

## **IAG COVER SHEET**

**FILE NAME: IndianHead.pdf**

**Title: Naval Surface Warfare Center Indian Head Division, IndianHead**

**Subject: Region 3, III**

**Author: Navy, DoD, Maryland, MD**

**Keywords: 12/09/00, 2000, FY01**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

AND THE

IN THE MATTER OF:

)  
)  
)  
**FEDERAL FACILITY AGREEMENT**  
Under CERCLA Section 120  
)  
Administrative  
Docket Number:  
III-FCA-CERC-018

I. JURISDICTION.....	4
II. DEFINITIONS.....	5
III. PARTIES BOUND .....	11
IV. PURPOSE .....	11
V. SCOPE OF AGREEMENT .....	13
VI. FINDINGS OF FACT .....	14
VII. EPA DETERMINATIONS .....	25
VIII. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION .....	26
IX. WORK TO BE PERFORMED .....	27
REMEDIAL INVESTIGATIONS FOR 26 PREVIOUSLY IDENTIFIED SITES.....	28
SITE-SCREENING AREAS.....	30
REMEDIAL INVESTIGATION AND FEASIBILITY STUDY.....	35
PROCEDURES FOR INTERIM REMEDIAL ACTIONS .....	35
RECORDS OF DECISION AND PLANS FOR REMEDIAL ACTION.....	36
REMEDIAL DESIGN AND REMEDIAL ACTION.....	38
FINALIZATION OF REMEDIAL ACTIONS.....	39
ACCELERATED OPERABLE UNIT.....	39
SUPPLEMENTAL RESPONSE ACTION.....	40
X. CONSULTATION .....	43
XI. DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN .....	51
XII. BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN .....	53
XIII. EXTENSIONS.....	59
XIV. PROJECT MANAGERS .....	61
XV. EXEMPTIONS.....	65
XVI. ACCESS .....	65
XVII. PERMITS .....	67
XVIII. REMOVAL AND EMERGENCY ACTIONS .....	69
XIX. PERIODIC REVIEW.....	71
XX. DISPUTE RESOLUTION.....	72

XXI. STIPULATED PENALTIES .....	75
XXII. FORCE MAJEURE.....	76
XXIII. ENFORCEABILITY.....	77
XXIV. OTHER CLAIMS.....	78
XXV. RESERVATION OF RIGHTS .....	79
XXVI. PROPERTY TRANSFER.....	80
XXVII. FUNDING.....	80
XXVIII. RECOVERY OF EPA EXPENSES .....	81
XXIX. QUALITY ASSURANCE .....	82
XXX. RECORD PRESERVATION.....	82
XXXI. SAMPLING AND DATA/DOCUMENT AVAILABILITY .....	83
XXXII. PROTECTED INFORMATION .....	83
XXXIII. COMMUNITY RELATIONS .....	84
XXXIV. PUBLIC COMMENT ON THIS AGREEMENT .....	85
XXXV. RESTORATION ADVISORY BOARD .....	88
XXXVI. EFFECTIVE DATE .....	89
XXXVII. AMENDMENT OF AGREEMENT .....	89
XXXVIII. SEVERABILITY .....	90
XXXIX. TERMINATION AND SATISFACTION.....	90
AUTHORIZED SIGNATURES .....	91
APPENDIX A.....	92
APPENDIX B.....	94

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

AND THE

UNITED STATES DEPARTMENT OF THE NAVY

IN THE MATTER OF:	)	
	)	
U.S. Department of the Navy	)	FEDERAL FACILITY AGREEMENT
Naval Surface Warfare Center	)	Under CERCLA Section 120
Indian Head Division	)	
Indian Head, MD	)	Administrative
	)	Docket Number:
	)	III-FCA-CERC-018

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

**I. JURISDICTION**

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

A. The U.S. Environmental Protection Agency (EPA) Region III enters into those portions of this Agreement that relate to the Remedial Investigation/Feasibility Study (RI/FS) pursuant to Section 120(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. No. 99-499 (hereinafter jointly referred to as CERCLA), 42 U.S.C. Section 9620(e)(1), and Sections 6001, 3008(h) and 3004(u) and (v) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v) as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) (hereinafter jointly referred to as RCRA), and Executive Order 12580;

B. EPA Region III enters into those portions of this Agreement that relate to interim remedial actions and final

remedial actions pursuant to CERCLA Section 120(e)(2), 42 U.S.C. Section 9620(e)(2), RCRA Sections 6001, 3008(h) and 3004(u) and (v), 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v), and Executive Order 12580;

C. The Navy enters into those portions of this Agreement that relate to the RI/FS pursuant to CERCLA Section 120(e)(1), 42 U.S.C. Section 9620(e)(1), RCRA Sections 6001, 3008(h) and 3004(u) and (v), 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v), Executive Order 12580, the National Environmental Policy Act, 42 U.S.C. Section 4321, and the Defense Environmental Restoration Program (DERP), 10 U.S.C. Section 2701 et. seq.;

D. The Navy enters into those portions of this Agreement that relate to interim remedial actions and final remedial actions pursuant to CERCLA Section 120(e)(2), 42 U.S.C. Section 9620(e)(2), RCRA Sections 6001, 3008(h), 3004(u) and (v), 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v), Executive Order 12580 and the DERP.

## II. DEFINITIONS

2.1 Except as noted below or otherwise explicitly stated, the definitions provided in CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) shall control the meaning of terms used in this Agreement.

A. "Accelerated Operable Unit" or "AOU" shall mean a remedial action which prevents, controls, or responds to a release or threatened release of hazardous substances, pollutants, and contaminants where prompt action is necessary but a response under removal authorities is not appropriate or desirable. The purpose of an AOU is to allow the Parties to proceed with a remedial action for that Operable Unit prior to completion of the final Record of Decision (ROD) for the total remedial action. AOU's are particularly appropriate where the size and complexity of the total remedial action would seriously delay implementation of independent parts of the action. AOU's will only proceed after complying with applicable procedures in the NCP, and the Parties shall make every effort to expedite these procedures. It is not intended that AOU's diminish the requirements for or delay the conduct of a total remedial action.

