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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII
and
THE STATE OF UTAH DEPARTMENT OF HEALTH
and
THE UNITED STATES DEPARTMENT OF ENERGY

IN THE MATTER OF: UNITED STATES DEPARTMENT OF ENERGY MONTICELLO (UTAH) SITE: MONTICELLO VICINITY PROPERTIES NPL SITE and MONTICELLO MILLSITE Federal Facility Agreement pursuant to section 120 of 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	FEDERAL FACILITY AGREEMENT PURSUANT TO CERCLA SECTION 120

FEDERAL FACILITIES AGREEMENT

Based on the information available to the Parties on the effective date of this FEDERAL FACILITY AGREEMENT (the 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:

(i) The United States Environmental Protection Agency, Region VIII (U.S. EPA), 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. section 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, as amended) and Executive Order 12580;

(ii) U.S. EPA, Region VIII, enters into those portions of this Agreement that relate to interim remedial actions and final remedial actions pursuant to section 120(e)(2) of CERCLA/SARA, and Executive Order 12580;

(iii) The United States Department of Energy (DOE) enters into those portions of this Agreement that relate to the RI/FS pursuant to section 120(e)(1) of CERCLA, Executive Order 12580, the National Environmental Policy Act, 42 U.S.C. § 4321, and the Atomic Energy Act of 1954 (AEA), as amended, 42 U.S.C. § 2201;

(iv) The DOE enters into those portions of this Agreement that relate to interim remedial actions and final remedial actions pursuant to section 120(e)(2) of CERCLA/SARA, Executive Order 12580, and the AEA.

(v) The State of Utah, Department of Health (the State), enters into this Agreement pursuant to CERCLA, as amended, sections 107, 120(f), 121 and section 310.

Pursuant to section 120(a) of CERCLA, as amended, DOE agrees that it is bound by this Agreement and that the terms of this Agreement may be enforced against DOE pursuant to Part XXX of this Agreement. EPA agrees that in the exercise of its jurisdiction it will recognize DOE's responsibilities under the Atomic Energy Act of 1954, as amended.

The activities undertaken pursuant to this Agreement are subject to approval by EPA and shall not be inconsistent with CERCLA/SARA and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. Part 300, Federal Register Vol. 50, No. 224, at 47912 (November 20, 1985) [National Contingency Plan or NCP]. Any revisions to the NCP shall be incorporated by modification of this Agreement.

II STATEMENT OF PURPOSE

A. The general purposes of this Agreement are to:

1. Ensure that the environmental impacts associated with past and present activities at the Monticello Site (the Site) have been and will continue to be thoroughly investigated and that appropriate response action is taken and completed as necessary to protect the public health and welfare and environment.

2. Evaluate all past investigative and response actions taken at the Site and documented by DOE in Radiological Engineering Assessments (REAs) and

related documents to determine whether they are the functional equivalent of, and consistent with, those actions and documentation required by CERCLA, as amended, the NCP, and Superfund guidance and policy.

3. Facilitate cooperation and the exchange of information and expertise of the Parties to this action.

4. Establish a procedural framework and schedule for developing, implementing, and monitoring appropriate response actions at the Site in accordance with CERCLA/SARA, the NCP, and Superfund guidance and policy.

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

1. Identify Interim Remedial Action (IRA) alternatives, if any, which are appropriate at the Site prior to the implementation of final remedial actions for the Site. This process is designed to promote cooperation among the Parties in identifying IRA alternatives prior to selection of final IRAs.

2. Establish requirements for the performance of a RI to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release or threatened release of hazardous substances, pollutants, or contaminants at the Site and to establish requirements for the performance of a FS for the

Site to identify, evaluate, and select alternatives for the appropriate remedial action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants, or contaminants at the Site in accordance with CERCLA/SARA.

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.

4. Implement the selected interim and final remedial action(s) in accordance with CERCLA/SARA.

5. Assure compliance with applicable Federal and state hazardous waste laws and regulations for matters covered by this Agreement.

6. Describe the roles and responsibilities of the Parties.

7. Describe and list the applicable or relevant and appropriate legal requirements for this remedial action.

8. Describe the procedures by which additional properties or locations may be added to or deleted from the Site.

9. Identify existing documentation prepared by DOE that is functionally equivalent to an RI/FS and/or other CERCLA/SARA requirements and is consistent with the

NCP. Also identify sampling, analysis, chain of custody, and related protocols followed by DOE and/or its contractor laboratories that are functionally equivalent to, or meet the requirements of, EPA-approved procedures for purposes of meeting CERCLA/SARA requirements.

10. With respect to current and future activities at the Site, establish requirements for the performance of the Remedial Investigation and Feasibility Study (RI/FS) or equivalent DOE process consistent with CERCLA, as amended, the NCP, and EPA guidance and policy.
11. Identify the nature, objective, and schedule of response actions to be taken at the Site(s).
12. Identify the process by which the Site may be deleted from the NPL.
13. Provide for continued operation and maintenance of the selected remedial action(s).

III DEFINITIONS

Except as noted below or otherwise explicitly stated, the definitions provided in section 101 of CERCLA, as amended, 42 U.S.C. § 9601, shall control the meaning of the terms used in this Agreement.

In addition:

A. "Additional Work" within the context of this Agreement shall mean any new or different work outside the originally agreed upon Scope of Work.

B. "Agreement" shall refer to this document and shall include all Attachments, Addenda, and Modifications to this document. All such Attachments, Addenda, and Modifications shall be appended to and made an integral and enforceable part of this document.

C. "ARARs" or "Applicable or Relevant and Appropriate Requirements," as they relate to cleanup standards, shall mean the following:

1. "Applicable" requirements are those cleanup standards, standards of control, and other substantive environmental protection requirements, criteria, or limitations promulgated under Federal or state law that specifically address a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstances at a CERCLA site.
2. "Relevant and appropriate" requirements mean those cleanup standards, standards of control, and other substantive environmental protection requirements, criteria, or limitations promulgated under Federal or state law that while not "applicable" to a hazardous substance, pollutant, or contaminant, remedial action, location, or other circumstances

at a CERCLA site address problems or situations sufficiently similar to those encountered at the CERCLA site that their use is well suited to a particular site.

D. "Authorized representative" shall include a Party's contractors acting in a specifically designated or defined capacity, including an advisory capacity.

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

F. "Completion Report" is the document which demonstrates the effectiveness of the remedial action and provides a basis for certification pursuant to Part X of this Agreement.

G. "Contaminated Properties," for the purposes of this Agreement, shall include those properties which: (1) exceed either the Health and Environmental Protection Standards for Uranium Mill Tailings (40 C.F.R. Part 192) or the U.S. Department of Energy Guidelines for Residual Radioactive Material at Formerly Utilized Sites Remedial Action Program (FUSRAP) or remote Surplus Facilities Management Program (SFMP) sites; or, (2) any properties within the Monticello Site which contain hazardous substances as defined in 42 U.S.C. § 101(14) that EPA, after consultation with the State, determines warrant remedial action pursuant to the terms of this Agreement.

H. "Days" shall mean calendar days, unless business days are specified. Any submittal or Written Statement of Dispute that under the terms of this Agreement would be due on a Saturday, Sunday, State of Utah, or Federal holiday shall be due on the following business day.

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

J. "Functional Equivalent" shall mean a review by EPA, after consultation with the State, to determine whether an activity or element of work undertaken or performed pursuant to this Agreement including a document, submittal, contract, or action developed or taken pursuant to this Agreement meets appropriate procedural and substantive objectives, standards, and requirements set forth pursuant to CERCLA, as amended, the National Contingency Plan (NCP), U.S. EPA guidelines, regulations, rules, criteria, national CERCLA/SARA policy, and CERCLA/SARA practices in effect at the time of performance of the activity or element of work. These standards shall be applied by EPA in the same manner and to the same extent that such standards are applied to any nongovernmental entity in accordance with recognition of DOE's statutory authorities or responsibilities.

K. "Millsite" or "Monticello Millsite" shall refer to the inactive Department of Energy uranium and vanadium mill located adjacent to the town of Monticello, Utah. See map, Attachment 1.

L. "Monticello Remedial Action Project" or "MRAP" shall refer to DOE's collective term for all of the remedial action activities referred to in Part IV herein.

M. "Monticello Site" or "Site" shall refer to both the Monticello Vicinity Properties NPL site and the Monticello Millsite.

N. "Monticello Vicinity Properties" or "Vicinity Properties" shall refer to the residential properties and contaminated land that constituted the June 10, 1986, National Priorities listing for Monticello, Utah, all properties currently authorized and funded for cleanup under DOE's Surplus Facilities Management Program (SFMP) and identified in Attachment 2 hereto and any additional properties added pursuant to the terms of Part XIII.

