agreed to by the Parties, the Navy shall submit appropriate modification(s) to affected Work Plans and schedules.

E. The Navy Project Manager may request the assistance of the other Parties' Project Managers in obtaining access to non-federal property as appropriate.

XVIII. CONFIDENTIAL INFORMATION

The Navy may possess information which is subject to a confidentiality claim as established by the Navy pursuant to regulations found at 32 CFR Part 701. In the event that the Navy submits information to other parties pursuant to this Agreement which is subject to a confidentiality claim, such information shall be clearly designated by the Navy as confidential. If no confidentiality claim accompanies the information when it is submitted, the information may be made available to the public without further notice to the Navy.

Upon receipt of material claimed as confidential, U.S. EPA shall review the confidentiality claim pursuant to 40 CFR Part 2, and shall make an independent confidentiality determination. The Navy's prior confidentiality determination made pursuant to 32 CFR Part 701 shall be relevant to, but shall not control, U.S. EPA's confidentiality determination.

In the event that U.S. EPA determines that information submitted by the Navy pursuant to this Agreement contains confidential business information ("CBI"), U.S. EPA shall manage such information according to U.S. EPA procedures for the management of CBI.

In the event that U.S. EPA determines that information submitted by the Navy pursuant to this Agreement does not contain CBI as established pursuant to 40 CFR Part 2, the Parties to this Agreement recognize that the conflicting confidentiality determinations made by U.S. EPA and the Navy give rise to a unique inter-agency dispute. Therefore, in the event of such conflicting determinations, U.S. EPA and the Navy agree to jointly elevate the resulting dispute to their respective offices of General Counsel for assistance in resolving the dispute. The Parties agree to abide by the final inter-agency resolution of the dispute resulting from such elevation, including appropriate management of the information in question in accordance with the resolution of the dispute.

Nothing in this Part shall serve as a limitation on the Navy's right to classify information for national security purposes pursuant to the national security provisions referenced in Section 120(j)(2) of CERCLA, 42 U.S.C. § 9620(j)(2), or to seek site-specific Presidential orders under Section 120(j)(1) of CERCLA, 42 U.S.C. § 9620(j)(1). Except as otherwise provided by Section 120(j) of CERCLA, analytical data shall not be claimed as confidential by the Navy.

If federal law so requires, such information shall not be publicly disclosed by GEPD pursuant to O.C.G.A. Section 50-18-72(a)(1) and GHWMA. If no claim of confidentiality accompanies the information when it is submitted, the information may be made available to the public without further notice to Navy.

XIX. FIVE YEAR REVIEW

A. Consistent with Section 121(c) of CERCLA/SARA, 42 U.S.C. § 9621(c) and OSWER Directive 9320.2-3A, Procedures for Completion and Deletion of NPL Sites, the Parties agree that they will conduct an initial review of the status of each remedial action that results in any hazardous substances, contaminants or pollutants remaining at the site five years after the initiation of such final remedial action(s) to assure that human health, welfare, and the environment are being protected. The review will be conducted on such remedial actions each five (5) years thereafter until all remediation is determined by each of the Parties to have been effective. If during any such review it is agreed by the Parties that additional action or modification of the remedial action is appropriate, the Navy shall take such steps as necessary to address the identified shortcoming.

B. Any dispute under this Section shall be resolved under Section XXVI (Resolution of Disputes) of this Agreement.

XX. OTHER CLAIMS

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

pollutants, contaminants or constituents found at, taken to, or taken from MCLB.

B. Neither the U.S. EPA nor Georgia shall be held as a party to any contract entered into by the Navy to implement the requirements of this Agreement.

C. The Navy shall notify the appropriate federal and state natural resource trustees as required by Section 104(b)(2) of CERCLA/SARA, 42 U.S.C. § 9604(b)(2), and Section 2(e)(2) of Executive Order 12580. Except as provided herein, the Navy is not released from any liability which it may have pursuant to any provisions of State and federal law, including any claim for damages for liability to the destruction of, or loss of natural resources.

XXI. RESERVATION OF GEORGIA'S RIGHTS

By entering into this Agreement, the GEPD does not waive any right or authority it may have under any Georgia law, but expressly reserves all of the rights and authority it may have thereunder, including the right to order abatement of an imminent hazard to the public health or the environment, and reserves all rights it may have under Section 121 of CERCLA, 42 U.S.C. § 9621. GEPD expressly agrees to exhaust any applicable remedies provided in Section VIII (Consultation with U.S. EPA and GEPD) and Section XXVI (Resolution of Disputes) of this Agreement before pursuing any other remedies it may have. Specifically, GEPD reserves any right and authority it may have to require corrective action for the entire facility in

accordance with O.C.G.A. Section 12-8-66(c) and its right to challenge the selection of the remedial action under CERCLA Section 121(f)(3)(a). Unless expressly waived by law, Georgia does not waive its Sovereign Immunity by entering into this Agreement.

XXII. STIPULATED PENALTIES

A. In the event that the Navy fails to submit a primary document to U.S. EPA pursuant to the appropriate timetable or deadline in accordance with the requirements of this Agreement, or fails to comply with a term or condition (including any deadlines or schedules for work under this Agreement) which relates to a CERCLA response action, U.S. EPA may assess a stipulated penalty against the Navy. 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 Section occurs.

B. Upon determining that the Navy has failed in a manner set forth in Paragraph A above, U.S. EPA shall so notify the Navy in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the Navy shall have thirty (30) calendar days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. The Navy shall not be liable for the stipulated penalty assessed by U.S. EPA if the failure is determined, through the dispute resolution process, not to have occurred. If dispute