B. "Agreement" shall refer to this document and shall include all Attachments to this document. All such Attachments are integral parts of this Agreement and shall be enforceable to the extent provided herein.

C. "Applicable State law" shall mean all State of Maryland laws determined to be applicable under this Agreement. The term shall include but not be limited to, all laws determined to be Applicable or Relevant and Appropriate Requirements (ARARs).

D. "ARARs" shall mean "legally applicable" or "relevant and appropriate" requirements, standards, criteria or limitations, as those terms are used in Section 121 of CERCLA, 42 U.S.C. Section 9621, and as defined in the NCP.

E. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, (SARA) Public Law No. 99-499, and any amendments thereto.

F. "Community Relations" shall mean the program to inform and involve the public in the installation restoration, CERCLA, and RCRA processes and to respond to community concerns.

G. "Corrective Action Permit" shall mean the corrective action portion of any RCRA Permit issued to the Naval Surface Warfare Center Indian Head Division (NSWC Indian Head), pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA), including the Corrective Action Permit issued to the NSWC Indian Head tenant command, the Naval Explosive Ordnance Disposal Technology Center, now known as the Naval Explosive Ordnance Disposal Technology Division (NAVEODTECHDIV).

H. "Days" shall mean calendar days, unless business days are specified. Any submittal, written statement of position, or written statement of dispute which, under the terms of this Agreement, would be due on a Saturday, Sunday, or Federal holiday shall be due on the following business day.

I. "Deadlines" shall mean the Near Term Milestones specifically established for the current fiscal year under the Site Management Plan. Deadlines are subject to stipulated penalties in accordance with Section XXI- STIPULATED PENALTIES.

J. "Deliverable Documents" shall mean those required documents listed as Primary and Secondary Documents under this Agreement.

K. "Documents" or "records" shall mean any documents, writings, 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.

L. "EPA" or "U.S. EPA" or "Agency" shall mean the United States Environmental Protection Agency, its employees, agents, authorized representatives, successors and assigns.

M. "Facility" shall mean that property owned by the United States and operated by the U.S. Department of the Navy, currently known as Naval Surface Warfare Center Indian Head Division (NSWC Indian Head) located in Charles County, Maryland and including all areas identified in Appendix A and Appendix B. consists of both the Main Site located on the Cornwallis Neck Peninsula and the Stump Neck Annex located across the Mattawoman Creek. This definition is for the purpose of describing a geographical area and not a governmental entity.

N. "Fiscal year" shall mean the time period used by the United States Government for budget management and commences on October 1 and ends September 30<sup>th</sup> of the following calendar year.

O. "Focused Feasibility Study" or "FFS" shall mean a comparison of alternatives which concentrates on a particular contaminated medium or a discrete portion of the Site which does not need added investigation in order to progress forward in the remedial process.

P. "Guidance" shall mean any requirements or policy directives published or issued by EPA which are of general application to environmental matters and which are otherwise applicable to the Navy's work under this Agreement.

Q. "Interim Remedial Action" shall mean all discrete Remedial Actions, including, but not limited to, Accelerated Operable Units (AOUs), implemented prior to a final Remedial Action which are taken to prevent or minimize the release of Hazardous Substances, pollutants, or contaminants.

R. "Milestones" shall mean the dates established by the Parties in the Site Management Plan for the initiation or completion of Primary Actions and the submission of Primary Documents and Project End Dates. Milestones shall include Near Term Milestones, Out Year Milestones, Primary Actions, and Project End Dates.

S. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, and any amendment thereto.



T. "Navy" shall mean the United States Department of the Navy, including the Engineering Field Activity Chesapeake (EFACHES), NSWC Indian Head, their employees, members, successors and authorized representatives, and assigns. The Navy shall also include the United States Department of Defense (DOD) to the extent necessary to effectuate the terms of the Agreement, including, but not limited to, appropriations and Congressional reporting requirements.

U. "Near Term Milestones" shall mean the Milestones within the current fiscal year (FY), the next fiscal year or "budget year" (FY+1), and the year for which the budget is being developed or "planning year" (FY+2).

V. "Operable Unit" or "OU" shall mean a discrete action that comprises an incremental step toward comprehensively remediating the Site. This discrete portion of a remedial response manages migration, or eliminates or mitigates a release, threat of release, or pathway of exposure related to the Site. Operable Units may address geographical portions of the Site, specific Site problems, or initial phases of an action, or may consist of any set of actions performed over time or any actions that are concurrent but located in different parts of the Site. The cleanup of the Site can be divided into a number of Operable Units, depending on the complexity of the problems associated with the Site. The term "Operable Unit" is not intended to refer to the term "operating unit" as used in RCRA. All Operable Units shall be addressed in accordance with the NCP, EPA Guidance and the requirements of CERCLA.

W. "Out Year Milestones" shall mean the Milestones within those years occurring after the planning year until the completion of the cleanup or phase of the cleanup (FY+3 through Project End Date).

X. "Parties" shall mean the Navy and EPA.

Y. "NSWC Indian Head" shall mean the Naval Surface Warfare Center Indian Head Division, located in Charles County, Maryland. Naval Surface Warfare Center Indian Head Division consists of both the Main Area located on the Cornwallis Neck Peninsula and the Stump Neck Annex located across the Mattawoman Creek.

Z. "Primary Actions" as used in these definitions shall mean those specified major, discrete actions that the Parties identify as such in the Site Management Plan. The Parties should identify all major, discrete actions for which there is

sufficient information to be confident that the date for taking such action is implementable.

AA. "Project End Dates" shall mean the dates established by the Parties in the Site Management Plan for the completion of major portions of the cleanup or completion of the cleanup of the entire Facility. The Parties recognize that, in many cases, a higher degree of flexibility is appropriate with Project End Dates due to uncertainties associated with establishing such dates.

