

## **IAG COVER SHEET**

**FILE NAME: NavSecurity.pdf**

**Title: Naval Security Group Activity**

**Subject: Region 2, II**

**Author: Navy, DoD, Puerto Rico, PR**

**Keywords: 03/19/92, 1992, FY92**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II

AND THE

PUERTO RICO ENVIRONMENTAL QUALITY BOARD

AND THE

UNITED STATES DEPARTMENT OF THE NAVY

IN THE MATTER OF:	)	FEDERAL FACILITY
	)	AGREEMENT UNDER
The U.S. Department of Navy's	)	CERCLA SECTION 120
Naval Security Group Activity	)	
Sabana Seca, Puerto Rico	)	Administrative
	)	Docket Number:

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

## 1. JURISDICTION

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

1.1 The U.S. Environmental Protection Agency (USEPA), Region II, enters into those portions of this Agreement that relate to the Remedial Investigation/Feasibility Study (RI/FS) pursuant to Section 120(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act and any amendments thereto, including the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), 42 U.S.C. Section 9620(e)(1); Sections 6001, 3008(h), 3004(u) and (v) of the Resource Conservation and Recovery Act and any amendments thereto, including the Hazardous and Solid Waste Amendments of 1984 (RCRA), 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v); and Executive Order 12580.

1.2 USEPA, Region II, enters into those portions of this Agreement that relate to remedial actions (including Remedial Design/Remedial Action (RD/RA) actions) pursuant to Section 120(e)(2) of CERCLA, 42 U.S.C. Section 9620(e)(2); Sections 6001, 3008(h), 3004(u) and (v) of the Resource Conservation and Recovery Act and any amendments thereto, including the Hazardous and Solid Waste Amendments of 1984 (RCRA), 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v); and Executive Order 12580.

1.3 The Navy enters into those portions of this Agreement that relate to the RI/FS pursuant to Section 120(e)(1) of CERCLA, 42 U.S.C. Section 9620(e)(1); Executive Order 12580; the National Environmental Policy Act (NEPA), 42 U.S.C. Section 4321 et seq.; and the Defense Environmental Restoration Program (DERP), 10 U.S.C. Section 2701 et seq.

1.4 The Navy enters into those portions of this Agreement that relate to remedial actions (including RD/RA actions) pursuant to Section 120(e)(2) of CERCLA, 42 U.S.C. Section 9620(e)(2); Executive Order 12580 and the DERP.

1.5 The Puerto Rico Environmental Quality Board (PREQB) representing the Commonwealth of Puerto Rico (the Commonwealth) enters into this agreement pursuant to Sections 120(f) and 121(f) of CERCLA, 42 U.S.C. Sections 9620(f) and 9621(f); Law 9 of July 18, 1970, 12 Puerto Rico Laws Annotated (PRLA) Section 1121 et seq., as amended; and Law 81 of July 2, 1987, 12 PRLA Section 1271 et seq.

## 2. PARTIES

The Parties to this Agreement are the USEPA, the PREQB representing the Commonwealth of Puerto Rico, and the Navy. The terms of this Agreement shall apply to and be binding upon the Parties, and their agents and employees and all subsequent owners, operators and lessees of Naval Security Group Activity (NSGA), Sabana Seca, Puerto Rico. The Navy will notify USEPA and PREQB of the identity and assigned tasks of each of its contractors performing work under this Agreement upon their selection. This section shall not be construed as an agreement to indemnify any person. The Navy shall take reasonable steps to notify its agents, employees, response action contractors for the Site, and all subsequent owners, operators, and lessees of NSGA Sabana Seca of the existence of this Agreement. Each undersigned representative of a Party certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement.

### 3. DEFINITIONS

Except as noted below or otherwise explicitly stated, the terms herein shall have their ordinary meaning unless otherwise defined in CERCLA or the National Contingency Plan (NCP).

In addition:

3.1 "Agreement" means this document, including Appendices A and C which are integral and enforceable parts of this document. Appendix B is not an enforceable part of this document and is included for informational purposes only.

3.2 "ARAR" means a "legally applicable or relevant and appropriate standard, requirement, criteria, or limitation" as used in Section 121(d) of CERCLA, 42 U.S.C. Section 9621(d).

3.3 "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., and any amendments thereto including the Superfund Amendments and Reauthorization Act (SARA) of 1986, Public Law 99-499.

3.4 "Commonwealth" means the Commonwealth of Puerto Rico.

3.5 "Days" means calendar days, unless business days are

specified. Any submittal, written notice of position or written statement of dispute that under the terms of this Agreement would be due on a Saturday, Sunday or a Federal/Commonwealth holiday shall be due on the following business day.

3.6 "Deadline" means the time limitation applicable to a primary document.

3.7 "Document" means any document, writing, correspondence and all other tangible things on which information has been stored which relates to this Agreement or to any activities to be undertaken relating to this Agreement.

3.8 "DRC" means the Dispute Resolution Committee.

3.9 "Letter of Intent to Execute the Agreement" means a document executed by the Parties prior to the release of this Agreement to the public for its review and comment pursuant to Section 35 (Public Comment) of this Agreement.

3.10 "NCP" and "The National Contingency Plan" mean the plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. Section 9605, and codified at 40 CFR Part 300 (1990), as amended.

3.11 "Navy" means the United States Navy. The Navy operates Naval Security Group Activity (NSGA) Sabana Seca, Puerto Rico, the subject of this Agreement. See also Section 4 (Site Description) of this Agreement.

3.12 "Parties" means all parties who are signatories to this Agreement.

3.13 "PREQB" means the Puerto Rico Environmental Quality Board representing the Commonwealth of Puerto Rico.

3.14 "Project Manager" means the individual who oversees and provides technical assistance concerning the activities to be performed pursuant to this Agreement. Each Party shall appoint its own Project Manager who will be such Party's principle point of contact for the implementation of this Agreement.

3.15 "Proposed Remedial Action Plans" (PRAPs) means reports describing the remedies proposed for remediation of specific locations at the Site.

3.16 "Record(s) of Decision" (ROD(s)) means the public document(s) that explain(s) which cleanup alternative(s) will be implemented at the Site, and include(s) the bases for the selection of such remedy(ies). The bases shall include, but not



be limited to information and technical analyses generated during the Remedial Investigation and Feasibility Study (RI/FS) and consideration of public comments and community concerns.

3.17 "Responsiveness Summary" means a summary of the comments received by the Parties during a public comment period, which documents public concerns and the responses to those concerns by the appropriate Party or Parties.

3.18 "Schedules" means the time limitations established for the construction, implementation and completion of response actions at the Site.

3.19 "SEC" means the Senior Executive Committee.

3.20 "SES" means the Senior Executive Service.

3.21 "Significant New Information" for the purposes of this Agreement means information that could be of material assistance in protecting or evaluating impacts on the public health, welfare or the environment, or in evaluating the selection of response action alternatives and (1) was not previously known, or (2) new or existing data that has been subjected to sampling or analysis techniques or interpretation or treatment technologies which were

not previously available and/or were not previously recommended by the Parties.

3.22 "Significant New Site Conditions" means those conditions of geology, hydrogeology or contamination that were not known at the time a Remedial Investigation (RI) was initiated.

3.23 "Site" means the Naval Security Group Activity (NSGA), Sabana Seca, Puerto Rico, and any other areas contaminated by the migration of a hazardous substance, pollutant or contaminant from NSGA Sabana Seca as discussed in Section 4 (Site Description) of this Agreement.

3.24 "Target Date" means the time limitation applicable to a secondary document.

3.25 "USEPA" means the United States Environmental Protection Agency.

#### 4. SITE DESCRIPTION

For the purposes of this Agreement, the approximately twenty-two hundred (2200) acre area comprising Naval Security Group Activity (NSGA) Sabana Seca and any off-NSGA Sabana Seca area contaminated by the migration of hazardous substances, pollutants or contaminants originating from NSGA Sabana Seca shall constitute the Site. The term "Site" includes the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of response actions. The Parties will continually clarify the extent of the Site on the basis of additional investigations, including Site Remedial Investigations performed by the Navy, to more accurately reflect the areas contaminated by hazardous substances, pollutants or contaminants related in whole or in any part to NSGA Sabana Seca. Notwithstanding the above, the Parties understand that some or all response actions required for hazardous substances, pollutants or contaminants that have migrated on-Site from off-Site locations may be the responsibility in whole or in part of one or more persons not signatory to this Agreement pursuant to Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a).

5. IDENTIFIED AND POTENTIAL RELEASES REQUIRING  
RESPONSE ACTIONS

As the result of the study entitled "Initial Assessment Study of Naval Security Group Activity, Sabana Seca and Naval Communications Station, Puerto Rico (September 1984)" and based upon the whole administrative record, the Parties find that: (a) on-Site releases of hazardous substances have occurred in the past; (b) other on-Site hazardous substance, pollutant or contaminant releases may have occurred in the past; (c) other on-Site hazardous substance, pollutant or contaminant releases may be occurring and/or may occur in the future; (d) the documented on-Site hazardous substance releases will require response actions and (e) other on-Site hazardous substance, pollutant or contaminant releases may require response actions in the future. Specifically, the Parties find that:

5.1 There has been a release of several pesticides including aldrin, chlordane, DDD, heptachlor and heptachlor epoxide at the Former Pest Control Shop.

5.2 Hazardous substances, pollutants or contaminants may have been released at six (6) other specific on-Site locations in the past.

5.3 On-Site hazardous substance, pollutant or contaminant releases may be occurring or may occur in the future at either the aforementioned seven (7) specific locations or at locations yet to be determined.

5.4 The Former Pest Control Shop pesticide release will require response actions to address the release or threatened release of hazardous substances, pollutants or contaminants.

5.5 Other on-Site hazardous substance, pollutant or contaminant releases yet to be confirmed or identified may require response action in the future.

5.6 NSGA Sabana Seca was proposed for inclusion on the National Priorities List (NPL) on June 24, 1988 (53 Federal Register 23988) and was included on October 4, 1989 (54 Federal Register 41015).

## 6. DETERMINATIONS

EPA and PREQB determine that:

6.1 The Navy is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21), and the owner/operator of NSGA Sabana Seca as defined by Sections 101(20) and 107(a)(1) of CERCLA, 42 U.S.C. Sections 9601(20) and 9607(a)(1).

6.2 The Site (NSGA Sabana Seca) is a "Facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).

6.3 Hazardous substances, pollutants or contaminants within the meaning of Sections 101(14), and 101(33) of CERCLA, 42 U.S.C. Sections 9601(14), and 9601(33) have been managed and/or disposed of at NSGA Sabana Seca.