O. "QAPP" or "Quality Assurance Project Plan" shall refer to the definition of "Site Quality Assurance and Sampling Plan" in section 300.6 of the NCP and require, at a minimum, the elements described in section 300.68(k).

P. "Remedial Investigation" or "RI" means that investigation conducted to fully determine the nature and extent of the release or threat of release of hazardous substances, pollutants, or contaminants and to gather necessary data to support the feasibility study and endangerment assessment.

Q. "Responsiveness Summary" shall follow EPA guidance and shall specify public, state, and EPA reaction to the draft Feasibility Study and the preferred alternative for remedial response action (Proposed Plan). The summary should include

written and oral comments from individual citizens, citizen groups, local officials, and responsible parties.

R. "Risk Assessment" is an analysis of scientific evidence in order to evaluate the relation between exposure or potential exposure to hazardous substances and the potential occurrence of disease or threat to public health.

S. "Scope of Work" is an initial project description.

T. "Site" shall include the properties contained in the Monticello Vicinity Properties NPL Site and the Monticello Millsite as defined in Part IV of this Agreement.

U. "State" shall refer to the State of Utah, its employees, contractors, and authorized representatives.

V. "Submittal" shall mean every document, report, schedule, deliverable, Work Plan, or other item to be submitted to EPA and the State pursuant to this Agreement.

W. "Timetables and deadlines" shall mean schedules and all work and actions which are to be completed and performed in conjunction with such schedules (including performance of actions established pursuant to the dispute resolution procedures set forth in Part XIV of this Agreement.)

X. "U.S. DOE" or "DOE" shall mean the United States Department of Energy or any successor agencies, its employees, contractors, and authorized representatives.

Y. "U.S. EPA" or "EPA" shall mean the United States Environmental Protection Agency, its employees, contractors, and authorized representatives.

Z. "Work Plan" shall refer to the detailed plan developed from the Scope of Work.

aa. "Written Statement of Dispute" shall mean a written statement by a Party of its position with respect to any matter subject to dispute resolution pursuant to Part XIV of this Agreement.

IV MONTICELLO SITE

For the purposes of this Agreement, the Monticello Site ("the Site") shall refer to the June 10, 1986, National Priorities listing for Monticello, Utah, all properties currently authorized and funded for cleanup under DOE's Surplus Facilities Management Program (SFMP), identified in Attachment 2 attached hereto and incorporated herein, the Monticello Millsite and contiguous property as described in Attachment 5, and any additional properties added according to the procedures described in Part XIII.

V STATEMENT OF FACTS

A. The original Monticello Mill ("the Mill" or "Millsite"), built in 1942 in the town of Monticello, Utah, was financed by the United States government through its agent, the Defense Plant Corporation, to provide additional sources of vanadium and uranium needed during World War II. Various government agencies operated the Mill until 1947. The Atomic Energy Commission (AEC) obtained the Mill in 1948 and operated it through 1959 under cost-type

contracts to produce both uranium and vanadium. Mill operations were terminated on January 1, 1960. Throughout the operating period, tailings from the milling process at the Monticello Millsite were removed from the site either through natural processes or by human activity and were used for construction-related activities in the area.

B. Unknown quantities of tailings were used by local contractors and citizens as fill material and aggregate for mortar and concrete in construction throughout the town of Monticello. At least 75 properties were ultimately determined to be contaminated to a level that exceeded EPA standards and therefore required cleanup as a result of these activities. Tailings particles were carried by wind and water and contaminated areas downgradient from the Millsite and from contaminated areas where tailings had been deposited by human activities.

C. Radiologic surveys, decontamination, and stabilization activities at the Millsite and adjacent tailings areas were conducted during the 1960s, 1970s, and early 1980s by DOE and EPA. Congress passed the Uranium Mill Tailings Radiation Control Act in 1978 (P.L. 95-604) (UMTRCA) with the primary objective of reducing the potential hazard to the public due to long-term exposure to low-level radioactivity associated with mill tailings and related contaminated materials derived from the former operations of currently inactive uranium mills. The Uranium Mill Tailings Remedial Action (UMTRA) program was created to conduct these remedial actions in accordance with EPA standards

(40 C.F.R. Part 192). However, UMTRCA did not authorize remedial action at inactive mill tailings sites owned by the Federal government. Pursuant to its authority under the AEA, DOE established the Surplus Facilities Management Program (SFMP) in 1979 to conduct remedial actions at surplus Federally-owned sites (i.e., sites surplus to the government's needs and no longer in use). In 1980, the Monticello Millsite, because it is DOE owned, was accepted into the SFMP. The DOE SFMP office has adopted as guidelines the technical requirements of the Standards for Remedial Action at Inactive Uranium Processing Sites (40 C.F.R. Part 192) and Nuclear Regulatory Commission (NRC) radiological protection standards (U.S. NRC, 1982).

D. The Millsite (referred to in the project as the Monticello Remedial Action Project, or MRAP) has been characterized, and data and information has been submitted to EPA for HRS scoring. The MRAP is currently undergoing National Environmental Policy Act (NEPA) review. DOE has established an official list of Vicinity Properties designated for remedial action under its SFMP based on the surveys mentioned in paragraph C above and described in more detail below. Radiologic surveys have been conducted throughout the town of Monticello to identify the existence, nature, and magnitude of radiation exposure from mill tailings originating from the Monticello Millsite (see Attachment 4). Such surveys include the following:

1. The 1971 and 1980 EPA-subsidized mobile scanning surveys (U.S. EPA, 1972; Bendix Field Engineering

Corp., 1982) were performed by DOE contractors. These surveys identified 98 anomalous properties.

2. In 1982, Bendix Field Engineering Corporation, under contract to DOE, investigated a total of 114 properties and included the 98 properties identified above plus an additional 16 properties which were surveyed at the request of landowners. An arbitrary number of surface samples were taken from 35 of these properties, and laboratory analyses were performed. As a result of this survey and an Oak Ridge National Laboratory (ORNL) survey performed in 1983 which added 36 more properties to the investigation, 50 properties were identified as candidates for response action.

3. In June, 1984, a radiation survey of 21 buildings in Monticello was conducted by EPA Region VIII personnel together with personnel from the State of Utah and DOE. Indoor radon and radon daughter measurements were made in 19 of the 21 buildings, and interior gamma radiation measurements were made in 10 buildings not previously surveyed by DOE. As a result of the surveys, 10 buildings were identified for further investigation.

E. Of the 50 original Vicinity Properties identified by DOE as response action candidates, DOE authorized 48 under its SFMP for cleanup. In early 1987, DOE added 14 additional properties for a

total of 62. As of July 1988, 13 additional properties have brought the total number of authorized properties to 75. Through its Grand Junction Projects Office (GJPO), DOE began cleanup of these properties in the summer of 1984 in accordance with EPA standards for cleanup and stabilization of inactive uranium mill tailings sites (40 C.F.R. Part 192). Properties contaminated with tailings from the Monticello Millsite, for which DOE has accepted responsibility, are identified in Attachment 2. DOE has also conducted cleanup action which was funded by EPA in 1984 at two (2) properties not included in DOE's SFMP.

F. The cleanup activity proposed or implemented at each Vicinity Property consists of decontamination, interim removal of identified residual radioactive material to the inactive Millsite, and restoration with clean materials. Decisions regarding the method and location of final disposal of contaminated materials at the Millsite are proceeding in accordance with the National Environmental Policy Act (NEPA) and CERCLA, as amended.

G. In October 1984, the contaminated Vicinity Properties were proposed for inclusion (as "Monticello Radioactively Contaminated Properties") on the NPL pursuant to CERCLA and were formally included on the NPL on June 10, 1986. As a result, cleanup activities at the Vicinity Properties must satisfy CERCLA/SARA requirements. Preliminary scoring of the Millsite by DOE under the HRS indicates that the Millsite will independently qualify for NPL listing. Accordingly, cleanup activities at the

Millsite will also be required to meet CERCLA and SARA requirements.

H. EPA, the State, and DOE have agreed to conduct the response action(s) at the site pursuant to this Agreement under section 120 of CERCLA, as amended.

VI CONCLUSIONS OF LAW

Based on the preceding Statement of Facts, EPA and the State have made the following Conclusions of Law:

A. DOE is a "person" as defined in section 101(21) of CERCLA, as amended, 42 U.S.C. § 9601(21).

B. The Monticello Vicinity Properties and Millsite are "facilities" as defined in section 101(9) of CERCLA, as amended, 42 U.S.C. § 9601(9).