BB. "Project Manager" shall mean each person designated by the Parties and the State of Maryland to represent that Party's interests and manage all response actions undertaken at the Site.

CC. "RCRA" shall mean the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984, (HSWA), Public Law No. 98-616, and any amendments thereto.

DD. "Record(s) of Decision" or "ROD(s)" shall be the public document(s) that select(s) and explain(s) which cleanup alternative(s) will be implemented at the Site, and includes the basis for the selection of such remedy(ies). The bases include, but are not limited to, information and technical analyses generated during the RI/FS and consideration of public comments and community concerns.

EE. "Schedule" shall mean a timetable or plan that indicates the time and sequence of events.

FF. "Site" shall include areas within the Facility, and any other areas, where a hazardous substance, hazardous waste, hazardous constituent, pollutant, or contaminant from the Facility has been deposited, stored, disposed of, or placed, or has migrated or otherwise come to be located. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9). This definition is not intended to include hazardous substances or wastes intentionally transported from the Facility by motor vehicle.

GG. "Site Management Plan" or "SMP" shall mean a planning document, prepared specifically under Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN, that contains a timetable, plan, or schedule which indicates the time and sequence of events. The Site Management Plan will be used as a management tool in planning, reviewing and setting priorities for all response activities at the facility. Milestones developed under

the terms of this Agreement are listed in the SMP. Deadlines listed in the SMP are subject to stipulated penalties.

HH. "Site-Screening Areas" or "SSAs" shall mean those geographical areas listed in Appendix A and any additional areas agreed to by the Parties in the future. SSAs may be RCRA Solid Waste Management Units (SWMUs), RCRA Areas of Concern (AOCs), or CERCLA AOCs. When the Parties agree, SSAs may expand or contract in size as information becomes available indicating the extent of contamination and the geographical area needed to be studied.

II. "Site-Screening Process" or "SSP" refers to the mechanism described in Subsection 9.3 for evaluating whether identified SSAs should proceed with a Remedial Investigation and Feasibility Study (RI and FS). The Site-Screening Process encompasses both the Facility's RCRA AOCs and SWMU areas and newly discovered CERCLA areas of concern within the Facility boundaries as defined in the NPL listing.

JJ. "Solid Waste Management Unit" or "SWMU", as defined pursuant to RCRA, shall mean any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid and/or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released.

KK. "State" shall mean the State of Maryland, including all departments, offices and agencies thereof, as represented by the Maryland Department of the Environment (MDE).

LL. "Target Dates" shall mean dates established for the completion and transmission of Secondary Documents. Target Dates are not subject to dispute resolution and they are not Milestones.

MM. "Transmit" shall mean the following: any document or notice to be transmitted by a certain date will be considered as transmitted on time if: (1) it is provided to the carrier on a next day mail basis no later than the day before it is due to be delivered according to the requirements of this Agreement; (2) it is hand-delivered by the due date; or (3) it is sent by certified mail return receipt requested no later than two days before it is due to be delivered according to the requirements of this Agreement. Any other means of transmission must arrive on the due date to be considered as timely delivered.

NN. "Work" shall mean all activities the Navy is required to perform under this Agreement, except those required by Section XXX (Record Preservation).

### III. PARTIES BOUND

3.1 This Agreement shall apply to and be binding upon EPA and the Navy. The Navy agrees to include the notices required by Section 120(h) of CERCLA in any contract for the sale or transfer of real property affected by this Agreement. Transfer (sale or lease) of property affected by this paragraph shall not relieve the Navy of its applicable obligations under this Agreement.

3.2 The Navy shall notify EPA of the identity and assigned tasks of each of its contractors performing Work under this Agreement upon their selection. The Navy shall provide copies of this Agreement to all contractors performing any Work called for by this Agreement. Each Party shall be responsible for ensuring that its contractors comply with the terms and conditions of this Agreement.

3.3 This Section shall not be construed as an agreement to indemnify any person.

### IV. PURPOSE

4.1 The general purposes of this Agreement are to:

A. Ensure that the environmental impacts associated with the past and present activities at the Site are thoroughly investigated and the appropriate response action is taken as necessary to protect the public health, welfare, and the environment;

B. Establish a procedural framework and schedule for developing, implementing and monitoring appropriate response actions at the Site in accordance with CERCLA, as amended by SARA, the NCP, Superfund guidance and policy, RCRA, RCRA guidance and policy, and applicable State law; and

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

4.2 Specifically, the purposes of this Agreement are to:

A. Identify interim and final remedial action alternatives

which are appropriate at the Site. The interim remedial action alternatives shall be identified and proposed to the Parties as early as possible prior to formal proposal of interim remedial action(s) to EPA and the State pursuant to CERCLA and applicable State law. This process is designed to promote cooperation among the Parties in identifying remedial alternatives for operable units prior to selection of final remedial actions.

B. Establish requirements for the performance of Remedial Investigations (RIs) to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release and threatened release of hazardous substances, pollutants or contaminants at the Site and to establish requirements for the performance of Feasibility Studies (FSs) for the Site to identify, evaluate and select alternatives for the appropriate remedial action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants or contaminants at the Site in accordance with CERCLA, the NCP and applicable State law.

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

D. Implement the selected interim remedial and final remedial action(s) at the Site in accordance with CERCLA, the NCP and applicable State law, and meet the requirements of CERCLA Section 120(e)(2) for an interagency agreement between the Parties.

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

F. Coordinate response actions at the Site with the mission and support activities at NSWC Indian Head.

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

H. Provide, in accordance with CERCLA and the NCP, for State involvement in the initiation, development, selection, and enforcement of remedial actions to be undertaken at NSWC Indian Head, including the review of all applicable data as it becomes available, and the development of studies, reports, and action

plans; and to identify and integrate State ARARs into the remedial action process.