6.4 There have been releases and there may continue to be releases and/or threats of releases of hazardous substances, pollutants or contaminants into the environment at the Site within the meaning of Sections 101(22), 104 and 106 of CERCLA, 42 U.S.C. Sections 9601(22), 9604 and 9606.

6.5 With respect to those releases and/or threats of releases, the Navy is a responsible party within the meaning of Section 107 of CERCLA, 42 U.S.C. Section 9607; Law 9 of July 18, 1970, 12 PRLA Section 1121 et seq., as amended; and Law 81 of July 2, 1987, 12 PRLA Section 1271 et seq.

6.6 This Agreement provides for the expeditious completion of all remedial actions necessary to protect public health, welfare or the environment consistent with the NCP.

## 7. SCOPE OF THE AGREEMENT

7.1 This Agreement shall apply to all releases and threats of release of hazardous substances, pollutants or contaminants for which response authorities are provided under CERCLA at the Site.

7.2 The Navy shall conduct the work identified within the scope of this Agreement in accordance with the authorities cited in Section 1 (Jurisdiction) of this Agreement, and all provisions of CERCLA and the NCP, as amended, and as provided for in relevant USEPA/PREQB-issued policy and guidance, and other applicable Federal or Commonwealth law.

7.3 The USEPA and PREQB shall provide all relevant guidance in response to written requests by the Navy for said guidance to assist the Navy in satisfying the requirements pursuant to this Agreement.

7.4 Under this Agreement, the Navy agrees it shall:

7.4.1 Conduct removal actions at the Site in accordance with Section 13 (Removal Actions) of this Agreement.

7.4.2 Conduct Remedial Investigations (RIs) at operable units at the Site;



7.4.3 Conduct Feasibility Studies (FSS) at operable units at the Site incorporating, at a minimum, the results of the RIs;

7.4.4 Develop Proposed Remedial Action Plans (PRAPs) for operable units at the Site;

7.4.5 Develop Record(s) of Decision (ROD(s)) for operable units at the Site; and

7.4.6 Conduct response actions for operable units at the Site.

## 8. PURPOSE

8.1 The general purposes of this Agreement are to:

8.1.1 Ensure that the environmental impacts associated with past and present activities at the Site are thoroughly investigated and appropriate response action alternatives are developed and implemented as necessary to protect the public health, welfare and the environment;

8.1.2 Establish a procedural framework and schedule for developing, implementing and monitoring appropriate response actions at the Site in accordance with CERCLA, the NCP, and relevant USEPA/PREQB-issued policy and guidance; and

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

8.2 Specifically, the purposes of this Agreement are to:

8.2.1 Identify response actions for operable units which are appropriate at specific locations of the Site prior to the implementation of final response action(s). Any Party may propose response actions for operable units to the other Parties and should do so as soon as the need for such action is

identified. This process is designed to promote cooperation among the Parties in identifying response actions for operable units prior to their formal proposal. The Parties do not intend that the identification or proposal of any response actions for operable units preclude the timely initiation of emergency actions necessary to address immediate threats to human health, welfare or the environment pursuant to Section 13 (Removal Actions) of this Agreement.

8.2.2 Establish requirements for the performance of RIs to determine fully the nature and extent of the threat to the public health, welfare or the environment caused by the release and threatened release of hazardous substances, pollutants or contaminants at the Site and to establish requirements for the performance of FSS for the Site to identify, evaluate, and select alternatives for the appropriate response 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 and applicable Commonwealth law.

8.2.3 Identify the nature, objective and schedule of response actions to be taken at the Site. Such response actions at the Site shall attain that degree of remediation of hazardous substances, pollutants or contaminants mandated by CERCLA and

applicable or relevant and appropriate requirements (ARARs) under Commonwealth law.

8.2.4 Implement the selected response action(s) in accordance with CERCLA and applicable Commonwealth law.

8.2.5 Meet the requirements of Section 120(e)(2) of CERCLA, 42 U.S.C. Section 9620(e)(2), for an interagency agreement among the Parties.

8.2.6 Assure compliance, through this Agreement, with the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Section 6901 et seq., and other federal and Commonwealth hazardous waste laws and regulations for matters covered herein as consistent with the NCP and relevant USEPA/PREQB-issued policy and guidance.

8.2.7 Coordinate response actions at the Site with the mission and support activities of units at NSGA Sabana Seca, Puerto Rico.

8.2.8 Expedite the remediation process to the extent consistent with protection of human health, welfare and the environment.

8.2.9. Provide for PREQB involvement in the initiation, development, and selection and enforcement of response actions to be undertaken at the Site, including the review of all applicable

data as it becomes available and the development of studies, reports, and action plans; and to identify and integrate Commonwealth ARARs into the response action process subject to Sections 121(d)(4) and (f)(3) of CERCLA, 42 U.S.C Sections 9621(d)(4) and (f)(3).

8.2.10 Provide for operation and maintenance of any response action selected and implemented pursuant to this Agreement.

## 9. STATUTORY COMPLIANCE

9.1 The Parties intend to integrate the Navy's CERCLA response obligations and corrective action obligations of other statutes which relate to the release(s) of hazardous substances, hazardous wastes, pollutants, or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will achieve compliance with CERCLA, 42 U.S.C. Section 9601, et seq., and meet or exceed all applicable or relevant and appropriate federal and Commonwealth laws and regulations, to the extent required by CERCLA Section 121, 42 U.S.C. Section 9621. Releases or other hazardous waste activities not covered by this Agreement remain subject to all applicable Commonwealth and federal environmental regulations.

9.2 Based on the foregoing, the Parties intend that any remedial action selected, implemented, and completed under this Agreement will be protective of human health and the environment such that remediation of releases covered by this Agreement shall obviate the need for further corrective action. The Parties agree that with respect to releases of hazardous waste covered by this Agreement, the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., shall be considered an ARAR pursuant to Section 121 of CERCLA, 42 U.S.C. Section 9621.

## 10. CONSULTATION WITH USEPA AND PREQB

### 10.1 Applicability:

10.1.1 The provisions of this Section establish the procedures that shall be used by the Parties to provide each other with appropriate notice, review, comment, and response to comments regarding RI/FS and RD/RA documents, specified herein as either primary or secondary documents. In accordance with Section 120 of CERCLA, 42 U.S.C. Section 9620, and 10 U.S.C. Section 2705, the Navy will normally be responsible for issuing primary and secondary documents to USEPA and PREQB. As of the effective date of this Agreement, all draft and final documents for any deliverable document identified herein shall be prepared, distributed and subject to dispute in accordance with paragraphs 10.2 through 10.10 below.

10.1.2 The designation of a document as "draft" or "final" is solely for purposes of consultation with USEPA and PREQB in accordance with this Section. 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.

## 10.2 General Process for RI/FS and RD/RA documents:

10.2.1 "Primary documents" include those reports, plans and studies that are major, discrete portions of RI/FS or RD/RA activities. Primary documents are initially issued by the Navy in draft subject to review and comment by USEPA and PREQB. Following receipt of comments on a particular draft primary document, the Navy 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 thirty (30) days after receipt if dispute resolution is not invoked or as modified by decision of the dispute resolution process.

10.2.2 "Secondary documents" include those reports, plans and studies that are discrete portions of the primary documents and are typically input or feeder documents. Secondary documents are issued by the Navy in draft subject to review and comment by USEPA and PREQB. Although the Navy 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.



### 10.3 Primary Documents:

10.3.1 The Navy shall complete and transmit draft documents for the following primary documents to USEPA and PREQB for review and comment in accordance with the provisions of this Section.

Descriptions of the documents required for submission are located in Appendix B. The Site Scope of Work, Site Community Relations Plan, and the NPL Close Out Report must encompass the entire Site. All other primary documents may encompass the entire Site or operable units.

10.3.1.1 Site Scope of Work or Amended Site Scope of Work

10.3.1.2 Site Community Relations Plan

10.3.1.3 Remedial Investigation/Feasibility Study (RI/FS) Work Plan(s)

10.3.1.4 Baseline Risk Assessment(s)

10.3.1.5 Risk Assessment(s)

10.3.1.6 Remedial Investigation (RI) Report(s)

10.3.1.7 Feasibility Study (FS) Report(s)

10.3.1.8 Proposed Remedial Action Plan(s) (PRAP(s))

10.3.1.9 Record(s) of Decision (ROD(s))

10.3.1.10 Remedial Design (RD) Report(s)

10.3.1.11 Remedial Action (RA) Work Plan(s)

10.3.1.12 Final Remediation Report(s)

10.3.1.13 Five Year Review Report(s)

10.3.1.14 NPL Close-Out Report

10.3.2 Only the draft final documents for the primary documents identified above shall be subject to dispute resolution. The Navy shall complete and transmit draft primary documents in accordance with the deadlines established in Section 29 (Deadlines) of this Agreement.

10.4 Secondary Documents:

10.4.1 The Navy shall complete and transmit draft documents for the following secondary documents to USEPA and PREQB for review and comment in accordance with the provisions of this Section. Secondary documents include, but are not limited to, USEPA/PREQB-required documents such as:

- 10.4.1.1 Statement(s) of Work
- 10.4.1.2 Preliminary Characterization Summary Report(s)
- 10.4.1.3 Health and Safety Plan(s)
- 10.4.1.4 Sampling and Analysis Plan(s) (including Quality Assurance Project Plan(s) (QAPP) and Field Sampling Plan(s))
- 10.4.1.5 Quarterly Progress Reports
- 10.4.1.6 Treatability Study Report(s)
- 10.4.1.7 Remedial Action (RA) Progress Reports
- 10.4.1.8 Remedial Design (RD) Implementation Plan(s)
- 10.4.1.9 Remedial Pre-Design Report(s)
- 10.4.1.10 Remedial Action (RA) Post-Construction Report(s)

10.4.2 Although USEPA and PREQB may comment on the draft documents for the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by paragraph 10.2 hereof. Target dates shall be established for the completion and transmission of draft secondary documents pursuant to Section 29 (Deadlines) of this Agreement.

10.5 Meetings of the Project Managers on Development of Documents:

The Project Managers shall meet on a quarterly basis except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the Site on the primary and secondary documents. Prior to preparing any draft document described in paragraphs 10.3 and 10.4 above, the Project Managers shall discuss the data to be reported in an effort to reach a common understanding with respect to the results to be presented in the draft document to the maximum extent practicable. Project Managers may be accompanied by whatever support personnel they deem necessary to accomplish the purpose of the meeting.