C. Uranium and vanadium oxides are "hazardous substances" as defined by section 101(14) of CERCLA, as amended, 42 U.S.C. § 9601(14)(E).

D. The discharge, pouring, emitting, and/or disposing of these hazardous substances at the Monticello Site constitutes a "release" as defined in section 101(22) of CERCLA, as amended, 42 U.S.C. § 9601(22).

VII DETERMINATIONS

Based on the preceding Statement of Facts and Conclusions of Law, EPA and the State have determined that:

A. The Monticello Site is subject to the requirements of CERCLA, as amended.

B. DOE is a responsible party with respect to present and past releases at the Monticello Site.

C. The actions to be taken pursuant to this Agreement are reasonable and necessary to protect the public health and welfare and the environment.

D. It is appropriate and desirable for the EPA, the State, and DOE to enter into this CERCLA section 120 Agreement to address the cleanup of hazardous substances at the Monticello Site.

VIII ROLE OF STATE GOVERNMENT

A. The State of Utah is a signatory to this Agreement. Pursuant to section 120 of CERCLA, as amended, the State shall participate in the planning, selection, and implementation of the remedial action including, but not limited to, review of and comment on all applicable data and development of studies, reports, action plans, and ARARs. As provided in this Agreement, EPA's positions and determinations shall be made after consultation with the State. Consultation shall include, but not be limited to, reviewing any State comments and recommendations, advising the State of EPA's proposed position or determination, giving in writing its reasons for disagreeing with any comments or recommendations by the State, and, if requested, meeting with the State to attempt to resolve differences before announcing its position or determination. In the event that EPA and the State

cannot agree on a unified position, EPA retains final decision-making authority for determinations to be made in the course of executing this Agreement. If EPA makes a decision in such circumstances inconsistent with the State's position, the State may invoke the dispute resolution process.

B. As further provided in this Agreement and the State of Utah Superfund Memorandum of Agreement (SMOA), [Attachment 7], responsibility for oversight of the activities performed under this Agreement will be shared by EPA and the State, with EPA being the lead agency with ultimate responsibility and authority. EPA may delegate to the State the review of any particular task and shall accept recommendations from the State regarding the acceptability of any particular submittal.

IX SCOPE OF AGREEMENT

A. DOE shall submit a Scope of Work based on, at a minimum, Attachment 6. DOE shall submit to EPA and the State a Work Plan based on the Scope of Work for both the Vicinity Properties and the Millsite, detailing, at a minimum, Site boundaries, how DOE intends to choose and has chosen specific properties for evaluation and cleanup, what properties have not been surveyed, and how DOE will complete the tasks required by this Agreement. In addition, the Work Plan will detail how DOE will address the specific issues listed at the properties described in Attachment 4. The Work Plan will include specific timetables and schedules for completion of each remedial action designated in the Work Plan. The Work Plan

will also incorporate EPA's review, comment, and approval schedule and the State's review and comment schedule for documents and analyses required under this Agreement. The Work Plan will also incorporate arrangements for long-term operation and maintenance of the Millsite and any Vicinity Properties requiring maintenance. The Work Plan shall provide a detailed analysis of the Remedial Investigation/ Feasibility Study for the Millsite and any remaining Vicinity Properties. A Scope of Work and Work Plan shall not be required for any properties for which remedial action has been completed.

B. DOE shall conduct a Remedial Investigation (RI) for the Millsite based on the approved Work Plan. For the Monticello Vicinity Properties, a Remedial Investigation, based on the approved Work Plan, or the RI functional equivalent, as described in Attachment 6 of this Agreement, shall be prepared.

C. DOE shall conduct a Feasibility Study (FS) for the Millsite. For the Vicinity Properties, a Feasibility Study or its functional equivalent, as described in Attachment 6 to this Agreement, shall be prepared incorporating, at a minimum, the results of the RI. The FSs shall be based on approved Work Plans.

D. DOE shall develop remedial action alternative(s) for the Site and implement those remedial actions selected by EPA for the Site as described in paragraph O of this Part.

E. DOE shall reimburse the State, pursuant to Part XXVII of this Agreement, for any and all of its costs specifically related to the implementation of this Agreement. DOE retains the right to

pursue claims against persons other than the State for contribution or indemnification for these costs.

F. In the event of any inconsistency between the Parts of this Agreement and the Attachments to this Agreement, the specific provisions of the Parts of this Agreement shall govern unless, and until, duly modified pursuant to this Agreement.

G. EPA, after consultation with the State, agrees to provide DOE with guidance and timely response to requests for guidance to assist DOE in the performance of the requirements under this Agreement.

H. Initial proposed Federal ARARs are listed in Attachment 3 to this Agreement. Within 30 days after the effective date of this Agreement, the State shall submit to DOE and EPA a proposed list of State ARARs. DOE shall conduct a detailed ARARs analysis to establish cleanup standards at the Site, taking into account both Federal ARARs and State ARARs. DOE shall submit this ARARs analysis to EPA and the State within 60 days after the effective date of this Agreement. EPA, after consultation with the State, will determine the ARARs to be applied at the Monticello Site. If DOE or the State disputes EPA's determination, either party may initiate the Dispute Resolution procedures in Part XIV of this Agreement. ARARs shall also be re-evaluated, at a minimum, throughout the document review process described in Part XII. ARARs determinations shall be incorporated into this Agreement and shall be an enforceable part thereof.

I. DOE shall conduct a comprehensive Risk Assessment for the Millsite and any Vicinity Properties for which a Risk Assessment or its equivalent has not yet been done and shall submit the Risk Assessment to EPA and the State for review and comment by both parties and approval by EPA according to the schedule set forth in the Work Plan.

J. DOE shall submit the draft RI and FS or the functionally equivalent DOE documents described in paragraphs B and C above to EPA and the State within the time frame detailed in the Work Plan described in paragraph A above. EPA and the State shall provide written comments to the draft report within 60 days from receipt at the address provided in Part XVII of this Agreement. These comments shall be incorporated into the final report referred to in paragraph L below.

K. DOE shall provide a minimum of 30 days for formal public review of the draft final RI and FS reports or functionally equivalent DOE documents, which shall be based on the contents of the Administrative Record and made available to the public. "Formal public review" shall be considered satisfied if DOE complies with the requirements in section 117(a) of CERCLA, as amended, 42 U.S.C. § 9617.

L. DOE shall submit to EPA and the State within the time frame stated in the Work Plan described in paragraph A, the Final RI and FS reports and a Responsiveness Summary or the functional equivalent DOE documents. The Responsiveness Summary shall be based on key public concerns and incorporate EPA's and the State's

responses to the draft report. The Final Reports shall incorporate any changes due to public comment.

M. For any individual properties for which DOE claims that any of the activities described in paragraphs A through L above have been completed by the effective date of this Agreement, DOE shall prepare and submit to EPA and the State, a Completion Report describing all previously completed work performed by DOE at the Monticello Site and how that work meets the intent of CERCLA, as amended, thereby demonstrating completion of the work or its functional equivalent. This documentation shall be reviewed by EPA and the State according to the procedures in Part XII of this Agreement.

N. Following completion and submittal of the RI/FS or its functional equivalent pursuant to Part XII, DOE shall, after consultation with EPA and the State, publish its proposed remedial action alternative(s) (Proposed Plan) for a public review and comment period which will last at least 30 days. Following public comment, DOE shall submit its proposed remedial action alternative(s) (Proposed Plan) to EPA, in the form of a draft Record of Decision, and in accordance with applicable guidance. If the Parties agree on the draft Record of Decision, it shall be adopted by EPA, DOE, and the State, and DOE shall issue the final Record of Decision. If the Parties are unable to reach agreement on the draft Record of Decision, selection of a remedial action shall be made by the EPA Administrator, or his delegate, and EPA shall then prepare the final Record of Decision.

O. Following selection of the final remedial action, DOE shall submit a plan to EPA and the State for implementation of the selected remedial action, including appropriate timetables and schedules. Once the remedial action plan is approved by EPA, after consultation with the State and pursuant to Part XII, DOE shall implement the remedial action(s) in accordance with the requirements of this Agreement and time schedules referred to in paragraph P below. EPA shall consult with the State prior to approval of the remedial action plan.

P. DOE shall submit to EPA and the State, within 21 days of the effective date of this Agreement, a time schedule for completing the tasks specified in this Agreement. EPA and the State shall review the time schedule and, after consultation with the State, EPA shall notify DOE in writing, within thirty (30) days of receipt of the schedule whether the time schedule is acceptable and shall provide any comments. If the schedule is acceptable, it shall be incorporated into this Agreement and become an enforceable part thereof. If the time schedule is not acceptable, DOE shall make the changes required and resubmit the schedule within thirty (30) days of notification that it is not acceptable. DOE or the State may dispute the approved schedule according to the procedures in Part XIV.