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

## V. SCOPE OF AGREEMENT

5.1 This Agreement is entered into by the Parties to enable the Navy to meet the provisions of CERCLA, 42 U.S.C. Section 9601 et seq., and Sections 3004(u) and (v) and 3008(h) of the Resource Conservation and Recovery Act (RCRA) as amended, 42 U.S.C. Sections 6924(u) and (v) and 6928(h).

5.2 This Agreement is intended to cover the investigation, development, selection, and implementation of Response Actions for all releases or threatened releases of hazardous substances, contaminants, hazardous wastes, hazardous constituents, or pollutants at or from the Site. This Agreement covers all phases of remediation for these releases, bringing together into one agreement the requirements for remediation as well as the system the Parties will use to determine and accomplish remediation, ensuring the necessary and proper level of participation by each Party. Although all such releases at the Site are not currently known, the Agreement establishes the system for dealing with those undiscovered releases. To accomplish remediation of those undiscovered releases, the Parties will establish schedules and deadlines as necessary and as information becomes available and, if required, amend this Agreement as needed.

5.3 This Agreement is intended to address and satisfy NSWC Indian Head's RCRA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes, hazardous constituents, pollutants, or contaminants at or from all areas addressed under current and future Corrective Action Permits. As of the effective date of this agreement, the EPA has issued one RCRA permit for Corrective Action effective January 24, 1991 and expiring on January 23, 2001 for Solid Waste Management Units located on the Stump Neck Annex of NSWC Indian Head. This Agreement is not intended to limit any requirements under RCRA or any other law or regulation to obtain permits, and is not intended to affect the treatment, storage, or disposal by NSWC Indian Head of hazardous wastes. This Agreement is not intended to encompass response to spills of hazardous substances from ongoing operations unless those spills occur in conjunction with CERCLA removal actions or remedial actions pursuant to this Agreement.

5.4 The scope of this Agreement extends to the entire Site, as listed in the Federal Register proposing the Site for the National Priority List (NPL) and as provided for in this Agreement. A release at the Site cannot be deleted from the NPL unless it is determined, in accordance with CERCLA/SARA, the NCP, and this Agreement, that the Navy has implemented all appropriate Response Actions for such release, and that the release at the Site no longer poses a threat to human health or the environment.

All Response Actions at the Site shall occur in discrete locations termed Site Screening Areas or Operable Units (OUs) identified at the Site pursuant to this Agreement.

5.5 Any Response Action in progress on the Effective Date of this Agreement shall be subject to the obligations and procedures of this Agreement.

5.6 The Parties agree to use their best efforts to expedite the initiation of response actions at the Site, including Accelerated Operable Units (AOUs) and interim response actions, and to carry out all activities under this Agreement so as to protect the public health, welfare and the environment. Upon request, the Parties agree to provide applicable guidance or reasonable assistance in obtaining such guidance relevant to the implementation of this Agreement.

## **VI. FINDINGS OF FACT**

6.1 For purposes of this Agreement, the following constitutes a summary of the findings upon which this Agreement is based. Nothing contained in this Agreement shall constitute an admission of any liability by the Navy for any matters contained herein nor shall anything in this Agreement constitute an admission by the Navy with respect to any finding of fact or any legal determination noted herein.

A. Naval Surface Warfare Center Indian Head Division, (NSWC Indian Head), formerly called the Naval Ordnance Station (NOS), the Naval Propellant Plant, the Naval Powder Factory, and the Naval Proving Grounds, is the lead Navy activity for propellants, explosives and pyrotechnics (referred to as energetics) whose mission is to provide services in energetics through engineering, operational support, manufacturing technology, and production. The NSWC Indian Head also conducts research and development, and testing and evaluation of energetic materials and ordnance devices.

B. NSWC Indian Head is located in Charles County, Maryland, 30 miles south of Washington, D.C. The Main Area is located along the Potomac River at its confluence with the Mattawoman Creek, and is comprised of approximately 2,500 acres. The Stump Neck Annex consists of approximately 1,000 acres and is separated from the Main Site by the Mattawoman Creek. NSWC Indian Head has been active since 1890 and assumed its current name in 1992. The United States is the current owner and operator.

C. As a requirement of the Resource Conservation and Recovery Act (RCRA), NSWC Indian Head submitted notifications of Hazardous Waste Activity (Part A permit applications) to the EPA in November 1980, for both the Main Site and the Stump Neck Annex. On December 21, 1981, EPA issued EPA ID Number MD 717 002 4684 to the Main Area. At that time, the application for the Stump Neck Annex did not demonstrate that the facility was one that was required to have a permit under Section 3005 of RCRA, so the application was returned. On December 13, 1984, the EPA issued the Main Area a new EPA ID Number, MD 417 002 4109. Between 1981 and 1985, the EPA issued ID Number MD 417 009 0001 to the Stump Neck Annex, which was operated by the Naval Explosive Ordnance Disposal Technology Center (later renamed the Naval Explosive Ordnance Disposal Technology Division).

D. A RCRA Part B permit application was submitted to the EPA and MDE for the Main Area of NSWC Indian Head on July 26, 1985, for the treatment and storage of Controlled Hazardous Substances (CHS). The Main Area operated under interim status until permit A223 was issued by the Maryland Department of the Environment (MDE) on April 14, 1988.

E. Likewise, a RCRA Part B permit application was submitted to the EPA and MDE for the Stump Neck Annex of NSWC Indian Head on September 30, 1985, for the treatment and storage of CHS. The Stump Neck Annex operated under interim status until permit A223a was issued by the Maryland Department of the Environment (MDE) on November 13, 1987.

F. RCRA Part B, Subpart X (miscellaneous units) permit applications were submitted to the EPA on November 8, 1988 for both the Main Area and the Stump Neck Annex of NSWC Indian Head. These permits include the thermal treatment of explosives at both Activities. Both Activities are currently operating under interim status for these miscellaneous units.