#### 10.6 Identification and Determination of Potential ARARs:

10.6.1 For those primary or secondary documents that consist of or include ARAR determinations, prior to the issuance of a draft document, the Project Managers shall meet to identify and propose, to the best of their ability, all potential ARARs pertinent to the document being addressed. PREQB shall identify all potential Commonwealth ARAR's for the Site as early in the remedial process as possible consistent with the requirements of Section 121 of CERCLA, 42 U.S.C. Section 9621, and the NCP. The Navy shall consider any written interpretations of ARAR's provided by PREQB. Draft ARAR determinations shall be prepared by the Navy in accordance with Section 121(d)(2) of CERCLA, 42 U.S.C. Section 9621(d)(2), the NCP and relevant USEPA/PREQB-issued policy and guidance that is consistent with CERCLA and the NCP.

10.6.2 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 specific location, the particular actions proposed as a remedy and the characteristics of that location. The Parties recognize that ARAR identification

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

#### 10.7 Review and Comment on Draft Documents:

10.7.1 The Navy shall complete and transmit each draft primary document to USEPA and PREQB on or before the corresponding deadline established for the issuance of the document. The Navy shall complete and transmit the draft secondary documents in accordance with the target dates established for the issuance of such documents established pursuant to Section 29 (Deadlines) of this Agreement.

10.7.2 Unless the Parties mutually agree to another time period, all draft documents shall be subject to a sixty (60) day period for review and comment. Review of any document by the USEPA and PREQB may concern all aspects of the document (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP and any relevant USEPA/PREQB-issued policy and guidance and with applicable federal and Commonwealth law. Comments by the USEPA and PREQB shall be provided with adequate specificity so that the Navy may respond to the comment and, if appropriate, make changes to the draft

document. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of the Navy, the USEPA and PREQB shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy documents, USEPA or PREQB may extend the sixty (60)-day comment period for an additional twenty (20) days by written notice to the Navy prior to the end of the sixty (60)-day period. On or before the close of the comment period, USEPA and PREQB shall transmit their written comments to the other Parties by return-receipt mail.

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

10.7.4 In commenting on a draft document which contains a proposed ARAR determination, the objecting Party shall include a reasoned statement whenever it objects to any portion of the proposed ARAR determination. Whenever the USEPA or PREQB objects, it shall explain the basis for its objection(s) in detail and shall identify any ARARs which it believes were not properly addressed in the proposed ARAR determination.

10.7.5 Following the close of the comment period for a draft document, the Navy shall give full consideration to all written comments on the draft document submitted during the comment period. Within sixty (60) days of the close of the comment period on a draft secondary document, the Navy shall transmit to USEPA and PREQB its written response to comments received within the comment period. Within sixty (60) days of the close of the comment period on a draft primary document, the Navy shall transmit to USEPA and PREQB a draft final primary document, which shall include the Navy's response to all written comments received within the comment period. While the resulting draft final primary document shall be the responsibility of the Navy, it shall be the product of consensus to the maximum extent possible.

10.7.6 The Navy may extend the sixty (60)-day period for either responding to comments in a draft document or for issuing the draft final primary document for an additional twenty (20) days by providing written notice to USEPA and PREQB prior to the end of the sixty (60)-day period. In appropriate circumstances, this time period may be further extended in accordance with Section 30 (Extensions) of this Agreement.

10.8 Availability of Dispute Resolution for Draft Final Primary Documents:

10.8.1 Dispute resolution shall be available to the Parties for draft final primary documents as set forth in Section 11 (Resolution of Disputes) of this Agreement.

10.8.2 When dispute resolution is invoked on a draft final primary document, work may be stopped in accordance with the procedures set forth in Section 11 (Resolution of Disputes) of this Agreement.

10.9 Finalization of Primary Documents:

The draft final primary document shall become the final primary document if no party invokes dispute resolution within thirty (30) days of receipt of the document or, if invoked, at completion of the dispute resolution process should the Navy's position be sustained. If the Navy's position is not sustained in the dispute resolution process, the Navy shall prepare, within not more than thirty-five (35) days, a revision of the draft final document which conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Section 30 (Extensions) of this Agreement.



#### 10.10 Subsequent Modifications of Final Primary Documents:

Following finalization of any primary document pursuant to paragraph 10.9 above, any Party to this Agreement may seek to modify the document, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in subparagraphs 10.10.1 and 10.10.2 below.

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

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

upon a showing that the requested modification is based on (1) Significant New Information, or (2) Significant New Site Conditions.

10.10.3 Nothing in this Section shall alter USEPA's or PREQB's ability to request the performance of additional work that was not contemplated by this Agreement. The Navy's obligation to perform such work must be established by a modification of a document.

10.11 It is the intent of the Parties to this Agreement that work done and information or data generated prior to the effective date of this Agreement be retained and utilized as elements of the RI/FS pursuant to CERCLA to the maximum extent feasible without violating applicable or relevant and appropriate laws, regulations, or guidelines. The Parties acknowledge that the Navy is in the process of conducting some of the work to be performed pursuant to this Agreement. The Navy may proceed with currently ongoing work. Such information or data shall be submitted as a primary document.

10.12 To the extent that modification to work completed or work in progress is necessary, such modification will be accomplished in accordance with paragraph 10.7 (Review and Comment on Draft Documents) above.

## 11. RESOLUTION OF DISPUTES

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

11.2 Informal Resolution: All parties to this Agreement shall make reasonable efforts to informally resolve disputes at the Project Manager or their immediate supervisor level. During this informal dispute resolution process the Parties shall meet as many times as the Parties deem necessary to discuss and attempt resolution of the dispute. If resolution cannot be achieved informally, the formal procedures of paragraph 11.3 of this Section shall be implemented to resolve a dispute.

11.3 Formal Resolution:

11.3.1 Within thirty (30) days after: (1) receipt of a draft final primary document pursuant to Section 10 (Consultation with USEPA and PREQB) 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 technical, legal or factual information the disputing Party is relying upon to support its position.

11.3.2 The Dispute Resolution Committee (DRC) will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (Senior Executive Service (SES) or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. 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 Section 16 (Notification) of this Agreement. The membership of the DRC includes:

11.3.2.1 USEPA:

Principal:       Emergency and Remedial Response  
                  Division Director  
                  USEPA, Region II

Alternate:       Emergency and Remedial Response  
                  Division Deputy Director  
                  USEPA, Region II

11.3.2.2 PREQB:

Principal: Vice President  
PREQB

Alternate: Air Quality, Superfund and Emergency  
Response Program Director  
PREQB

11.3.2.3 Navy:

Principal: Director, Environmental Quality Division  
Atlantic Division,  
Naval Facilities Engineering Command

Alternate: Head, Environmental Programs Branch  
Environmental Quality Division  
Atlantic Division,  
Naval Facilities Engineering Command

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

shall be forwarded to the Senior Executive Committee (SEC) for resolution within seven (7) days after the close of the twenty-one (21) day resolution period.

11.3.4 The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision signed by all Parties. If unanimous resolution of the dispute is not reached within twenty-one (21) days, USEPA's Regional Administrator shall issue a written position on the dispute. The Navy or PREQB may, within twenty-one (21) days of receipt of the Regional Administrator's position, issue a written notice elevating the dispute to the Administrator of USEPA for resolution in accordance with all applicable laws and procedures. In the event that a Party elects not to elevate the dispute to the Administrator within the designated twenty-one (21) days escalation period, the Party shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute. The membership of the SEC includes:

11.3.4.1 USEPA:                   Regional Administrator  
                                  USEPA, Region II

11.3.4.2 PREQB:               Chairman  
                                  PREQB

11.3.4.3 Navy: Commander  
Atlantic Division,  
Naval Facilities Engineering Command

11.3.5 Upon escalation of a dispute to the Administrator of USEPA pursuant to subparagraph 11.3.4 above, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the USEPA Administrator shall meet and confer with the Assistant Secretary of the Navy (Installations and Environment) and the Chairman of the PREQB to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the other Parties with a written final decision setting forth resolution of the dispute. The duties of the Administrator set forth in this Section shall not be delegated.

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

11.5 The pendency of any dispute under this Section shall not affect the Navy'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 paragraph 11.3 of this Section. All activities required by this Agreement which are not affected by the dispute shall continue and be completed in accordance with the applicable deadline, target date or schedule.

11.6 When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Emergency and Remedial Response Division Director for USEPA's Region II requests, in writing, that work related to the dispute be stopped because, in USEPA's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health, welfare or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. PREQB may request the USEPA's Region II Emergency and Remedial Response Division Director to order work stopped for the reasons set out above. To the extent possible, the Party seeking a work stoppage shall consult with the other Parties prior to initiating a work stoppage request. After stoppage of work, if a Party believes that the work stoppage is inappropriate or may have potentially significant adverse impacts, the Party may meet with the Party ordering the work stoppage to discuss that stoppage. Following



this meeting, and further consideration of the issues, the USEPA's Region II Emergency and Remedial Response Division Director will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the USEPA's Region II Emergency and Remedial Response Division Director may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the Party requesting dispute resolution.

11.7 Within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this Section, the Navy 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.

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

## 12. PERMITS

12.1 The Parties recognize that under Sections 121(d) and 121(e)(1) of CERCLA, 42 U.S.C. Sections 9621(d) and 9621(e)(1), portions of the response actions called for by this Agreement and conducted entirely on-Site are exempted from the procedural requirement to obtain a Federal, Commonwealth, or local permit but must satisfy applicable or relevant and appropriate Federal and Commonwealth standards, requirements, criteria, or limitations which would have been included in any such permit.

12.2 Paragraph 12.1 above is not intended to relieve the Navy from complying with Federal, Commonwealth, or local hazardous waste management requirements whenever it proposes a response action involving the shipment or movement of a hazardous substance off-Site.

12.3 The Navy shall provide PREQB and USEPA Project Managers written notice of any permits or other authorizations required for off-Site activities as soon as it becomes aware of the requirement. Upon request, the Navy shall provide PREQB and/or USEPA Project Managers copies of all such permit applications and other documents related to the permit or authorization process.

12.4 If a permit or other authorization necessary for implementation of this Agreement is not issued (or is proposed to be issued or renewed in a manner which is materially inconsistent with the requirements of any Work Plan reached pursuant to this Agreement), the Navy agrees to notify PREQB and USEPA of the non-issuance or inconsistency no later than fourteen (14) business days after becoming aware of the non-issuance or inconsistency. The Project Managers shall then meet to consider the appropriate course of action.

12.5 During the pendency of any delay pursuant to Paragraph 12.4 above, the Navy shall continue to implement those portions of the applicable work plan which are not directly or indirectly dependent upon a permit/authorization in question and which can be implemented pending final resolution of the permit issue(s).