Q. All documents required by this Part shall be incorporated into this Agreement and become an enforceable part thereof.

X COMPLETION REPORTS FOR INDIVIDUAL PROPERTIES

A. As the remedial action for each individual property in the Monticello Vicinity Properties NPL Site is completed or for any individual properties for which DOE claims remedial action has already been completed, DOE shall prepare a completion report for each Vicinity Property with certification and documentation to establish that each property is no longer a potential threat to public health, welfare, or the environment and that further remedial measures are not needed.

B. EPA and the State will review the completion report submitted by DOE. EPA, after consultation with the State, shall determine whether all appropriate response action has been implemented at the individual property based on information and conditions known by EPA and the State at that time, and whether any potential threat to public health, welfare or the environment remains from that particular property.

C. Based on information and conditions known by EPA at that time, if EPA, after consultation with the State, determines that no further response action is necessary at that particular property and that particular property no longer presents a threat to public health, welfare, or the environment, EPA shall inform DOE in writing that the response action is complete for that particular property and meets the requirements of CERCLA/SARA, the NCP, and applicable EPA and State guidance.

D. If EPA determines, after consultation with the State, that further response action is needed for that particular

property, EPA shall so notify DOE in writing. DOE shall take all necessary actions to remedy the deficiencies noted by EPA, after which time DOE may resubmit documentation to EPA and the State for a determination that the response action on that property has been completed. EPA and the State shall review and respond to this additional documentation in accordance with paragraph B and C above. The provisions of this paragraph shall again apply if EPA determines, after consultation with the State, that further response action is still warranted.

E. A determination by EPA that the response action is complete for a particular property shall not be binding on EPA while making a determination whether the Monticello Vicinity Properties NPL Site should be deleted from the NPL in accordance with the procedures of Part XI and the requirements of 40 C.F.R. § 300.66. In addition, EPA reserves the right to require additional work or remedial action for conditions unknown to EPA at the time of a determination as described in paragraph C above, or for conditions subsequent to a determination made pursuant to paragraph C above that create or may create a threat to public health, welfare and/or the environment.

XI DELETION OF THE SITE(S) FROM THE NPL

A. Upon completion of remedial action for the entire Monticello Vicinity Properties NPL Site and/or Millsite, EPA, after consultation with the State, shall apply the factors outlined in 40 C.F.R. § 300.66 and determine whether all appropriate response

action has been implemented at the individual properties, and whether any potential threat to public health or the environment remains.

B. If EPA determines, after consultation with the State, that no further response is appropriate and that the Site should be deleted from the NPL, EPA will initiate steps to delete the Site from the NPL, consistent with CERCLA, as amended, the NCP, applicable EPA policy and guidance, and the SMOA, where the latter is not in conflict with the provisions of this Part.

C. If EPA determines, after consultation with the State, that the submission does not establish sufficient documentation to warrant deletion from the NPL, EPA shall so notify DOE in writing and provide specific reasons for the determination. DOE shall take appropriate steps to correct any deficiencies noted and shall resubmit the documentation aftersuch steps are completed.

XII CONSULTATION WITH U.S. EPA AND THE STATE: REVIEW AND COMMENT PROCESS FOR DRAFT AND FINAL DOCUMENTS

A. Applicability:

1. The provisions of this Part establish the procedures that shall be used by DOE, the State, and U.S. EPA to provide the Parties 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, DOE will

normally be responsible for issuing primary and secondary documents to U.S. EPA and the State. 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. Any document, response to comments, or work product submitted to EPA under the terms of this Agreement shall be simultaneously submitted to the State. Whenever EPA or the State is required to provide documents pertaining to comments, review, or approval to DOE, the State shall submit its comments or review to EPA, and EPA shall transmit the State's comments or review to DOE along with EPA comments, review, or approval. DOE shall respond to the State's comments by sending a copy of such comments to EPA, as well as directly to the State.

3. The designation of a document as "draft" or "final" is solely for purposes of consultation with U.S. EPA and the State 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 DOE in draft, subject to review and comment by the State and EPA. Following receipt of comments on a particular draft primary document, the DOE will respond to the comments received and issue a draft final primary document subject to dispute resolution. The draft final primary document will become the final primary document either 30 days after the period established for review of a draft final document, if the dispute resolution is not invoked, or as modified by decision of the dispute resolution process.

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

C. Primary Reports:

1. DOE shall complete and transmit draft reports for the following primary documents to EPA and the State for review and comment in accordance with the provisions of this Part. If DOE submits a document which it claims is the functional equivalent of one of the documents listed below, it shall be treated as a Primary Report. DOE may also submit a combined package of Primary Documents where appropriate.

   a. Scope of Work

   b. RI/FS Work Plan, including Sampling and Analysis Plan and QAPP

   c. Risk Assessment

   d. Community Relations Plan

   e. RI Report

   f. Initial Screening of Alternatives

   g. FS Report

   h. Proposed Plan

   i. Record of Decision

   j. Remedial Design

   k. Remedial Action Work Plan

2. Only the draft final reports for the primary documents identified above shall be subject to dispute resolution. DOE shall complete and transmit draft primary documents in accordance with the timetable and

deadlines established in the Work Plan to this Agreement.

D. Secondary Documents:

1. DOE shall complete and transmit draft reports for the following secondary documents (or documents which DOE claims are the functional equivalent of the documents listed below) to EPA and the State for review and comment in accordance with the provisions of this Part:

   a. Initial Remedial Action/Data Quality Objectives
   b. Site Characterization Summary
   c. Detailed Analysis of Alternatives
   d. Post-Screening Investigation Work Plans.
   e. Treatability Studies
   f. Sampling and Data Results

2. Although EPA and the State may comment on the draft reports for the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by paragraph B hereof, or by agreement of all parties. Target dates shall be established for the completion and transmission of draft secondary reports pursuant to the Work Plan to this Agreement.

E. Meetings of the Project Coordinators on Development of Reports:

The Project Coordinators shall meet approximately every 90 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 Coordinators 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 ARARs determinations, prior to the issuance of a draft report, the Project Coordinators shall meet to identify and propose, to the best of their ability, all potential ARARs for the report being addressed. Draft ARARs determinations shall be prepared by the DOE in accordance with section 121(d)(2) of CERCLA, as amended, the NCP, and pertinent guidance issued by EPA, which is not inconsistent with CERCLA, as amended, 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 ARARs identification is 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. DOE shall complete and transmit each draft primary report to EPA and the State on or before the corresponding deadline established for the issuance of the report. DOE shall complete and transmit the draft secondary document in accordance with the target dates established in the schedule for the issuance of such reports established pursuant to Part IX of this Agreement.

2. Unless the Parties mutually agree to another time period, all draft reports shall be subject to a 60-day period for review and comment. Such review 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, as amended, the NCP, and any pertinent guidance or policy promulgated by EPA or any State guidance or policy not inconsistent with CERCLA and/or the NCP. Comments by EPA and the State shall be provided with adequate specificity so that the DOE may respond to the comment 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 DOE, EPA, or the State shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy reports, EPA or the State may extend the 60-day comment period for an additional 20 days by written notice to DOE prior to the end of the 60-day period. In appropriate circumstances, this period may be further extended in accordance with the mechanism described in Part XXXII. On or before the close of the comment period, EPA and the State shall transmit, by next day mail, their combined, written comments to DOE.

3. Representatives of DOE shall make themselves readily available to EPA and the State 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 DOE on the close of the comment period.

4. In commenting on a draft report which contains a proposed ARARs determination, EPA and the State shall provide a reasoned statement of whether either party objects to any portion of the proposed ARARs

determination. To the extent that EPA or the State does object, that party shall explain the basis for the objection in detail and shall identify any ARARs which they believe were not properly addressed in the proposed ARARs determination.

5. Following the close of the comment period for a draft report, DOE shall give full consideration to all written comments on the draft report submitted during the comment period. Within 60 days of the close of the comment period on a draft secondary report, DOE shall transmit to EPA and the State its written response to comments received within the comment period. Within 60 days of the close of the comment period on a draft primary report, DOE shall transmit to EPA and the State a draft final primary report, which shall include DOE's response to all written comments received within the comment period. While the resulting draft final report shall be the responsibility of the DOE, it shall be consistent with comments of all parties the product of consensus to the maximum extent possible.

6. DOE may extend the 60-day period for either responding to comments on a draft report or for issuing the draft final primary report for an additional 20 days by providing notice to EPA and the State. In appropriate

circumstances, this time period may be further extended in accordance with Part XXXII 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 XIV.