G. An Oil Operations permit, #83-OP-0666, was obtained for NSWC Indian Head on April 22, 1983. This permit included oil



operations at both the Main Area and the Stump Neck Annex. The MDE later issued separate Oil Operations permits for the Main Area and the Stump Neck Annex. The Main Area operates under permit #99-OPT-3364, which was issued December 17, 1998, and the Stump Neck Annex operates under permit #99-OPT-3370, which was issued December 11, 1998.

H. On September 15, 1978, the EPA issued National Pollutant Discharge Elimination System (NPDES) Industrial Wastewater (IW) Discharge Permit MD0003158 to NSWC Indian Head. This permit applied to both the Main Area and Stump Neck Annex. In 1985, the MDE issued State Discharge Permit 78-DP-2515. Currently, NSWC Indian Head operates under State Discharge Permit 95-DP-2515, which was issued February 1, 1998.

I. NSWC Indian Head operates under NPDES Sanitary Wastewater Discharge Permit MD0020885. The MDE issued permit number 88-DP-2528 to NSWC Indian Head, which applies to both the Main Area and the Stump Neck Annex.

J. NSWC Indian Head was listed on the Federal Agency Hazardous Waste Compliance Docket, which was established pursuant to CERCLA Sections 120(c).

K. EPA completed, pursuant to CERCLA, a Hazard Ranking System evaluation of the NSWC Indian Head that resulted in a score of 50.

L. Based on the Hazard Ranking System evaluation, and in accordance with EPA policy, on February 13, 1995, NSWC Indian Head was proposed for inclusion on the National Priorities List (NPL). On September 29, 1995, NSWC Indian Head was finalized on the NPL. The notice was published in the Federal Register at 60 FR 50435.

M. The NSWC Indian Head Installation Restoration Program includes a total list of 65 sites. Sites numbered 1 through 29, and 39 through 57 are located on the Main Area of the facility. Sites numbered 30 through 38, and 58 through 65 are located on the Stump Neck Annex. Since 1990, the Navy has addressed the sites at the Stump Neck Annex under a separate Resource Conservation and Recovery Act (RCRA) Corrective Action Permit which provides for a similar process as CERCLA for the investigation and remediation of the sites. Through the finalization of this Federal Facilities Agreement, the RCRA Corrective Action sites at the Stump Neck Annex will be included under the CERCLA program. The following Section 6.2 provides the environmental history and Findings of Fact of the IR Program at

the Main Area of the facility. Section 6.3 provides the environmental history and Findings of Fact of the IR Program at the Stump Neck Annex.

## 6.2 NSWC - IHDIIV Main Area

A. The Navy completed an Initial Assessment Study (IAS) of NSWC Indian Head in May 1983 pursuant to the DOD Installation Restoration Program (IRP). The IAS examined a total of 38 potentially contaminated sites. Sites numbered 1 through 29 are located on the Main Area of the facility. Sites numbered 30 through 38 are located on the Stump Neck Annex. The 29 identified Main Area sites are listed below. Stump Neck Sites 30 through 38 are discussed in Section 6.3.

Site 1	Thorium Spill
Site 2	Waste Crankcase Oil applied to Torrense Road
Site 3	Nitroglycerin Explosion, Nitration Building Area
Site 4	Lloyd Road Oil Spill
Site 5	X-ray Building, Building 731
Site 6	Radiographic Facility, Building 1349
Site 7	HMX Spill, Slurry Mix Building
Site 8	Mercury Deposits, Building 766
Site 9	Patterson Avenue, Oil Spill
Site 10	Single Base Propellant Grains Spill Area
Site 11	Caffee Road Landfill
Site 12	Town Gut Landfill
Site 13	Paint Solvents Disposal Area
Site 14	Waste Acid Disposal Pit
Site 15	Mercury Deposits in Manhole, Fluorine Lab
Site 16	Laboratory Chemical Disposal
Site 17	Disposed Metal Parts Along Shoreline
Site 18	Hog Island
Site 19	Catch Basins at Chip Collection Houses
Site 20	Single Base Powder Facilities
Site 21	Bronson Road Landfill
Site 22	NG Slums Burning Site
Site 23	Hydraulic Oil Discharges from Extrusion Plant
Site 24	Abandoned Drain Lines
Site 25	Hypo Discharges from X-ray Building No.2
Site 26	Thermal Destructor 2
Site 27	Thermal Destructor 1
Site 28	Original Burning Ground
Site 29	The Valley

Of the 38 sites, the IAS recommended further study at Sites 5, 8, and 12 based on the historical information available. Additionally, because historical operations at Sites 6 and 25

were similar to those at Site 5, the IAS also recommended additional study at these two sites if further investigation of Site 5 indicated a problem.

B. The Navy completed a Confirmation Study at NSWC Indian Head in September 1985. The Confirmation Study was designed to evaluate the presence or absence of contamination at Sites 5, 8 and 12. The results of the study are documented in the report entitled "NACIP Confirmation Study, Naval Ordnance Station, Indian Head, MD", dated September 1985. Sites 5 and 8 were determined to have extensive levels of silver and mercury, respectively. The Confirmation Study determined that further study and monitoring was necessary at Site 12.

C. The Navy completed removal actions at Sites 5 and 8, and continued investigations at Site 12. The removal actions involved the excavation of contaminated soils to prevent further transport and migration of the contamination, and risk to ecologically sensitive receptors. The Navy continued further monitoring at Site 12, and completed a Remedial Investigation in 1999. The RI recommended the preparation of a Feasibility Study (FS) to evaluate methods for mitigating environmental risks, and to address regulatory concerns connected with landfill closure requirements.