12.6 The Parties shall comply with all applicable Commonwealth and Federal laws and regulations regarding the Site.

### 13. REMOVAL ACTIONS

13.1 All removal actions conducted on Site shall be conducted in a manner consistent with this Agreement, CERCLA, and the NCP and shall contribute to the efficient performance of any long term remedial action with respect to the release(s) or threatened release(s) concerned.

13.2 The Navy shall give USEPA and PREQB adequate opportunity for timely review and comment after the Navy makes any proposal to carry out such removal actions and before the Navy initiates any such response action. Such a proposal to undertake such action by the Navy shall be submitted to USEPA and PREQB and shall include:

13.2.1 Documentation of the actual or threatened release from the Site;

13.2.2 Documentation that the action(s) to be taken will abate the danger and threat which may be posed by release of hazardous substances from the Site;

13.2.3 Documentation that the action(s) will, to the extent practicable, contribute to the efficient performance of any long-

term remedial action with respect to the release or threatened release concerned; and

13.2.4 A work plan and schedule for the proposed action.

13.3 The opportunity for review and comment for proposed removal actions, as stated in paragraph 13.2 above, may not apply if the action is in the nature of an emergency removal taken because of an immediate, imminent and substantial endangerment to human health or the environment. In the case of an emergency removal action the Navy may determine that review and comment, as stated in paragraph 13.2 above, is impractical. However, in the case of an emergency removal action, the Navy shall provide USEPA and PREQB with oral notice as soon as possible and written notice within 48 hours after the Navy determines that an emergency removal action is necessary. Promptly after initiating an emergency removal action, the Navy shall provide USEPA and PREQB with a written Action Memorandum which shall include the factual, technical and scientific basis for such action. Upon completion of an emergency removal action, the Navy shall state whether, and to what extent, the emergency removal action varied from the description of the action in the written notice provided pursuant to this paragraph.

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

14. RECORDS OF DECISION AND PROPOSED REMEDIAL ACTION PLANS

14.1 For the entire Site or for each operable unit, the Navy shall submit a Proposed Remedial Action Plan (PRAP) to USEPA and PREQB for review and comment in accordance with Section 10 (Consultation with USEPA and PREQB) of this Agreement. Following finalization of the PRAP, a public comment period will be announced and an opportunity for a public meeting will be offered by the Navy to receive comments on the FS Report and the PRAP. Copies of all written and oral public comments received will be provided to the Parties. Public review and comment shall be conducted in accordance with Section 117(a) of CERCLA, 42 U.S.C. Section 9617(a). Following public comment, the Parties will determine if the PRAP should be modified based on the comments received. Any such modifications will be made by the Navy and the modified PRAP will be reviewed and commented on by the USEPA and PREQB. Any of the Parties may recommend that additional public comment be solicited if modifications to the PRAP substantially change the originally proposed remedial action.

14.2 Within thirty (30) days of the close of the public comment period, the Navy will draft and submit to USEPA and PREQB a draft Record of Decision (ROD). The draft ROD will include a Responsiveness Summary, based on comments received during the public comment period and written in accordance with relevant

USEPA/PREQB-issued policy and guidance. The Parties shall have thirty (30) days to attempt to jointly agree upon the draft ROD following its submission by the Navy. If the Parties agree on the draft ROD, USEPA and PREQB shall co-sign the ROD and the draft ROD shall be adopted by USEPA, PREQB, and the Navy. Within ten (10) days of receipt of the ROD with USEPA's signature, the Navy shall issue the final ROD. If the Parties are unable to reach agreement on the draft ROD, the procedures of Section 11 (Resolution of Disputes) of this Agreement shall apply. If selection of a remedial action is made by the USEPA Administrator, USEPA shall then prepare the final ROD. The selection of a remedial action by the USEPA Administrator shall be final and not subject to dispute by the Navy; provided however, PREQB reserves its right to the extent provided by law to seek appropriate relief with respect to USEPA's final selection of a remedial action. The Navy shall prepare the final ROD in all other circumstances.

14.3 Notice of the final ROD shall be published by the Party preparing it and shall be made available to the public prior to commencement of the remedial action, in accordance with Section 117(b) of CERCLA, 42 U.S.C. Section 9617(b).



## 15. REPORTING

The Navy shall submit to PREQB and USEPA quarterly written progress reports which identify and briefly describe the actions which the Navy has taken during the previous quarter to implement the requirements of this Agreement. Progress reports shall also identify and briefly describe the activities scheduled to be taken during the upcoming quarter. Progress reports shall be submitted by the tenth (10) day of January, April, July and September for each quarter following the effective date of this Agreement. The progress reports shall include a statement of the manner and extent to which the requirements and time schedules set out in this Agreement and approved Work Plans are being met. In addition, the progress reports shall identify any anticipated delays in meeting time schedules, the reason(s) for the delay and actions taken to prevent or mitigate the delay. The Navy shall submit any notice of a Significant New Site Condition within seven (7) days of such discovery.

## 16. NOTIFICATION

16.1 Unless otherwise specified, the following shall be sent by return-receipt mail, overnight mail, facsimile machine or hand delivery to Project Managers or their designated agent(s). All time limitations shall commence upon receipt of the relevant document. Two copies of each document shall be provided in bound and duplex-printed form to reduce bulk. An additional copy of each document shall be provided unbound and single-sided to facilitate reproduction.

16.1.1 Any document provided pursuant to a deadline or target date identified in or developed under this Agreement.

16.1.2 Comments addressing documents provided pursuant to a deadline or target date identified in or developed under this Agreement.

16.1.3 Any notice of Significant New Site Conditions.

16.1.4 Any notice of dispute and response thereto submitted under Section 11 (Resolution of Disputes) of this Agreement.

16.1.5 Any request, and response thereto, for extensions under Section 30 (Extensions) of this Agreement.

16.1.6 Any notice of cessation of work under Section 13 (Removal Actions) of this Agreement.

16.2 The items listed in paragraph 16.1 above shall be transmitted as shown below:

16.2.1 Mail:

USEPA: NSGA Sabana Seca Project Manager  
(3 copies) U.S. Environmental Protection Agency,  
Region II  
NSGA Sabana Seca Project Manager  
Emergency and Remedial Response Division  
Program Support Branch  
Federal Facility Section  
26 Federal Plaza, Room 747  
New York, New York 10278

PREQB: Environmental Quality Board  
(3 copies) Air Quality, Superfund, and Emergency  
Response Program  
Eighth Floor  
NSGA Sabana Seca Project Manager  
P.O. Box 11488  
Santurce, PR 00910

Navy: Commander, Atlantic Division  
(3 copies) Naval Facilities Engineering Command  
Code 1822, Attn: NSGA Sabana Seca RPM  
Norfolk, Virginia 23511-6287

16.2.2 Facsimile Machine:

USEPA: (212) 264-7611 or (212) 264-6607  
Attn: [Project Manager's Name]  
PREQB: (809) 756-5906  
Attn: [Project Manager's Name]  
Navy: (804) 445-6662  
Attn: [Project Manager's Name]

16.2.3 Hand Delivery:

USEPA: NSGA Seca Project Manager (ERRD)  
(3 copies) U.S. Environmental Protection Agency,  
Region II  
26 Federal Plaza, Room 747  
New York, New York 10278  
  
PREQB: NSGA Sabana Seca Project Manager  
(3 copies) Environmental Quality Board  
Air Quality, Emergency Response, and  
Superfund Program  
Ponce de Leon Avenue #431, Eighth Floor

Hato Rey, Puerto Rico 00917

Navy: Commander, Atlantic Division  
(3 copies) Naval Facilities Engineering Command  
Code 1822, Attn: NSGA Sabana Seca RPM  
Norfolk, Virginia 23511-6287

16.2.4 The following are telephone contacts for the Project Managers.

16.2.4.1 USEPA: (212) 264-6669

16.2.4.2 PREQB: (809) 767-8071

16.2.4.3 Navy: (804) 445-9897

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

## 17. PROJECT MANAGERS

17.1 The USEPA, PREQB and the Navy shall each designate a Project Manager and Alternate for the purpose of overseeing the implementation of this Agreement. Within ten (10) days of the effective date of this Agreement, each Party shall notify the other Parties in writing of the name and address of their Project Manager/Alternate. Any Party may change its designated Project Manager/Alternate by notifying the other Parties, in writing, within five (5) days of the change. To the maximum extent possible, communications between the parties concerning the implementation of this Agreement shall be directed through the Project Managers as set forth in Section 16 (Notification) of this Agreement. As a matter of course, all written communications shall be sent to the Project Managers as described in Section 16 (Notification) above. Each Project Manager shall be responsible for assuring that all communications from the other Project Managers are appropriately disseminated and processed by the entities which the Project Manager represents.

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

17.2.1 Take samples, obtain split and/or duplicate samples and ensure that work is performed properly and pursuant to Section 18 (Sampling and Data Document Availability) of this Agreement as well as pursuant to the Appendices and plans incorporated into this Agreement;

17.2.2 Observe all activities performed pursuant to this Agreement;

17.2.3 Take photographs subject to applicable national security-related restrictions;

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

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

17.3 Any Project Manager may request minor field modifications to the work to be performed pursuant to this Agreement, or in techniques, procedures or designs utilized in carrying out this Agreement, which are necessary to the completion of the project. Any minor field modifications requested by any Party must be approved orally by all three (3) Project Managers to be effective. If unanimous agreement cannot be reached on the

proposed minor field modification, the Parties shall use the procedures of Section 11 (Resolution of Disputes) of this Agreement. Within seven (7) days following a modification made pursuant to this paragraph, the Project Manager who requested the modification shall provide written notification to the other Project Managers which delineates the modification and reasons therefore.

17.4 The Navy Project Manager or its designated representative shall be physically present on Site or reasonably available to supervise work performed at the Site during implementation of the work performed pursuant to this Agreement.

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



18. SAMPLING AND DATA DOCUMENT AVAILABILITY

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

18.2 At the request of any Party the sampling Party shall allow split and/or duplicate samples to be taken by any other Party during sample collection conducted during the implementation of this Agreement. The Project Manager obtaining the sample shall notify the other Project Managers not less than fourteen (14) days in advance of any sample collection to the maximum extent practicable.

## 19. RETENTION OF DOCUMENTS

Each Party to this Agreement shall preserve all documents which relate in any way to the presence of hazardous substances, pollutants, contaminants or constituents at the Site or to the implementation of this Agreement for a minimum of ten (10) years after termination of this Agreement despite any other document retention policy to the contrary. After the ten (10) year period, any Party desiring to destroy or dispose of document(s) shall notify, in writing, the other Parties at least forty-five (45) days prior to destruction or disposal of any such documents. Upon request by any Party, all documents pending destruction or disposal shall be made available for the requesting Party's review and copying. Notwithstanding the requirement to retain documents established by this Section, the execution of this Agreement does not constitute a waiver of any Freedom of Information Act (FOIA) privilege.