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

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 DOE's position be sustained. If DOE's determination is not sustained in the dispute resolution process, DOE shall prepare, within 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 XXXII hereof.

J. Subsequent Modifications of Final Reports:

Following finalization of any primary report pursuant to paragraph I above, EPA, the State, or DOE may seek to modify the report, including seeking additional field work, pilot studies,

computer modeling, or other supporting technical work, only as provided in paragraphs 1 and 2 below.

1. EPA, the State, or DOE 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. EPA, the State, or DOE may seek such a modification by submitting a concise written request to the Project Coordinator of the other Party. The request shall specify the nature of the requested modification and how the request is based on new information. EPA and the State agree that each Party will consult with the other Party prior to submitting such a request.

2. In the event that agreement is not reached by the Project Coordinators on the need for a modification, either EPA, the State, or DOE 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 the selection of remedial alternatives or in protecting human health and welfare and the environment.

3. Nothing in this Subpart shall alter EPA's ability to request the performance of additional work pursuant to Part XV of this Agreement (Additional Work) which does not constitute modification of a final document. The State may also propose that EPA request additional work from DOE pursuant to the procedures in Part XV.

XIII ADDITIONAL PROPERTIES

A. Any additional properties may be proposed by DOE, the State, or EPA for further review or response action pursuant to this Agreement on the basis of data or measurements which identify radioactive contamination exceeding EPA standards or other hazardous substances. The process for proposing such properties includes a programmatic, legal, and radiologic determination of authority and need under CERCLA, as amended, and the AEA. The process for such proposal and addition shall be initiated as follows:

1. By DOE:

   a. A proposal recommending that additional properties be included for remedial action shall be sent to EPA and the State at the addresses listed in Part XVII of this Agreement.

   b. If EPA and the State agree to the addition, the properties shall be included within the scope of this Agreement, and an addendum shall be attached and incorporated herein.

c. If either EPA or the State does not agree to the addition of the properties, EPA shall make a written determination about whether the properties shall be included. DOE or the State may initiate the Dispute Resolution procedures of Part XIV and shall provide to the other Parties a written statement of position with respect to the dispute within 30 days. After the 30-day period, or, if invoked, after the termination of the Dispute Resolution procedures, an addendum shall be attached and incorporated herein specifying the addition of any new properties.

2. By EPA:

a. EPA shall prepare and transmit to DOE and the State a proposal for addition of specific properties. The proposal shall include justifying data and measurements.

b. The proposal shall be reviewed by DOE and the State and responded to within 60 days of receipt, stating the basis for any disagreements or objections. The State shall consult with EPA before submitting its response.

c. If DOE and the State agree to the addition of the properties, the properties shall be included within the scope of this Agreement and an

addendum shall be attached and incorporated herein.

d. If either DOE or the State does not agree to the addition of the properties, EPA shall make a written determination about whether the properties shall be included. DOE or the State may initiate the Dispute Resolution procedures of Part XIV and shall provide to the other Parties a written statement of position with respect to the dispute within 30 days. After the 30-day period or, if invoked, after the termination of the Dispute Resolution procedures, an addendum shall be attached and incorporated herein specifying the addition of any new properties.

3. The State:

a. The State shall prepare and transmit to EPA, which will in turn transmit to DOE, a proposal for addition of specific properties. The proposal shall include justifying data and measurements.

b. The proposal shall be reviewed by DOE and EPA and responded to within 60 days of receipt stating the basis for any disagreements or objections. EPA shall consult with the State before submitting its response.

c. If EPA and DOE agree to the addition of the properties, the properties shall be included within the scope of this Agreement and an addendum shall be attached and incorporated herein.

d. If either EPA or DOE does not agree to the addition of the properties, EPA shall make a determination about whether the properties shall be included. DOE or the State may initiate the Dispute Resolution procedures of Part XIV and shall provide the other Parties a written statement of position with respect to the dispute within 30 days. After the 30-day period or, if invoked, after the termination of the Dispute Resolution procedures, an addendum shall be attached an incorporated herein specifying the addition of any new properties.

XIV RESOLUTION OF DISPUTES

A. 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 agree they shall make reasonable efforts to informally resolve all disputes at the Project Coordinator or immediate supervisor level. If resolution of the dispute cannot be reached, the procedures outlined below shall be implemented.

B. Within 30 days after: (1) the period established for review of a draft final primary document pursuant to Part XII (Review of Submittals) 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.

C. 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 Coordinators and/or their immediate supervisors. During this informal dispute resolution period, the Parties shall meet as necessary to discuss and attempt resolution of the dispute.

D. If agreement cannot be reached on any issue within the informal dispute resolution period, the disputing Party shall forward the written statement of dispute to the Dispute Resolution Committee (DRC), thereby elevating the dispute to the DRC for resolution.

E. The DRC will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (SES or equivalent) or be delegated the authority to participate on the DRC

for the purposes of dispute resolution under this Agreement. The EPA representative on the DRC is the Hazardous Waste Management Division Director of EPA's Region VIII. The DOE's designated member is the Assistant Manager for Special Projects and Energy Programs, Idaho Operations Office. The State's representative on the DRC shall be the Utah Bureau of Solid and Hazardous Waste CERCLA Branch Chief. 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 XVII (Notification).

F. Following elevation of a dispute to the DRC, the DRC shall have 21 days to unanimously resolve the dispute and issue a written decision. If the DRC is unable to unanimously resolve the dispute within this 21-day period the written statement of dispute shall be forwarded to the Senior Executive Committee (SEC) for resolution.

G. 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's Region VIII. The DOE's representative on the SEC is the DOE Operations Office Manager. The State's representative on the SEC shall be the Utah Bureau of Solid and Hazardous Waste Director. The SEC members shall as appropriate confer, meet, and exert their best efforts to resolve the dispute and issue a written decision. If unanimous resolution of the dispute is not reached within 21 days, EPA's Regional Administrator shall issue a written position

on the dispute. DOE or the State may, within 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 DOE or the State elects not to elevate the dispute to the Administrator within the designated 21-day escalation period, DOE and the State shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.

H. Upon escalation of a dispute to the Administrator of EPA pursuant to Subpart F, the Administrator will review and resolve the dispute within 21 days. Upon request and prior to resolving the dispute, the EPA Administrator shall meet and confer with the Secretary of DOE and the Utah Environmental Health Division Director to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide DOE and the State with a written final decision setting forth resolution of the dispute. The duties of the Administrator as set forth in this Part shall not be delegated.

I. The pendency of any dispute under this Part shall not affect the DOE'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.

J. When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Hazardous Waste Division Director for EPA Region VIII, after consultation with the State, 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. To the extent possible, EPA shall give DOE and the State prior notification that a work stoppage request is forthcoming. After stoppage of work, if DOE or the State believes that the work stoppage is inappropriate or may have potential significant adverse impacts, DOE or the State may meet with the EPA Division Director 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 by DOE or the State. Such dispute may be brought directly to either the DRC or the SEC at the discretion of DOE or the State.

K. If EPA has not issued a work stoppage order with respect to work that the State or DOE believes is inadequate or defective and likely to yield an adverse effect on human health or the environment as a result of such inadequacy or defect, or with

respect to work that the State or DOE believes is likely to have a substantial adverse effect on human health or the environment as a result of such inadequacy or defect, or with respect to work that the State or DOE believes is likely to have a substantial adverse effect on the remedy selection or implementation process, the State or DOE may request such a work stoppage order. The State and DOE may meet with the EPA Division Director to discuss the proposed 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 proposed work stoppage. The final written decision of the Division Director may immediately be subject to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC at the discretion of DOE or the State.

L. Within 21 days of resolution of a dispute pursuant to the procedures specified in this Part, DOE 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.

M. Except as provided in Part XXIX, resolution of a dispute pursuant to this Part of the Agreement constitutes a final resolution of any dispute arising under this Agreement, and the Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Part of this Agreement.

XV ADDITIONAL WORK OR MODIFICATION TO WORK

A. In the event that any Party to this Agreement determines that additional work, or modification to work, including investigatory work, engineering evaluation, and/or construction activities is necessary to accomplish the objectives of this Agreement, notification of such additional work or modification to work shall be provided to the other Party. Upon agreement that such additional work or modification to work is necessary, DOE agrees, subject to the dispute resolution procedures set forth in Part XIV, to implement any such work.

B. Any additional work or modification to work approved pursuant to Subpart A above shall be completed in accordance with the standards, specifications, and schedule determined or approved by EPA after consultation with the State. If any additional work or modification to work will significantly affect work scheduled in an adverse way or will require significant revisions to an approved Work Plan, DOE shall notify EPA and the State immediately of the situation by telephone, followed by a written record of communication within five (5) business days of the initial notification. Within 15 business days of the initial telephone contact, DOE shall transmit a written explanation of the anticipated significant adverse affect of the additional work to be performed. A "significant" revision shall constitute any revision requiring a formal change of the Agreement.