D. After further review of the original 29 IAS sites of the Main Area, the Navy, EPA and Maryland Department of the Environment (MDE) decided in 1996 to include Sites 6, 11, 13, 15, 16, 17, 21 and 25 into further Remedial Investigation because of the potentially higher risks associated with these sites. The remainder of the original 29 IAS sites, including Sites 5 and 8, will enter the Site Screening Process as outlined in section 9.3, which will provide for a second evaluation, potentially including some additional sampling, to confirm the presence or absence of contamination at the sites, and the need for further action.

E. The Navy completed a Supplemental Preliminary Assessment (PA) Report for NSWC Indian Head in January 1992. The Preliminary Assessment was an addendum to the Initial Assessment Study and examined an additional 17 sites located on the Main Area. The 17 additional sites are listed below.

Site 39	Silver Release to Sediments
Site 40	Palladium Catalyst in Sediment
Site 41	Scrap Yard
Site 42	Olsen Road Landfill
Site 43	Toluene Disposal
Site 44	Soak Out Area

Site 45	Abandoned Drums
Site 46	Cadmium Sandblast Grit
Site 47	Mercuric Nitrate Disposal Area
Site 48	NG Plant Disposal Area
Site 49	Chemical Disposal Pit
Site 50	Building 103 Crawl Space
Site 51	Building 101 Dry Well
Site 52	Building 102 Dry Well
Site 53	Mercury Contamination of the Sewage System
Site 54	Building 101
Site 55	Building 102

All but Sites 51 and 52 were recommended for further action.

F. As a follow-up to the Supplemental Preliminary Assessment, the Navy conducted a Site Inspection (SI) on Sites 39 through 50, and Sites 53 through 55 in two phases. Phase I focused on Site 42, Olsen Road Landfill. Phase II focused on the remainder of the sites. Based on the results of the SI, all of the sites were recommended for further study to determine the nature and extent of contamination and to identify the appropriate remedial action required.

G. The Navy completed work plans for the Remedial Investigation of these sites in 1997. Remedial Investigation Reports for Sites 41, 42 and 44 were completed in 1999. At Site 41, the RI recommended the preparation of a Feasibility Study (FS) to evaluate methods for mitigating human health and environmental risks posed by the contaminated surface soil at the site. At Site 42, the RI recommended the preparation of an FS to evaluate methods to address regulatory concerns connected with landfill closure requirements. No further action was recommended at Site 44. Remedial Investigations continue for the remainder of the 1992 PA sites.

H. Since the 1992 PA, two additional sites were discovered on the Main Area of NSWC Indian Head. The 2 additional sites are listed below.

Site 56	IW-87 Lead Outfall
Site 57	Building 292 TCE Contamination

I. Based on site sampling, the Navy performed an Engineering Evaluation / Cost Analysis (EE /CA) in 1994 and 1997 to evaluate the Removal Action options at Site 56 and Site 57, respectively. The Navy conducted a Removal Action at Site 56 in 1996, which involved the removal of lead contaminated sediments at IW-87 and the lining of the outfall pipe. These soils were

properly disposed of off-site. In 1998, the Navy completed a Removal Action at Site 57 to address infiltration of TCE contaminated groundwater into a storm sewer leading to outfall IW-80. Approximately 700 feet of storm sewer was lined to inhibit the accelerated migration of TCE. The Navy completed Remedial Investigations at Site 57 in July 2000. The Navy will continue further Feasibility Studies to evaluate potential technology alternatives that may be used to remediate the site.

J. The EPA Office of RCRA Programs conducted a RCRA Solid Waste Management Unit (SWMU) Investigation at the NSWC-IHDIV, and issued a draft RCRA Facilities Assessment in 1988. The draft document provided a list of 78 RCRA Solid Waste Management Units and 14 RCRA Areas of Concern.

Of the RCRA SWMUs and AOCs identified in the draft RFA, the following 24 sites correspond to IR sites previously identified in the original 1983 IAS, and will be addressed under CERCLA as described Section VIII - Statutory Compliance / RCRA-CERCLA Integration of this Agreement:

RCRA AOC E	IR Site 1 Thorium Spill
RCRA SWMU 75	IR Site 2 Crank Case Oil Applied to Torrense Road
RCRA AOC B	IR Site 3 Nitroglycerin Explosion, Nitration Area
RCRA SWMU 76	IR Site 4 Lloyd Road Oil Spill Sites
RCRA SWMU 55	IR Site 5 X-Ray Building 731
RCRA SWMU 56	IR Site 6 Building 1349, Hypo Spill
RCRA SWMU 22	IR Site 7 Building 682, HMX Spill
RCRA SWMU 7	IR Site 8 Building 766, Mercury Deposits
RCRA AOC A	IR Site 9 Patterson Avenue, Oil Spill
RCRA AOC C	IR Site 10 Single-base Propellant Grains Spill
RCRA SWMU 37	IR Site 11 Caffee Road Landfill
RCRA SWMU 11	IR Site 12 Town Gut Landfill
RCRA SWMU 12	IR Site 13 Paint Solvents Disposal Ground
RCRA SWMU 14	IR Site 14 Waste Acid Disposal Pit
RCRA SWMU 15	IR Site 15 Mercury Manhole Deposits, Fluorine Lab
RCRA SWMU 60	IR Site 16 Laboratory Chemical Disposal
RCRA AOC M	IR Site 17 Disposal Metal Parts Along Shoreline
RCRA SWMU 16	IR Site 21 Bronson Road Landfill
RCRA SWMU 77	IR Site 22 NG Slums Burning Site
RCRA AOC K	IR Site 24 Abandoned Drain Lines
RCRA SWMU 61	IR Site 25 Hypo Discharge X-Ray Building No 2
RCRA SWMU 63	IR Site 26 Thermal Destructor 2

RCRA SWMU 62	IR Site 27 Thermal Destructor 1
AOC F	IR Site 29 The Valley

In addition, the following RCRA SWMUs and AOCs identified in the draft RFA have been determined inactive, and are included as IR Areas of Concern listed in Appendix B of this Agreement:

SWMU 4,5	Underground Storage Tanks (Bldg. 290 and 525)
SWMU 6	Used Battery Accumulation Area (Bldg. 766)
SWMU 27	Waste Oil Storage Area (Goddard Power Plant)
SWMU 38	Caffee Road Waste Oil Storage Area
SWMU 40-46	Wastewater Collection/Treatment Tanks (Moser)
SWMU 47-51	Spent Acid Storage/Treatment Tanks (Moser Plant)
SWMU 64-66	Waste Water Storage Tanks (Bldg. 1596)
SWMU 69	Temp Accumulation Dumpster for Explosive Scrap
SWMU 70	Temp Areas for Drummed Explosive Scrap
SWMU 72	Oil/Water Separators
SWMU 74	Unlined Overland Drainage Ditches
AOC G	Sand Blasting Sand Storage Area
AOC H	Drum at Fuel Storage Area
SWMU 20	Safety Burn Point
SWMU 21	Caffee Road Decontamination Burn Point

The following RCRA SWMUs and AOCs are currently active units, and/or RCRA permitted units, or have completed RCRA closure. These SWMUs and AOCs will not be investigated further, unless information leads the Parties to believe that the SWMU or AOC has released or has the potential to release hazardous waste into the environment, and poses a threat to human health and/or the environment:

SWMU 1	Inactive Container Storage Unit
SWMU 2	Active Container Storage Unit (Bldg. 455)
SWMU 3	PCB Storage (Bldg. 1440)
SWMU 8	Drum Accumulation Area (Bldg. 766)
SWMU 9,10	Spent Acid Tanks at Biazzi Plant
SWMU 13	Drum Accumulation Area (Bldg. 870)
SWMU 17,18	Oil/Water Separator and Oil Storage Tank-Extrusion
SWMU 19	Cast Plant (Strauss Avenue) Burn Point
SWMU 23	Sewage Treatment Plant
SWMU 24	Spent Hexane/Acetone Accumulation Area (Extrusion)
SWMU 25	Fly Ash Bag House (Goddard Power Plant)
SWMU 26	Trench Drain and Oil/Water Separator (Goddard)

SWMU 28	Ash Precipitation System (Goddard Power Plant)
SWMU 29	Acid Neutralization Tank (Goddard Power Plant)
SWMU 30,31,32	Coal Storage Area Sump and Neutralization Pits
SWMU 33,34,35	Waste Water Sump and Settling Tanks (Organic Chemicals)
SWMU 36	Radiator (Classified Paper Incinerator)
SWMU 39	Drum Storage Area (Bldg. 314)
SWMU 52	Nitroglycerin Slums Storage (Bldg. 891)
SWMU 53,54	Spent Fixer Storage Tanks (Bldg. 266)
SWMU 57	Asbestos Storage (Bldg. 296)
SWMU 58,59	Asbestos Storage Dumpsters (by Bldg. 299)
SWMU 61	Building 588 Area
SWMU 67	Temporary Waste Accumulation Area
SWMU 68	Wastewater Catch Basins and Tanks
SWMU 71	Accumulation Dumpsters for Metal Scrap
SWMU 73	Refuse Collection Dumpsters
SWMU 78	Temporary Solvent Storage at Organic Chemical Plant
AOC D	Coal Storage Area
AOC I	Storage Building at Machine Shop
AOC J	Ballistic Test Areas
AOC L	Fuel Oil Tank Secondary Containment Area (Goddard)
AOC N	Carpentry Shop (Bldg. 314) Dust Collector

### 6.3 NSWC - IHDIV Stump Neck Annex

A. The EPA Office of RCRA Programs conducted a RCRA Solid Waste Management Unit (SWMU) Investigation of the NAVEDOTECHCEN at the NSWC-IHDIV, and issued a draft RCRA Facilities Assessment in July 1990. The RFA identified 24 SWMUs at the Stump Neck Annex:

SWMU 1	Rum Point Landfill
SWMU 2	Range 3 Burn Point
SWMU 3	Chicamuxen Creek's Edge Site A
SWMU 4	Chicamuxen Creek's Edge Site B
SWMU 5	Range 6
SWMU 6	Air Blast Pond
SWMU 7	Scrap Metal Pit
SWMU 8	Tool Burial Site
SWMU 9	Torpedo Burial Site
SWMU 10	Inactive Disposal Site
SWMU 11	Suspected Tool Burial Site
SWMU 12	Waste Oil Storage Site

SWMU 13	Pink Water Treatment Tank
SWMU 14	Photographic Lab Septic Tank System
SWMU 15	Spent Photographic Solution Storage
SWMU 16	Thermal Treatment Tank
SWMU 17	Building 2015 - Chemical Lab Accumulation Area
SWMU 18	Waste Pile
SWMU 19	Disposal Area #1
SWMU 20	Disposal Area #2
SWMU 21	Drum Storage Area
SWMU 22	Stump Neck Impact Area
SWMU 23	Old Demolition Range
SWMU 24	Causeway

B. The 1983 IAS of 38 sites at NSWC Indian Head originally identified 9 of the 24 SWMUs found during the RFA (Sites 30 through 38). These 9 sites are listed below. These sites are addressed as Site Screening Areas included in Appendix A of this Agreement, and will continue under the Site Screening Process as described in Section 9.3.

Site 30	SWMU 22	Stump Neck Impact Area
Site 31	SWMU 23	Old Demolition Range
Site 32	SWMU 11	Suspected Tool Burial Site
Site 33	SWMU 7	Scrap Metal Pit
Site 34	SWMU 8	Tool Burial Site
Site 35	SWMU 9	Torpedo Burial Site
Site 36	SWMU 10	Inactive Disposal Site
Site 37	SWMU 24	Causeway
Site 38	SWMU 1	Rum Point Landfill

C. In December 1990, EPA issued the RCRA permit for Corrective Action effective January 24, 1991 and expiring on January 23, 2001. Of the 24 SWMUs, the permit contained conditions requiring the Navy to perform further investigation at the following 6 SWMUs. These SWMUs were assigned IR site numbers 38, and 58 through 62 (SWMUs 1 through 6). The permit required Verification Investigations (VI) at Sites 38, 60 and 62, and RCRA Facilities Investigations (RFI) at Sites 58, 59, and 61. Draft Reports for these Investigations were completed in January 1998. These sites are addressed as Site Screening Areas included in Appendix A of this Agreement, and information and conclusions from these draft reports will be used in the Site Screening Process.