## 20. SITE ACCESS

20.1 USEPA and PREQB authorized representatives shall have authority to enter and move about the Site at all reasonable times for any purpose consistent with this Agreement including, among other things:

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

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

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

20.1.4 Verifying the data submitted to the USEPA and PREQB by the Navy; and

20.1.5 Observing the performance of any or all sampling, testing, response action, removals, remedial actions, pilot studies and/or any other actions taken at the Site pursuant to the terms of this Agreement.

20.2 The Navy shall honor all reasonable requests for such access by the USEPA and PREQB. However, such access shall be obtained in accordance with applicable national security-related restrictions and in a manner minimizing interference with any military operations at NSGA Sabana Seca. The Parties recognize that the Site is a National Security installation thereby requiring that the USEPA and PREQB use cameras and recording devices at the Site in accordance with applicable national security-related restrictions. The Navy may provide an escort when it deems necessary whenever USEPA or PREQB requires access to the Site for purposes consistent with the provisions of this Agreement. The USEPA and PREQB shall provide reasonable notice to the Navy Project Manager to request access to the Site.

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

20.4 The access agreements shall provide that the owners of any property where Navy monitoring wells, pumping wells, treatment facilities or other response actions are located shall notify the Parties by return receipt mail, at least forty-five (45) calendar days prior to any conveyance or any other transfer of any interest in the property. The Navy will take those steps necessary to insure the continued operation of the monitoring wells, treatment facilities, or other response actions installed pursuant to this Agreement.

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

20.6 After using its best efforts, should the Navy be denied access to non-Federal property, it will advise the Parties of that denial and will describe those actions taken to gain access within thirty (30) days of the denial. Within fifteen (15) days of such notice, the Navy shall submit appropriate modification(s) to affected Work Plans. However, the Navy shall have ultimate responsibility in obtaining required access in accordance with its statutory authority.

## 21. FIVE YEAR REVIEW

21.1 Consistent with Section 121(c) of CERCLA, 42 U.S.C. Section 9621(c), and any relevant USEPA/PREQB-issued policy and guidance, if the selected remedial action(s) result(s) in any hazardous substances, pollutants or contaminants remaining at the Site, the Parties agree to review the remedial action(s) at least every five (5) years after the initiation of the final remedial action(s) to assure that human health and the environment are being protected by the remedial action(s) being implemented. If during any such review it is determined that additional action or modification of the remedial action is appropriate, the Navy shall take such steps as are necessary to address the identified additional action or modification of the remedial action(s).

21.2 Any dispute under this Section shall be resolved under Section 11 (Resolution of Disputes) of this Agreement.

## 22. OTHER CLAIMS

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

22.2 Neither the USEPA nor PREQB shall be held as a party to any contract entered into by the Navy to implement the requirements of this Agreement.

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

## 23. CONFIDENTIAL OR CLASSIFIED INFORMATION

### 23.1 Confidential Information

23.1.1 Should the Navy provide confidential information to USEPA and PREQB, it may request that the information be withheld from public release pursuant to 40 CFR Section 2.203(b) (1990), and any amendments thereto.

23.1.2 Analytical data shall not be claimed as confidential by the Navy.

23.1.3 Information determined to be confidential by the Navy pursuant to 32 CFR Part 701 (1990), and any amendments thereto, shall be afforded the protection specified therein and such information shall be treated by all Parties to the extent permitted by law as confidential when so marked.

23.1.4 If no claim of confidentiality accompanies Navy information when it is submitted to the USEPA or PREQB, the information may be made available to the public without further notice to the Navy.

### 23.2 Classified Information



23.2.1 Navy information may also be subject to national security classification. Notwithstanding any other provisions of this Agreement, all requirements concerning the handling and "need to know" of national security information and restricted data shall be complied with in accordance with Section 120(j)(2) of CERCLA, 42 U.S.C. Section 9620(j)(2).

#### 24. EXHAUSTION OF ADMINISTRATIVE PROCEDURES

The Parties shall exhaust the administrative procedures provided in Section 10 (Consultation with USEPA and PREQB), Section 11 (Resolution of Disputes), Section 27 (Enforceability), Section 28 (Stipulated Penalties), Section 25 (PREQB's Reservation of Rights) and Section 37 (Recovery of USEPA and PREQB Expenses) of this Agreement before initiating any enforcement action for matters within the scope of this Agreement.

## 25. PREQB'S RESERVATION OF RIGHTS

25.1 Nothing herein shall be construed to affect the rights of PREQB, representing the Commonwealth, to seek appropriate relief, to the extent authorized by CERCLA and this Agreement, against USEPA, the Navy, or any other Party, to obtain compliance with ARARs at the Site, including, but not limited to, Puerto Rico law 1) governing hazardous or solid waste generation, storage, treatment, or disposal, (2) concerning removal or remedial actions, or (3) liability or compliance with respect to the release of hazardous substances or other pollutants or contaminants, including petroleum.

25.2 By entering into this Agreement, PREQB, representing the Commonwealth, does not waive any right or authority it may have under Commonwealth law, but expressly reserves all of the rights and authority it may have thereunder to order abatement of an imminent hazard to the public health or the environment, and reserves all rights it may have under Sections 113, 121 and 310 of CERCLA, 42 U.S.C. Sections 9613, 9621 and 9659. PREQB expressly agrees to exhaust any applicable procedures provided in Section 10 (Consultation with USEPA and PREQB), Section 11 (Resolution of Disputes), and Section 37 (Recovery of USEPA and PREQB Expenses) of this Agreement before pursuing any remedies it may have under the statutes which provide the jurisdictional basis for this

Agreement. Unless expressly waived by law, the Commonwealth does not waive its sovereign immunity by entering into this Agreement.

## 26. TOTAL INTEGRATION

There are no promises, verbal understandings or agreements of any kind pertaining to this Agreement other than specified herein.

This Agreement shall constitute the entire integrated agreement of the Parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.

## 27. ENFORCEABILITY

27.1 The Parties agree that:

27.1.1 Upon the effective date of this Agreement, any standard, regulation, condition, requirement or order which has become effective under CERCLA and is incorporated into this Agreement is enforceable by any person pursuant to Section 310 of CERCLA, 42 U.S.C. Section 9659, and any violation of such standard, regulation, condition, requirement or order will be subject to civil penalties under Sections 310(c) and 109 of CERCLA, 42 U.S.C. Sections 9659(c) and 9609;

27.1.2 All deadlines associated with the RI/FS shall be enforceable by any person pursuant to Section 310 of CERCLA, 42 U.S.C. Section 9659, and any violation of such deadlines will be subject to civil penalties under Sections 310(c) and 109 of CERCLA, 42 U.S.C. Sections 9659(c) and 9609;

27.1.3 All terms and conditions of this Agreement which relate to remedial actions, including corresponding deadlines or schedules, and all work associated with remedial actions, shall be enforceable by any person pursuant to Section 310(c) of CERCLA, 42 U.S.C. Section 9659(c), and any violation of such terms or conditions will be subject to civil penalties under

Sections 310(c) and 109 of CERCLA, 42 U.S.C. Sections 9659(c) and 9609; and

27.1.4 Any final resolution of a dispute pursuant to Section 11 (Resolution of Disputes) of this Agreement which establishes a term, condition, deadline or schedule shall be enforceable by any person pursuant to Section 310(c) of CERCLA, 42 U.S.C. Section 9659(c), and any violation of such term, condition, deadline or schedule will be subject to civil penalties under Sections 310(c) and 109 CERCLA, 42 U.S.C. Sections 9659(c) and 9609.

27.2 Nothing in this Agreement shall be construed as authorizing any person to seek judicial review of any action or work where review is barred by any provision of CERCLA, including Section 113(h) of CERCLA, 42 U.S.C. Section 9613(h).

27.3 Nothing in this Agreement shall be construed as a restriction or waiver of any rights the USEPA or PREQB, representing the Commonwealth, may have under CERCLA, including but not limited to any rights under Sections 113 and 310, 42 U.S.C. Sections 9613 and 9659. The Department of Defense (DOD) does not waive any rights it may have under CERCLA Section 120, 42 U.S.C. Section 9620; SARA Section 211, 10 U.S.C. Section 2701 et seq.; and Executive Order 12580.

27.4 The Parties agree to exhaust their rights under Section 11 (Resolution of Disputes) prior to exercising any rights to judicial review that they may have.

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



## 28. STIPULATED PENALTIES

28.1 In the event that the Navy fails to submit a primary document to USEPA pursuant to the appropriate deadline in accordance with the requirements of this Agreement, or fails to comply with a material term or condition (including any deadlines or schedules for work under this Agreement) which relates to a response action at the Site, USEPA may assess a stipulated penalty against the Navy. A stipulated penalty may be assessed in an amount not to exceed \$5,000 for the first week (or part thereof), and \$10,000 for each additional week (or part thereof) for which a failure set forth in this Section occurs.

28.2 Upon determining that the Navy has failed in a manner set forth in paragraph 28.1 above, USEPA shall so notify the Navy in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the Navy shall have fifteen (15) days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. The Navy shall not be liable for the stipulated penalty assessed by USEPA if the failure is determined, through the dispute resolution process, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.

28.3 The annual reports required by Section 120(e) of CERCLA, 42 U.S.C. Section 9620(e), shall include, with respect to each final assessment of a stipulated penalty against the Navy under this Agreement, each of the following:

28.3.1 The facility responsible for the failure;

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

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

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

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

28.4 Stipulated penalties assessed pursuant to this Section shall be payable to the Hazardous Substance Superfund only in the manner and to the extent expressly provided for in Acts authorizing funds for and appropriations to the DOD.

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

28.6 This Section shall not affect the Navy's ability to obtain an extension of a deadline or schedule pursuant to Section 30 (Extensions) of this Agreement.

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

28.8 USEPA and PREQB agree, to the extent allowed by law, to share equally any stipulated penalties paid by Navy between the Hazardous Substance Superfund and an appropriate Commonwealth fund..