XVI REPORTING

DOE shall submit to EPA and the State monthly written progress reports which describe the actions which DOE has taken during the previous month to implement the requirements of this Agreement. Progress reports shall also describe the activities scheduled to be taken during the upcoming month. Progress reports shall be submitted by the twentieth (20th) day of each month following the effective date of this Agreement. The progress reports shall include a detailed statement of the manner and extent to which the requirements and time schedules set out in the Attachments to this Agreement are being met. In addition, the progress reports shall identify any anticipated delays in meeting time schedules, the reason(s) for the delay and action taken to prevent or mitigate the delay.

XVII NOTIFICATION

A. Unless otherwise specified, any report, document, or Submittal provided to EPA pursuant to a schedule or deadline identified in or developed under this Agreement shall be sent by certified mail, return receipt requested, or hand delivered to:

U.S. Environmental Protection Agency, Region VIII
ATTN: Lam Nguyen, Remedial Project Manager
999 18th Street, Suite 500
Denver, Colorado 80202-2405

B. Documents sent to DOE shall be addressed as follows unless DOE specifies otherwise by written notice:

U.S. Department of Energy, Idaho Operations Office
ATTN: Gerald Bowman
785 DOE Place
Idaho Falls, Idaho 83402

and

U.S. Department of Energy
ATTN: Leo Little, Manager
Grand Junction Project Office
P.O. Box 2567
Grand Junction, Colorado 81503

and

U.S. Department of Energy
ATTN: W.E. Murphie, SFMP Program Manager
NE-23, GTN
Washington, D.C. 20545

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

Bureau of Solid and Hazardous Waste
ATTN: J. Steven Thiriot
288 North 1460 West
P.O. Box 16690
Salt Lake City, Utah 84116-0690

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

XVIII PROJECT MANAGERS

A. On or before the effective date of this Agreement, EPA, the State, and DOE shall each designate a Project Coordinator and Alternate (herein jointly referred to as Project Coordinator). The EPA Remedial Project Manager shall be EPA's Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Agreement. To the maximum extent possible, all communications between DOE, the State, and EPA and all documents including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Agreement shall be directed through the Project Coordinators. Within ten (10) days of the effective

date of this Agreement, each Party shall notify all other Parties of the name and address of its Project Coordinator.

B. Any Party may change its designated Project Coordinator by notifying the other Party, in writing, within five (5) days of the change.

C. Each Project Coordinator shall be responsible for assuring that all communication from the other Project Coordinators is appropriately disseminated and processed by the entities which the respective Project Coordinators represent.

D. The EPA-designated Project Coordinator shall have the authority vested in the Remedial Project Manager and the On-Scene Coordinator by the NCP, including but not limited to, the authority to direct DOE to halt, conduct, or perform any tasks required by this Agreement and any response action portions thereof when the EPA Project Coordinator determines that conditions may present an immediate risk to public health or welfare or the environment. If EPA issues such verbal request, it shall follow up such request in writing within seven (7) days. EPA and State Project Coordinators shall also have the authority to, among other things: (1) take samples, obtain duplicate, split samples or sub-samples of DOE samples, ensure that work is performed properly and pursuant to U.S. 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, and make such other reports on the progress of the work as the Project Coordinator deems appropriate; (3) review records, files, and

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

E. The State may also recommend a work stoppage to EPA or, after consultation with EPA, to DOE, if the State has reason to believe that continuation of a particular task may result in a threat to public health or the environment. Any such recommendation must be in writing unless the urgency of the situation, in the State's discretion, requires a shorter time period for notification that can only be accomplished by other means. If the State issues such a verbal request, it shall follow up such request in writing within seven (7) days.

F. Failure or inability of DOE to comply with the schedules of performance set forth in this Agreement or in the Work Plan that result from EPA-directed cessation or modification of work shall not be deemed a violation of this Agreement and shall not subject DOE to penalties, unless the cause for the cessation or modification of work was a violation of this Agreement or the Work Plan or if DOE was responsible for creating, during the pendency of this Agreement, the conditions which led the EPA Project Coordinator to halt or modify work. DOE shall not be deemed responsible under this paragraph for having created such conditions if EPA directed DOE to undertake the actions which resulted in such

conditions or if the conditions resulted from other circumstances beyond DOE's control.

G. The absence of the EPA Project Coordinator from the facility shall not be cause for the stoppage of work.

H. The DOE Project Coordinator or State Project Coordinator may also recommend and request field modifications to the work to be performed pursuant to this Agreement or in techniques, procedures, or design utilized in carrying out this Agreement which are necessary to the completion of the project. EPA, after consultation with the State, must approve the proposed modification in writing for said modification to be effective. The DOE Project Coordinator shall have the authority to order a cessation of work in circumstances which, in his professional judgment, warrant such cessation and constitute a threat to public health or the environment if such work were to continue. In the event an order to halt work is given, the DOE Project Coordinator shall notify the EPA Project Coordinator and the State Project Coordinator verbally within one (1) working day of the order, followed up in writing within five (5) business days, and provide reasons therefore. Such an order, if approved by EPA after consultation with the State, shall not constitute a violation of the terms of this Agreement. This includes cessation by DOE for nonperformance by the remedial action contractor.

I. If agreement cannot be reached on the proposed additional work or modification to work, dispute resolution as set forth in Part XIV may be used in addition to this Part. Within five (5)

business days following a modification made pursuant to this Part, the Project Coordinator who requested the modification shall prepare a memorandum detailing the modification and the reasons thereof and shall provide or mail a copy of the memorandum to the other Project Coordinators.

J. The DOE Project Coordinator or his designee shall be physically present at the Monticello Site or reasonably available to supervise work performed at the Site during implementation of the work performed pursuant to this Agreement.

XIX QUALITY ASSURANCE

Throughout all sample collection and analysis activities, DOE shall use EPA-approved quality assurance, quality control, and chain of custody procedures. EPA, in consultation with the State, agrees to evaluate the QA, QC, chain of custody, sampling protocols, etc., used by DOE with respect to work completed at the Site for consistency with EPA-approved procedures. In the event of a conflict between EPA and State-approved procedures, compliance with EPA-approved procedures shall constitute compliance with this Part.

As EPA and the State determine it to be appropriate, DOE shall:

A. Follow the EPA guidance contained in the document entitled "Compendium of Superfund Field Operations Methods (September 1987) and other subsequent and relevant EPA guidance documents.

B. Consult with EPA and the State in planning for, and prior to submitting, a Sampling and Analysis Plan for review, concurrence, and approval.

C. Inform the EPA and State Project Coordinators in advance which laboratories will be used by DOE and ensure that EPA and State personnel and EPA-authorized and State-authorized representatives have reasonable access to the laboratories and personnel used for analyses.

D. Ensure that laboratories used by DOE perform analyses according to EPA methods or other methods deemed satisfactory to EPA. DOE shall submit all protocols to be used for analyses to EPA and the State within 14 days prior to the commencement of analyses.

E. Ensure that laboratories used by DOE for analyses participate in a Quality Assurance/Quality Control program (QA/QC) equivalent to that of, and approved by, EPA. As part of such a program and upon request by EPA in consultation with the State, such laboratories shall perform analyses of samples provided by EPA to demonstrate the quality of the analytical data. A maximum annual number of four (4) such samples may be provided to each laboratory. If State Quality Assurance/Quality Control programs are in conflict with EPA's program, compliance with an EPA-approved QA/QC program shall constitute compliance with this Part.

XX SAMPLING AND DATA/DOCUMENT AVAILABILITY

A. DOE shall make available to EPA and the State quality-assured results of sampling, tests, or other data generated by DOE, or on its behalf, with respect to the implementation of this Agreement within 45 days of collection or performance. DOE shall submit these results in the progress reports described in Part XVI of this Agreement. If quality assurance is not completed within 45 days, raw data or results shall be submitted within the 45-day period and quality-assured data or results shall be submitted as soon as they become available.

B. DOE shall notify the EPA and State Project Coordinators by telephone at least 30 days before conducting independent verification and routine environmental sampling. At the request of EPA or the State, DOE shall provide or allow EPA or the State or the authorized representative of each to observe field work and to take split or duplicate samples of all samples collected by DOE pursuant to this Agreement. At the request of DOE, EPA and the State similarly shall provide or allow DOE or its authorized representatives to take split or duplicate samples of all samples collected by EPA or the State related to the Monticello Site. If it is not possible to provide the designated prior notification described above, the appropriate Project Coordinator shall be notified as soon as possible after the other Parties become aware that samples will be collected, but no later than 48 hours in advance, except in the event of an emergency.

XXI RETENTION OF RECORDS

Each Party to this Agreement shall preserve, for a minimum of ten (10) years after termination of this Agreement, all of its records and documents in its possession or in the possession of its divisions, employees, agents, accountants, or contractors which relate in any way to the presence of hazardous substances, pollutants, and contaminants at the Site, or to the implementation of this Agreement, despite any document retention policy to the contrary. After this ten-year (10) period, DOE shall notify EPA and the State at least 45 days prior to destruction or disposal of any such documents or records. Upon request by EPA or the State, DOE shall make available such records or documents to either Party.

XXII ACCESS

A. Without limitation on any authority conferred on EPA or the State by statute or regulation, EPA, the State, and/or their authorized representatives, shall have authority to enter the Site at all reasonable times, by providing reasonable advance notification for the purposes of, among other things:

(1) inspecting records, operating logs, contracts, and other documents relevant to implementation of this Agreement;

(2) reviewing the progress of DOE, its response-action contractors or lessees in implementing this Agreement; (3) conducting such tests as the EPA Project Coordinator deems necessary; and (4) verifying the data submitted to EPA and/or the State by DOE. DOE shall honor all reasonable requests for such access by EPA or the

State conditioned only upon presentation of proper credentials. However, such access shall be obtained in conformance with DOE security regulations.

B. With respect to work which DOE is currently conducting on private property pursuant to access agreements with the landowner, DOE shall use the maximum extent of its authority, exclusive of CERCLA section 104 authorities, to obtain agreement from the landowner allowing for access by EPA and the State. In the event the landowner refuses, EPA and the State shall exercise their own authorities or initiate their own contact with the landowner for purposes of gaining access to said property. With respect to non DOE property upon which monitoring wells, pumping wells, treatment facilities, or other response actions are to be located, the access agreements shall also provide that no conveyance of title, easement, or other interest in the property shall be consummated without provisions for the continued operation of such wells, treatment facilities, or other response actions on the property. The access agreements shall also provide that the owners at the Monticello Site or any other property where monitoring wells, pumping wells, treatment facilities, or other response actions are located shall notify EPA, the State, and DOE by certified mail, at least 30 days prior to any conveyance, of the property owner's intent to convey any interest in the property and of the provisions made for the continued operation of the monitoring wells, treatment facilities, or other response actions installed pursuant to this Agreement.

C. In the event that Site access is not obtained as described in Subpart B above, DOE shall notify EPA and the State within 15 days regarding the lack of, and efforts to obtain, such access agreements. Within 15 days of any such notice, DOE shall submit appropriate modification(s) in response to such inability to obtain access.

D. DOE may request the assistance of EPA and the State where access problems persist. If EPA or the State seeks judicial approval of access pursuant to CERCLA section 104, it will seek such approval for all parties to this Agreement where practicable.

E. Except as specifically stated, nothing in this section is intended to restrict EPA's or the State's right-of-access under applicable law.

F. DOE shall permit EPA, the State, or their authorized representatives to inspect and copy, at reasonable times, all unclassified or unprivileged records, files, photographs, documents, and other writing, including sampling and monitoring data, pertaining to work undertaken pursuant to this Agreement.

XXIII FIVE-YEAR REVIEW

A. Pursuant to CERCLA, as amended, section 121(c), DOE agrees that EPA and the State will review the response action no less often than each five (5) years after the initiation of the final response 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 EPA, after consultation with the

State, that additional action or modification of the remedial action is appropriate in accordance with section 104 or section 106 of CERCLA, as amended, EPA shall require DOE to implement such additional or modified action.

B. Any dispute by DOE or the State of the determination under this Part shall be resolved under Part XIV of this Agreement.

XXIV OTHER CLAIMS

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

B. This Agreement does not constitute any decision on pre-authorization of funds under section 111(a)(2) of CERCLA, as amended, 42 U.S.C. § 9611(a)(2).

C. Neither EPA or the State shall be held as a party to any contract entered into by DOE to implement the requirements of this Agreement.

D. This Agreement shall not restrict EPA or the State from taking any legal or response action for any matter not specifically part of the work covered by this Agreement.

XXV OTHER APPLICABLE LAWS

A. All remedial actions required to be taken pursuant to this Agreement shall be undertaken in accordance with the requirements of all applicable local, state, and Federal laws and regulations, including the National Contingency Plan.

B. DOE regularly applies the technical requirements of the UMTRCA and the Standards for Remedial Action at Inactive Uranium Processing Sites (40 C.F.R. Part 192) to DOE's remedial actions at uranium processing sites. Cleanup actions begun by DOE prior to this Agreement at the Monticello site have been performed in accordance with the UMTRCA and the Standards for Remedial Action at Inactive Uranium Processing Sites.

C. The Parties agree that with respect to releases of uranium at the Site, the technical requirements of the UMTRCA and the Standards for Remedial Action at Inactive Uranium Processing Sites are applicable or relevant and appropriate to the cleanup of the Monticello Site within the meaning of Section 121(d) of CERCLA, as amended.

XXVI CONFIDENTIAL INFORMATION

A. DOE may assert a confidentiality claim covering all or part of the information requested by this Agreement except that analytical data shall not be claimed as confidential by DOE. Information determined to be confidential by EPA, pursuant to

40 C.F.R. Part 2, shall be afforded the protection specified therein. Any dispute as to a determination of confidentiality shall be resolved solely through the procedures in 40 C.F.R. Part 2. Information determined to be confidential by the State pursuant to section 26-14b-21, U.C.A., and implementing rules shall be afforded the protection specified therein by the State. If no claim of confidentiality accompanies the information when it is submitted to EPA and the State, the information may be made available to the public without further notice to DOE.

B. Information, records, or other documents produced by DOE under the terms of this Agreement, which are identified by DOE as classified within the meaning of and in conformance with the Atomic Energy Act of 1954, as amended, shall not be made available to the public. In addition, those data, documents, records, or files which could otherwise be withheld pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. §552, or the Privacy Act of 1974 (5 U.S.C. § 552a), unless expressly authorized for release by the originating Party, shall be handled in accordance with those regulations.

XXVII RECOVERY OF EXPENSES

A. The Parties agree to amend this section at a later date in accordance with any subsequent resolution of the currently contested issue of EPA cost reimbursement.

B. With respect to State costs:

1. DOE agrees to reimburse the State for all costs incurred by the State specifically related to the implementation of this Agreement at the Monticello Site and not inconsistent with the NCP. The amount of such reimbursement shall not exceed $600,000.

2. A separate funding agreement between DOE and the State will be executed within 90 days after the parties execute this Agreement, which shall be the specific mechanism for the transfer of funds (e.g. a Grant) between DOE and the State for payment of the costs referred to in paragraph B.1.

3. For the purposes of budget planning only, the State shall annually provide DOE before the beginning of the fiscal year a written estimate of the State's projected costs to be incurred in implementing the MOnticello Agreement in the upcoming fiscal year.

4. The State reserves all rights it has to recover any other past and future costs incurred by the State in connection with CERCLA activities conducted at the Monticello Site.

5. In the event of a substantial increase in the State's costs incurred specifically related to the implementation of this Agreement, and a significant change in the scope of the project, the State and DOE agree to renegotiate the cap established in Paragraph

B.1 to reflect such increase proportionate to the circumstances. The amount and schedule of payment of these costs will be negotiated with consideration for DOE's multi-year funding cycle.

XXVIII AMENDMENT OF AGREEMENT

A. This Agreement may be amended by mutual agreement among EPA, the State, and DOE. Such amendments shall be in writing and shall have as their effective date the date on which they are signed by all Parties, unless otherwise agreed.

B. Any noncompliance with amendments to this Agreement shall be considered a failure to achieve the requirements of this Agreement and will subject DOE to the penalties included in Part XXXI of this Agreement.

C. No informal advice, guidance, suggestions, or comments by EPA or the State regarding reports, plans, specifications, schedules, or any other writing submitted by DOE will be construed as relieving DOE of its obligations to obtain written approval, if and when required by this Agreement.