## 29. DEADLINES

29.1 The following deadline has been established by the Parties for the submittal of the following draft primary document pursuant to this Agreement:

29.1.1 Site Scope of Work: Within thirty (30) days of the Effective Date of this Agreement.

29.2 Within the Site Scope of Work, the Navy shall propose deadlines or target completion dates for completion of each of the following draft primary documents:

29.2.1 Site Community Relations Plan

29.2.2 RI/FS Work Plan(s)

29.2.3 Baseline Risk Assessment(s)

29.2.4 Risk Assessment(s)

29.2.5 Remedial Investigation (RI) Report(s)

29.2.6 Feasibility Study (FS) Report(s)

29.2.7 Proposed Remedial Action Plan(s)

29.2.8 Record(s) of Decision

29.3 Within thirty (30) days of receipt of any Site Scope of Work, USEPA and PREQB shall review and provide comments to the Navy regarding the proposed deadlines. Within thirty (30) days

following receipt of the comments the Navy shall, as appropriate, make revisions and reissue the applicable Site Scope of Work. The Parties shall meet as necessary to discuss and finalize the proposed deadlines. If the Parties agree on proposed deadlines, the finalized deadlines shall be incorporated into the appropriate Work Plans. If the Parties fail to agree within forty-five (45) days on the proposed deadlines, the matter shall immediately be submitted for dispute resolution pursuant to Section 11 (Resolution of Disputes) of this Agreement.

29.4 The final deadlines established pursuant to this Section shall be published by USEPA and PREQB.

29.5 Within twenty-one (21) days of issuance of the Record of Decision, the Navy shall propose deadlines for completion of each Remedial Design Report and Remedial Action Work Plan. Each deadline shall be proposed, finalized and published utilizing the same procedures set forth in paragraphs 29.3 and 29.4 above.

29.6 Within twenty-one (21) days of receipt of any Final Remedial Investigation or Feasibility Study Work Plans by USEPA and PREQB, the Navy shall furnish target completion dates for secondary documents listed in the Remedial Investigation and Feasibility Study Work Plans.

29.7 The deadlines set forth in this Section, or to be established as set forth in this Section, may be extended pursuant to Section 30 (Extensions) of this Agreement. The Parties recognize that one possible basis for extension of the deadlines for completion of Remedial Investigation and Feasibility Study (RI/FS) Reports is the identification of Significant New Site Conditions during the performance of the remedial investigation.

### 30. EXTENSIONS

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

30.1.1 The deadline or the schedule that is sought to be extended;

30.1.2 The length of the extension sought;

30.1.3 The good cause(s) for the extension; and

30.1.4 Any related deadline or schedule that would be affected if the extension were granted.

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

30.2.1 An event of force majeure;

30.2.2 A delay caused by another Party's failure to meet any requirement of this Agreement;

30.2.3 A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;

30.2.4 A delay caused, or which is likely to be caused, by the grant of an extension in regard to another deadline or schedule;  
or

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

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

30.4 Within fourteen (14) days of receipt of a request for an extension of a deadline or a schedule, USEPA and PREQB shall advise the Navy in writing of their respective positions on the request. If USEPA or PREQB does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position. Should USEPA or PREQB not concur in the requested extension and should that Party's notice of nonconcurrence not be provided within fourteen (14) days of receipt of the Navy's written request for the extension, then the deadline or schedule which is the subject of



the requested extension shall be tolled for the period of time in excess of the fourteen (14) days that it took the nonconcurring Party to advise the Navy of its position.

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

30.6 Within fourteen (14) days of receipt of a statement of nonconcurrence with the requested extension, any Party may invoke dispute resolution in accordance with Section 11 (Resolution of Disputes) of this Agreement.

30.7 A timely and good faith request for an extension shall toll any assessment of stipulated penalties or application for judicial enforcement of the affected 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 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 deadline or schedule as most recently extended.

31. FORCE MAJEURE

31.1 Force Majeure shall mean any event arising from causes beyond the control of a Party that causes a delay in or prevents the performance of any obligation under this Agreement, including, but not limited to:

31.1.1 Acts of God, fire, war, insurrection, civil disturbance, or explosion;

31.1.2 Unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance;

31.1.3 Adverse weather conditions that could not be reasonably anticipated;

31.1.4 Unusual delay in transportation;

31.1.5 Restraint by court order or order of public authority;

31.1.6 Inability to obtain, 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 Navy;

31.1.7 Delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; or

31.1.8 Insufficient availability of appropriated funds, if the Navy shall have made timely request for such funds as part of the budgetary process as set forth in Section 32 (Funding) of this Agreement.

31.2 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 or response actions whether or not anticipated at the time such response actions were initiated.

## 32. FUNDING

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

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

32.3 Any requirement for the payment or obligation of funds, including stipulated penalties, by the Navy 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. Section 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.

32.4 If appropriated funds are not available to fulfill the Navy's obligations under this Agreement, USEPA and the PREQB, representing the Commonwealth, reserve the right to initiate an action against any other person, or to take any response action, which would be appropriate absent this Agreement.

32.5 Funds authorized and appropriated annually by Congress under the "Environmental Restoration, Defense" appropriation in the Department of Defense Appropriation Act and allocated by the Deputy Assistant Secretary of Defense (Environment) [DASD(E)] to the Navy will be the source of funds for activities required by this Agreement consistent with Section 211 of SARA, 10 U.S.C. Section 2703. However, should the Environmental Restoration, Defense appropriation be inadequate in any year to meet the total Navy CERCLA implementation requirements, the DOD shall employ and the Navy shall follow a standardized DOD prioritization process which allocated that year's appropriations in a manner which maximizes the protection of human health, welfare and the environment.

### 33. CONVEYANCE OF TITLE

No conveyance of title, easement, or other interest in the Navy property in which any containment system, treatment system, monitoring system or other response action(s) is installed or implemented pursuant to this Agreement shall be consummated by the Navy without provision for continued maintenance of any such system or other response action(s) in accordance with Section 120(h) of CERCLA, 42 U.S.C. 9620(h). At least ninety (90) days prior to any such conveyance, the Navy shall notify USEPA and PREQB of the provisions made for the continued operation and maintenance of any response action(s) or systems installed or implemented pursuant to this Agreement. The Navy shall include notice of this Agreement in any document conveying title, easement or other interest in the Site to any subsequent owner and/or operator of any portion of the Site.

#### 34. ADMINISTRATIVE RECORD AND PUBLIC PARTICIPATION

34.1 Activities required pursuant to this Agreement shall comply with the administrative record and public participation requirements of CERCLA, including Sections 113(k) and 117 of CERCLA respectively, 42 U.S.C. Sections 9613(k) and 9617; the NCP; and relevant USEPA/PREQB-issued policies and guidances on administrative records and public participation.

34.2 The Navy shall develop and implement a Community Relations Plan (CRP) consistent with Section 117 of CERCLA, 42 U.S.C. Section 9617; the NCP; relevant USEPA/PREQB-issued policy and guidance, including USEPA's Community Relations Handbook and any modifications thereto.

34.3 To the extent practicable, any Party issuing any press release to the media or publishing a notice regarding any of the work required by this Agreement shall advise the other Parties of such press release or notice and the contents thereof at least two (2) business days before the issuance of such press release or notice and of any subsequent changes to the press release or notice prior to release. This provision for notice, however, does not extend to contract solicitations for work or modifications thereto that are routinely publicized for



competition purposes. The provisions of this paragraph are not subject to Section 11 (Resolution of Disputes) of this Agreement.

34.4 The administrative record shall be established and maintained by the Navy in accordance with Section 113(k) of CERCLA, 42 U.S.C. Section 9613(k), and relevant USEPA/PREQB-issued policy and guidance. A copy of each Navy document placed in the Administrative Record shall be supplied to USEPA and PREQB. An index of documents in the Administrative Record will be updated on at least a quarterly basis and provided to the USEPA and PREQB. Upon request the Navy shall make all documents forming the Administrative Record available to USEPA and PREQB for copying.

### 35. PUBLIC COMMENT

35.1 This Agreement is subject to the public participation provisions of Sections 117 and 211 of CERCLA, 42 U.S.C. Section 6917 and 10 U.S.C. Section 2705.

35.2 When the Parties agree that this Agreement, or any amendment(s) thereto, is ready for public review and comment, they will sign a Letter of Intent to Execute. USEPA shall then announce the availability of this Agreement, the Letter of Intent to Execute and any amendment(s) to this Agreement for public review and comment. USEPA shall accept comments from the public for a period of forty-five (45) days after such announcement. At the end of the comment period, the Parties shall jointly review all such comments and shall either:

35.2.1 Determine that the Agreement should be made effective in its present form and then be submitted for execution by those Parties; or

35.2.2 Determine that further negotiation of the Agreement is necessary, in which case the Parties shall return to negotiation.

### 36. AMENDMENT OF AGREEMENT

36.1 Any Party may submit a written request for amendment to the other Parties.

36.2 This Agreement may be amended by the unanimous written agreement of the Parties. If the Parties do not reach unanimous agreement to the proposed amendment they may enter into negotiations with a view toward resolving all points of disagreement. If, following negotiation, unanimity cannot be achieved, the amendment will not occur. Amendment proposals under this Agreement are not subject to Section 11 (Resolution of Disputes) of this Agreement.

36.3 The notice procedures of Section 117 of CERCLA, 42 U.S.C. Section 9617, and Section 211 of SARA, 10 U.S.C. Section 2705, shall be followed for all material amendments to this Agreement. The amendment cannot be executed until such time as public participation requirements of Section 35 (Public Comment) of this Agreement have been satisfied.

### 37. RECOVERY OF USEPA AND PREQB EXPENSES

#### 37.1 Reimbursement of USEPA's Expenses:

The Parties agree to amend this Section at a later date in accordance with subsequent resolution of the national issue of DOD-USEPA cost reimbursement.

#### 37.2 Reimbursement of PREQB'S Expenses:

37.2.1 Compensation for PREQB support services rendered in connection with those activities funded by the Defense Environmental Restoration Program (10 U.S.C. § 2701, et seq.) and carried out pursuant to this Agreement is governed by the Defense/Commonwealth Memorandum of Agreement (DCMOA), between the Department of Defense and PREQB on behalf of the Commonwealth, executed on February 4, 1991. In the event such Memorandum of Agreement is terminated or no longer in effect for any reason, the terms of the remainder of this Section shall apply.

37.2.2 The Navy agrees to request funding and to reimburse PREQB for the costs related to the implementation of this Agreement as provided in this Section. The Navy agrees to advise PREQB of the status of available funds as soon as the appropriations are made available and final program allocations are made by DOD to the Navy.

37.2.2.1 Reimbursable costs are subject to Section 32 (Funding) of this Agreement, and shall consist only of reasonable expenditures required to be made and actually made by PREQB in furtherance of this Agreement. Such costs shall not include payment for any activity for which PREQB receives payment or reimbursement from another federal agency or for any activity violative of federal or Commonwealth statutes or regulations.

37.2.2.2 Total compensation to PREQB for services or oversight activities shall not exceed the percentage limits specified in the DCMOA and the most recent Cooperative Agreement between the Navy and/or DOD and PREQB concerning the Site using the same procedures set forth in those documents.

37.2.2.3 Within sixty (60) days after the end of each quarter of the federal fiscal year, PREQB shall submit to the Navy an accounting of all PREQB costs actually incurred during that quarter in providing support services under this Section. Such accounting shall be accompanied by cost summaries and be supported by documentation which meets federal auditing requirements. The summaries will set forth employee-hours and other expenses by major type of support service. All costs submitted must be for work directly related to implementation of this Agreement and not inconsistent with the National Contingency Plan (NCP), the requirements of OMB Circulars A-87 (Cost Principles for State and Local Governments) and A-128 (Audits for

State and Local Cooperative Agreements with State and Local Governments), and Standard Forms 424 and 270. The Navy has the right to audit cost reports used by PREQB to develop the cost summaries. Before the beginning of each fiscal year, PREQB shall supply a budget estimate of its expected activities for that year.

37.2.2.4 The Navy shall reimburse PREQB within sixty (60) days of receipt of the accounting, except for any amounts disputed in accordance with subsection 37.2.3 below.

37.2.3 In lieu of Section 11 (Resolution of Disputes) of this Agreement, this subsection shall govern any dispute between the Navy and PREQB regarding the application of this Section or any matter controlled by this Section, including, but not limited to, allowability of expenses and limits on reimbursement.

37.2.3.1 The Navy and PREQB Project Managers shall be the primary points of contact to coordinate resolution of disputes under this subsection.

37.2.3.2 If the Navy or PREQB Project Managers are unable to resolve a dispute, the matter shall be referred to the DRC

representatives (as provided in Section 11 of this Agreement) for the Navy and PREQB as soon as practicable, but in any event within forty (40) days of receipt of the accounting.

37.2.3.3 Should such DRC representatives be unable to resolve the dispute within ten (10) working days, the matter shall be elevated to the SEC representatives (as provided in Section 11 of this Agreement) for the Navy and PREQB, who will render a written report on the results of their efforts to resolve the dispute within ten (10) working days.

37.2.3.4 If the Navy and PREQB are unable to resolve the issues in dispute through procedures described in this subsection, PREQB may withdraw as a Party to this Agreement by providing written notice of its withdrawal to the remaining Parties. Such withdrawal shall terminate all rights and obligations PREQB may have under this Agreement; provided, however, that any actions or decisions taken under or pursuant to this Agreement by PREQB prior to its withdrawal shall continue to have full force and effect as if PREQB were still a Party to this Agreement.

37.2.3.5 Although it is the intention of the Navy and PREQB that these procedures shall govern disputes regarding PREQB reimbursement, informal dispute resolution is encouraged. Regardless of the result of dispute resolution under this

subsection, nothing in this Agreement constitutes a waiver of claims by PREQB for costs expended but not reimbursed, and PREQB retains all of its legal and equitable remedies to recover its costs.



### 38. TERMINATION

38.1 Except as provided in Section 21 (Five Year Review) of this Agreement, to the extent that remedial actions are conducted pursuant to the provisions of this Agreement, following the completion of all remedial actions and upon written request by the Navy, USEPA and PREQB will send to the Navy a written notice of satisfaction of the terms of this Agreement within ninety (90) days of the request. The notice shall state that, in the opinions of USEPA and PREQB, the Navy has satisfied all of the terms of this Agreement in accordance with the requirements of CERCLA, the NCP and all related regulations and guidance, and applicable Commonwealth laws, and that the remedial work performed by the Navy was consistent with the remedial actions agreed upon by USEPA and PREQB.

38.2 If USEPA and PREQB fail to provide the written notice of completion to the Navy after the Navy has requested it, USEPA and PREQB will respond to the Navy in writing as to the reasons why that notice of completion has not been provided. The written denial of completion shall be subject to Section 11 (Resolution of Disputes) of this Agreement for sixty (60) days following the Navy's receipt of the written denial.

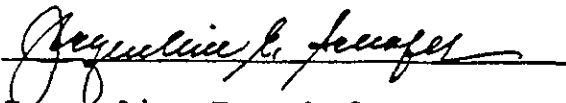
39. EFFECTIVE DATE

39.1 This Agreement and any amendments thereto are effective upon their execution by all Parties.

39.2 This Agreement will not be executed until such time as public participation requirements of Section 35 (Public Comment) of this Agreement have been satisfied.

IT IS SO AGREED:

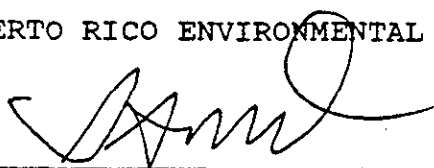
FOR U.S. DEPARTMENT OF THE NAVY

By:   
Jacqueline E. Schafer

Date: 19 March 1992

Assistant Secretary of the Navy for Installations and  
Environment

FOR THE PUERTO RICO ENVIRONMENTAL QUALITY BOARD


By: 

Date: March 19, 1992

Pedro A. Maldonado-Ojeda, Esq.

Chairman, Puerto Rico Environmental Quality  
Board

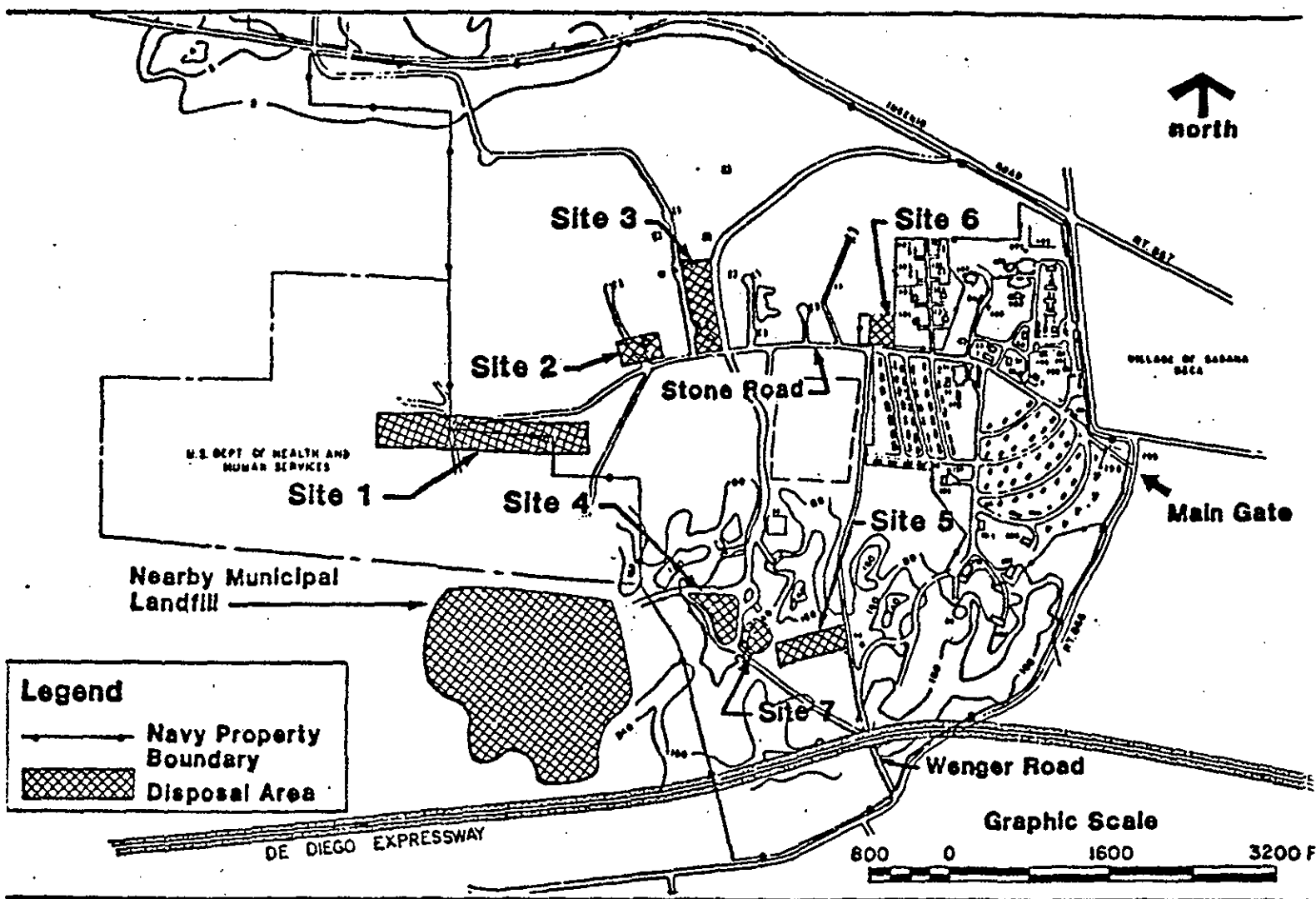
FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

By:   
Constantine Sidamon-Eristoff

Date: 3-19-92

Regional Administrator, Region II

# SITE MAP, NSGA SABANA SECA



SITE	DESCRIPTION
1	South Stone Road Disposal Area
2	Bunker 607 Disposal Area
3	North Stone Road Disposal Area
4	Pistol Range Disposal Area
5	Wenger Road Disposal Area
6	Former Pest Control Shop
7	Leachate Ponding Area

Waste Disposal Areas  
NSGA Sabana Seca,  
South Tract

16 May 1991

DESCRIPTION OF DOCUMENTS  
REQUIRED FOR SUBMISSION UNDER THIS AGREEMENT

This Appendix is provided for informational purposes only. This Appendix is not an enforceable part of this Agreement. The Site Scope of Work, Site Community Relations Plan, and the NPL Close Out Report must encompass the entire Site. All other documents may encompass the entire Site or operable units.

Miscellaneous:

1. Remedial Investigation/Feasibility Study (RI/FS) Project Planning and Scoping:

a. The initial Project Planning phase of the RI/FS process is designed to scope the following:

(1) Interim actions necessary to mitigate potential threats to human health or the environment;

(2) Future actions that may be required to address problems; and

(3) The optimal sequence of actions and investigative activities.

b. RI/FS Project Planning is done to:

(1) Determine the types of decisions that must be made;

(2) Identify the data quality objectives needed to support those decisions;

(3) Describe the methods by which the required data will be obtained and analyzed; and

(4) Prepare project plans to document methods and procedures.

2. Site Administrative Record (SAR):

a. Provides the basis for the selected response action(s) at the Site. Any issue under judicial review concerning the adequacy of a response action is strictly limited to the SAR.

b. Serves as a vehicle for public participation in the selection of response action(s).

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c. Notice of the availability of the SAR must be published in a major local newspaper of general circulation.