XXIX COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

A. In consideration for DOE's compliance with this Agreement and based on the information known to the Parties on the effective date of this Agreement, EPA and the State agree that compliance with this Agreement shall stand in lieu of any administrative, legal, and equitable remedies available to them against DOE

regarding the currently known releases or threatened releases of hazardous substances including hazardous wastes, pollutants, or contaminants at the Site which are the subject of the RI/FS(s) and which will be addressed by the remedial action(s) provided for under this Agreement; except that nothing in this Agreement shall preclude EPA or the State from exercising any administrative, legal, or equitable remedies available to them to require additional response actions by DOE in the event that: (1) conditions previously unknown or undetected by EPA or the State arise or are discovered at the Site; or (2) EPA or the State receives additional information not previously available concerning the premises which they employed in reaching this Agreement, and the implementation of the requirements of this Agreement are no longer protective of public health and/or the environment.

B. Notwithstanding this Part or any other Part of this Agreement, the State shall retain any rights it may have to obtain judicial review of any final decision of EPA on the selection and implementation of a remedial action under CERCLA, as amended. The State agrees to exhaust the dispute resolution procedures of Part XIV of this Agreement prior to seeking such review.

C. This Covenant Not To Sue does not affect any claims for natural resource damage assessments or for damages to natural resources.

D. Notwithstanding this Part, the State shall retain the rights specified in Part XXVII of this Agreement (Recovery of expenses), Part XXXI (Enforceability), and Part XXXVIII (Funding).

The State agrees to exhaust the dispute resolution procedures prior to enforcing the rights specified above, except for disputes as to recovery of expenses pursuant to Part XXVII of this Agreement.

XXX 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, as amended, 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, as amended.

2. All timetables or deadlines associated with the development, implementation, and completion of the RI/FS shall be enforceable by any person pursuant to section 310 of CERCLA, as amended, and any violation of such timetables or deadlines will be subject to civil penalties under sections 310(c) and 109 of CERCLA.

3. All terms and conditions of this Agreement which relate to interim or final remedial actions, including corresponding timetables, deadlines, or schedules and all work associated with the interim or final remedial

actions, shall be enforceable by any person pursuant to section 310(c) of CERCLA, and any violation of such terms or conditions will be subject to civil penalties under sections 310(c) and 109 of CERCLA, as amended.

4. Any final resolution of a dispute pursuant to Part XIV 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, as amended, 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, as amended.

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, as amended, including section 113(h) of CERCLA, as amended.

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

XXXI DELAY IN PERFORMANCE/STIPULATED PENALTIES

A. In the event that DOE fails to submit a primary document (i.e., Scope of Work, RI/FS Work Plan, Risk Assessment, RI Report, Initial Screening of Alternatives, FS Report, Proposed Plan, Record of Decision, Remedial Design, Remedial Action Work Plan) to EPA and the State 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 interim or final remedial action, EPA, after consultation with the State, may assess a stipulated penalty against DOE. The State may also recommend to EPA that a stipulated penalty be assessed. A stipulated penalty may be assessed in an amount not to exceed $5000 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 DOE has failed in a manner set forth in paragraph A, EPA, after consultation with the State, shall so notify DOE in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, DOE shall have 15 days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. DOE 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, as amended, shall include, with respect to each final assessment of a stipulated penalty against DOE 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.

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

D. Stipulated penalties assessed pursuant to this Part shall be payable to the Hazardous Substances Response Trust Fund from funds authorized and appropriated for that specific purpose.

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

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

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

XXXII 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 DOE 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.
4. Any related timetable and deadline or schedule that would be affected if the extension were granted.

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

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

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

D. Within 14 days of receipt of a request for an extension of a timetable and deadline or a schedule, EPA, after consultation with the State, shall advise DOE in writing of its respective position on the request. Any failure by EPA to respond within the 14-day period shall be deemed to constitute concurrence in the request for extension. If EPA does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

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

F. Within 14 days of receipt of a statement of nonconcurrence with the requested extension, DOE may invoke dispute resolution.

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

enforcement may be sought only to compel compliance with the timetable and deadline or schedule, as most recently extended.

XXXIII *FORCE MAJEURE*

A force majeure shall mean any event arising from factors 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 DOE; 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 DOE shall have made timely request for such funds as part of the budgetary process as set forth in Part XXXVII (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 PUBLIC PARTICIPATION/ADMINISTRATIVE RECORD

A. The Parties agree that this Agreement and any subsequent proposed response action alternative(s) and subsequent plan(s) for response action at the Site arising out of this Agreement shall comply with the Administrative Record and public participation requirements of CERCLA, as amended, including section 117 of SARA, the NCP, and EPA guidance on public participation and administrative records.

B. DOE shall develop and implement a Community Relations Plan (CRP) which responds to the need for an interactive relationship with all interested community elements in the Monticello area. The Plan shall address current and future activities and elements of work being undertaken by DOE. DOE agrees to develop and implement the CRP in a manner consistent with section 117 of SARA, the NCP, U.S. EPA guidelines set forth in EPA's Community Relations Handbook, and any modifications thereto. The CRP shall be reviewed in accordance with Part XII of this Agreement.

C. Any Party issuing a formal press release or providing significant information to the media regarding any of the work required by this Agreement shall advise the other Party of such press release or information and the contents thereof, at least 48 hours before the issuance of such press release and of any subsequent changes prior to release.

D. DOE agrees it shall establish and maintain an administrative record at or near the Monticello Site in accordance with section 113(k) of CERCLA, as amended. Once the Administrative Record is established, DOE shall maintain the Record at the Monticello Site. The actual repository location shall be mutually agreed to by the Parties to this Agreement. The Administrative Record shall be established and maintained in accordance with current and future EPA policy and guidelines. Future changes to these policies and guidelines affecting DOE's maintenance of the Administrative Record shall be discussed by the Parties and agreement reached on how best to accommodate those changes. A suitable addendum to this Part shall then be prepared and attached to this Agreement. A copy of each document placed in the Administrative Record will be provided to EPA and the State. The Administrative Record developed by DOE shall be updated and supplied to EPA and the State on at least a quarterly basis. An Index of Documents in the complete Administrative Record will accompany each update to the Administrative Record. EPA, after consultation with the State when necessary, shall make the final determination of whether a document is appropriate for inclusion in the Administrative Record. EPA or the State may also submit documents to DOE for inclusion in the Administrative Record as EPA or the State deems appropriate.

XXXV PUBLIC COMMENT/EFFECTIVE DATE

A. Within 15 days of the date on which the last Party signs this Agreement, DOE, the State, and EPA shall jointly and simultaneously announce the availability of this Agreement to the public for review and comment. The period of public comment shall be forty-five (45) days after such announcement. EPA shall assemble and distribute to DOE and the State public comments submitted during this period. At the end of the comment period, the Parties shall review such comments and shall either:

1. Determine that this Agreement should be made effective in its present form, in which case EPA shall notify all Parties in writing and this Agreement shall become effective on the date that DOE receives such notification; or

2. Determine that modification of this Agreement is necessary, in which case the Parties shall meet to discuss and agree upon any proposed changes. Upon agreement of any proposed changes, EPA shall notify all Parties in writing and this Agreement shall become effective on the date that DOE receives such notification.

B. In the event a Party determines that it is necessary to modify this Agreement as a result of public comment thereon, and there is disagreement among the Parties as to the need for such modification, the dispute resolution procedures of Part XIV of this Agreement may be invoked. However, no modification as a result of

public comment pertaining to this Agreement shall be made except by agreement of all Parties.

XXXVI TERMINATION

The provisions of this Agreement shall be deemed satisfied and terminated upon receipt by DOE of written notice that DOE has demonstrated to the satisfaction of EPA, after consultation with the State, that all the terms of this Agreement have been completed.

XXXVII FUNDING

A. It is the expectation of the Parties to this Agreement that all obligations of DOE arising under this Agreement will be fully funded. DOE shall take all necessary steps and make efforts to obtain timely funding to meet its obligations under this Agreement.

B. In accordance with section 120(e)(5)(B) of CERCLA, as amended, 42 U.S.C. § 9620(e)(5)(B), DOE 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, 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 DOE's obligations under this Agreement, EPA and the State reserve the right to initiate any other action which would be appropriate absent this Agreement.

SIGNATURES

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

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

December 19, 1988
DATE

J. WINSTON PORTER
ASSISTANT ADMINISTRATOR
OFFICE OF SOLID WASTE AND
EMERGENCY RESPONSE

December 2, 1988
DATE

JAMES J. SCHERER
REGIONAL ADMINISTRATOR
U.S. EPA REGION VIII

FOR THE UNITED STATES DEPARTMENT OF ENERGY:

16 December 1988
DATE

DON OFTE
MANAGER
IDAHO OPERATIONS OFFICE

FOR THE STATE OF UTAH:

December 5, 1988
DATE

KENNETH ALKEMA
DIRECTOR
ENVIRONMENTAL HEALTH DIVISION
UTAH DEPARTMENT OF HEALTH

INDEX

ATTACHMENTS