Primary Documents:

1. Site Scope of Work (SOW):

a. Documents the decisions and evaluation made during the Project Planning and Scoping process.

b. Determines the Site-specific objectives of the RI/FS study and devises a general management approach for the Site.

2. Site Community Relations Plan (CRP):

a. Provides guidelines for community relations activities at the Site implemented by the Navy to keep the concerned public informed of the response action activities at the Site.

b. A community relations plan can enable governmental staff to take community concerns into account in planning a response action and the result can be a better response action. At the same time, it can ensure that citizens have accurate information about the response.

3. Remedial Investigation and Feasibility Study (RI/FS) Work Plan:

a. Presents anticipated future tasks and associated schedules and cost estimates based on the Statement of Work.

b. Summarizes the initial evaluation of existing data and background information performed during Project Planning and Scoping, and presents the conceptual model.

c. The Work Plan also defines the scope and objectives of RI/FS activities to the extent possible with the help of detailed descriptions provided in the Site Sampling and Analysis Plan.

d. Because the RI/FS process is dynamic, the RI/FS Work Plan should be constructed to allow for scoping flexibility and work modification.

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4. Baseline Risk Assessment:

- a. Provides an evaluation of the potential threat to human health and the environment in the absence of any remedial action.
- b. Provides the basis for determining whether or not remedial action is necessary and the justification for conducting remedial actions.
- c. Is used to support a finding of imminent and substantial endangerment or justify no further remedial action.
- d. Provides the basis for the Risk Assessment Report.

5. Risk Assessment:

- a. Expands on the Baseline Risk Assessment Report.
- b. Characterizes the risk and uncertainties concerning noncarcinogenic and potential carcinogenic effects associated with contamination.
- c. Develops performance goals and provides risk analysis for potential remedial alternatives based on Applicable or Relevant and Appropriate Requirements (ARARs).
- d. Supports the Feasibility Study Report.

6. Remedial Investigation (RI) Report:

- a. Presents the physical characteristics of the site.
- b. Defines the sources of contamination at the site.
- c. Characterizes the nature and extent of the contamination for all media.
- d. Presents the results from the development and initial screening of alternatives.
- e. Supports the Feasibility Study Report.
- f. Notice of the availability of the RI Report must be

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published in a major local newspaper of general circulation.

7. Feasibility Study (FS) Report:

a. The primary objective of this phase of the FS is to develop an appropriate range of waste management alternatives that ensure the protection of human health and the environment.

b. Presents the results of the detailed analysis of alternatives that ensure the protection of human health and the environment.

c. Notice of the availability of the FS Report must be published in a major local newspaper of general circulation.

8. Proposed Remedial Action Plan:

a. Highlights the RI and FS Reports.

b. Provides a brief analysis of remedial alternatives under consideration and proposes the preferred alternative(s).

c. Provides the public with information and an opportunity to participate in the remedy selection process. Notice of the availability of the PRAP must be published in a major local newspaper of general circulation.

9. Record of Decision:

a. It is the document that demonstrates that the lead agency's decision-making has been carried out in accordance with CERCLA and the NCP.

b. Summarizes the problems posed by a site and provides an analysis of the alternative ways to address those problems.

c. Addresses public comment expressed concerning the Proposed Remedial Action Plan, Remedial Investigation and Feasibility Study Reports and other information made available in the Site Administrative Record.

10. Remedial Design Report (including Design Plans and



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Specifications):

a. Describes how the design will implement and accomplish the goal(s) of the approved Remedial Action Plan and the selected remedy.

b. Provides the schedule for completion of various components of the preliminary and final designs and implementation of work (e.g., site selection, site preparation, construction, testing, start-up, etc.).

c. Provides the Design Plans and Specifications:

(1) Preliminary design addressing not less than 30% of the total design based on the information in the Remedial Design Report (for review).

(2) Prefinal design at 90% completion which shall include all functional details, specifications and drawings (for review).

(3) Final design at 100% completion with final construction drawings and specifications.

11. Remedial Action Work Plan:

a. Provides a plan which will explain in detail how the approved remedial action will be implemented.

b. Includes:

(1) Remedial Action-specific Health and Safety Plan.

(2) Remedial Action-specific Sampling and Analysis Plan.

(3) Remedial Action-specific QA/QC Plan which includes all field installation and construction.

(4) Permitting Plan which provides for satisfaction of all permitting requirements, both administrative and technical including ARARs and actions exempt from permitting.

(5) Environmental Monitoring Plan to address all potentially affected media as appropriate.

(6) Schedule for the construction and operation of the

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approved remedy and remedial design and submission of the final Remedial Action Report.

12. Final Remediation Report (including Notice of Intent to Delete):

Upon completion of the remediation the following information will be provided:

a. How the remediation has met the goal(s) of the approved Remedial Action Plan.

b. A summary of conditions including monitoring results and a detailed description of any remaining contamination or releases.

c. A description of any operation and maintenance requirements and assurances of applicable institutional controls that will be necessary.

d. Any recommendations for further action or monitoring at the site.

e. As appropriate, a Notice of Intent to Delete when the site is intended to be deleted from the National Priority List and a projected date for submission of the NPL Close Out Report.

13. Five Year Review (FYR) Report:

a. Provides a summary of the findings of the FYR.

b. Describes in detail any further actions (which may include the "no action" decision) required for the site.

c. Provides a timeframe for the next FYR, if appropriate.

d. Notice of the availability of the FYR Report must be published in a major local newspaper of general circulation.

14. NPL Close-Out Report:

a. The NPL Close-Out Report will constitute the complete technical justification for deletion of a specific location,

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operable unit or site from the National Priorities List.

b. Contains all information required by USEPA guidance and directives for completion of the process.

Secondary Documents:

1. Statement of Work

a. Provides detailed description of work to be performed.

b. Is based on the general work description contained in the Site Scope of Work.

2. Preliminary Characterization Summary Report:

a. Summarizes data following the completion of initial sampling and analysis activity.

b. Used for evaluating the development and initial screening of remedial alternatives.

c. Assists in the identification of potential Applicable or Relevant and Appropriate Requirements (ARARs).

d. Provides the basis for the Site Health Assessment conducted by the Agency for Toxic Substances and Disease Registry (ATSDR).

e. Supports the Baseline Risk Assessment Report(s).

3. Health and Safety Plan (HSP):

a. Evaluates the risk associated with existing site conditions, identifies site control measures and key site health and safety personnel.

b. Provides for a contingency plan which satisfies OSHA requirements, and details site standard operating procedures (SOPs).

c. The HSP is developed concurrently with the Sampling and Analysis Plan to ensure safe field activity and to identify

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potential problems and special site requirements.

d. The HSP should provide for site safety briefings and inspections.

4. Sampling and Analysis Plan (including Quality Assurance Project Plan and Field Sampling Plan)

a. Ensures that field sample collection and laboratory analysis, and data analysis and interpretation activities will be comparable to and compatible with previous collection, analysis and interpretation activities performed at the site while providing a mechanism for planning and approving field activities.

b. Includes the following:

(1) Field Sampling Plan which provides for all field procedures by defining in detail the sampling methods and decontamination procedures to be used.

(2) Quality Assurance Project Plan which describes the policy, organization, functional activities, and quality assurance and quality control protocols necessary to achieve the data quality objectives dictated by the scope and objectives of the RI/FS.

5. Quarterly Progress Report:

Describes the on-site response action progress.

6. Treatability Study Report:

a. Reduce cost and performance uncertainties for treatment alternatives to acceptable levels so that a remedy can be selected.

b. May include bench-scale and/or pilot-scale testing to gather performance data and to develop cost estimates to support the detailed analysis of alternatives during the feasibility study.

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7. Remedial Action Progress Report:

a. Describes the on-site progress during remedial action activities.

b. Includes information on:

- (1) The progress of the remedy.
- (2) Operation and Maintenance requirements.
- (3) Environmental Monitoring requirements.

8. Remedial Design Implementation Plan:

a. Describes how, prior to the initiation of design, the Navy will initiate and/or revise the Community Relations Plan (CRP) to address community concerns anticipated during the Remedial Design/Remedial Action (RD/RA) process or indicate how they are addressed by the CRP.

b. Describes in general terms how the design will meet the scope and goal(s) of the approved remedial action plan for the site.

c. Provides the schedules for the submission of the remedial pre-design and design reports and related activities.

9. Remedial Pre-Design Report:

a. Provides a description including a topographic map and preliminary layout of remedial activities.

b. Provides a summary of the factors of the selected remedy that will affect the design, construction and completion of the remedial action including:

- (1) Description of remedy.
- (2) Scope and goal(s) of remedy.
- (3) Preliminary design criteria and rationale.
- (4) General operation and maintenance requirements.

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- (5) Short and long term environmental monitoring requirements.
  - (6) Specific factors from the RI/FS affecting remedy.
  - (7) Results and impacts of applicable tests or studies.
  - (8) Description of additional tests or studies needed to design or implement the remedial action.
- c. Provides special design or implementation considerations including:
- (1) Special technical considerations.
  - (2) Additional engineering or site data required.
  - (3) Permit and/or regulatory requirements (including ARARs).
  - (4) Access, easements, right-of-way needs.
  - (5) Health and safety considerations.

10. Remedial Action Post-Construction Report:

Provides a closeout report that includes but is not limited to:

- a. A final construction inspection report.
- b. A brief description of any outstanding construction and/or testing items.
- c. Certification by a registered professional engineer that the remedy is fully operational and functional as designed and planned.
- d. Explanation of any changes in design, installation or operation from that described in previously submitted reports or plans.
- e. As-built design drawings and specifications and Final Operation and Maintenance Plan(s).

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LIST OF ACRONYMS

ARAR	Applicable or Relevant and Appropriate Requirement
CERCLA	Comprehensive Environmental Response Compensation and Liability Act
CRP	Community Relations Plan
DASD(E)	Deputy Assistant Secretary of Defense (Environment)
DERP	Defense Environmental Restoration Program
DOD	Department of Defense
DON	Department of the Navy
DRC	Dispute Resolution Committee
EQB	Environmental Quality Board
FOIA	Freedom of Information Act
FS	Feasibility Study
HS	Hazardous Substance
IAS	Initial Assessment Study
NCP	National Contingency Plan
NSGA	Naval Security Group Activity
PRAP	Proposed Remedial Action Plan
QAPP	Quality Assurance Project Plan
QA/QC	Quality Assurance/Quality Control
RA	Remedial Action
RCRA	Resource Conservation and Recovery Act
RD	Remedial Design
RI	Remedial Investigation
ROD	Record of Decision
SEC	Senior Executive Committee
SES	Senior Executive Service
USC	United States Code
USEPA	United States Environmental Protection Agency

Appendix C