Site 38	SWMU 1	Rum Point Landfill
Site 58	SWMU 2	Range 3 Burn Point
Site 59	SWMU 3	Chicamuxen Creek's Edge Site A



Site 60	SWMU 4	Chicamuxen Creek's Edge Site B
Site 61	SWMU 5	Range 6
Site 62	SWMU 6	Air Blast Pond

D. Pursuant to the requirements of the RCRA Corrective Action Permit, NSWC Indian Head notified the EPA Region III RCRA Programs Branch in 1991 of three additional SWMUs that were not originally identified in the RFA, but warranted further investigation. These 3 sites are listed below. These SWMUs were associated with operations of the Naval School Explosive Ordnance Disposal (NAVSCOLEOD). The three "school" sites included Sites 63, 64 and 65 (SWMUs 25, 26, and 27), which would become inactive with the relocation of the school. The Navy completed a Verification Investigation report on the three Sites in June 1996. The Navy will address these three Sites as Site Screening Areas included in Appendix A of this Agreement, and will continue under the Site Screening Process as described in Section 9.3

Site 63	SWMU 25 Area 8
Site 64	SWMU 26 IED
Site 65	SWMU 27 IOD

E. Also in 1991, the Navy discovered a fourth SWMU (SWMU 30), which was associated with a dry well that was connected to a laboratory located in Building 2015. SWMU 30, and 8 of the 24 originally identified SWMUs will be evaluated under the IR Program as Areas of Concern. These 9 SWMUs are listed below. As with the Main Area, these AOCs will undergo a "desk-top" evaluation as described in Section 9.3, which involves a thorough review of all existing or easily obtainable documentation/information on the identified areas.

SWMU 30	Bldg. 2015 Dry Well
SWMU 12	Waste Oil Storage Site
SWMU 14	Photographic Lab Septic Tank System,
SWMU 15	Spent Photographic Solution Storage
SWMU 17	Building 2015 - Chemical Lab Accumulation Area
SWMU 18	Waste Pile
SWMU 19	Disposal Area #1
SWMU 20	Disposal Area #2
SWMU 21	Drum Storage Area

F. The following RCRA SWMUs are currently active units, and/or RCRA permitted units, or are undergoing RCRA closure. These SWMUs will not be investigated further, unless information leads the Parties to believe that the SWMU has released or has the potential to release hazardous waste into the environment, and poses a threat to human health and/or the environment:

SWMU 13     Pink Water Treatment Tank  
SWMU 16     Thermal Treatment Tank.

G.    In 1992, NSWC Indian Head notified the EPA of two other sites at the Stump Neck Annex, which later became SWMUs 28 and 29. These units will also be evaluated under the IR Program as Areas of Concern.

SWMU 28     Old Skeet and Trap Range  
SWMU 29     Pistol Range

## VII.   EPA DETERMINATIONS

7.1   The following constitutes a summary of the determinations relied upon by EPA to establish its jurisdiction and authority to enter into this Agreement. None of these determinations shall be considered admissions to any person, related or unrelated to this Agreement, for purposes other than determining the basis of this Agreement or establishing the jurisdiction and authority of the Parties to enter into this Agreement.

A.    The United States Department of the Navy is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).

B.    The NSWC Indian Head is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9), and 10 U.S.C. Section 2701 et seq., and is subject to the Defense Environmental Restoration Program.

C.    The United States is the owner and operator of NSWC Indian Head as defined in Sections 101(20) and 107(a)(1) of CERCLA, 42 U.S.C. Sections 9601(20) and 9607(a)(1). The Navy is the DOD component charged with fulfilling the obligations of the owner under CERCLA at NSWC Indian Head.

D.    There has been a release or a substantial threat of a release of hazardous substances, pollutants, contaminants, hazardous wastes or constituents at or from the Facility.

E.    The actions provided for in this Agreement are consistent with the NCP.

F.    The actions provided for in this Agreement are necessary to protect the public health, or welfare or the environment.

G. This Agreement provides for the expeditious completion of all necessary response actions.

#### VIII. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

8.1 The Parties intend to integrate the Navy's CERCLA response obligations and RCRA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes, pollutants or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will achieve compliance with CERCLA, 42 U.S.C. Section 9601 et seq.; satisfy the corrective action requirements of RCRA Sections 3004(u) and (v), 42 U.S.C. Sections 6924(u) and (v), for a RCRA permit, and RCRA Section 3008(h), 42 U.S.C. Section 6928(h), for interim status facilities; and meet or exceed all applicable or relevant and appropriate Federal and State laws and regulations, to the extent required by CERCLA Section 121, 42 U.S.C. Section 9621, and applicable State law.

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

8.3 The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties further recognize that ongoing hazardous waste management activities at NSWC Indian Head may require the issuance of permits under Federal and State laws. This Agreement does not affect the requirements, if any, to obtain such permits. However, if a permit is issued to the Navy for on-going hazardous waste management activities at the Site, EPA shall reference and incorporate any appropriate provisions, including appropriate schedules (and the provisions for extension of such schedules), of this Agreement into such permit.

With respect to those portions of this Agreement incorporated by reference into permits, the Parties intend that judicial review of the incorporated portions shall, to the extent authorized by law, only be conducted as provided by CERCLA.

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

#### IX. WORK TO BE PERFORMED

9.1 A. The Parties recognize that background information exists and must be reviewed prior to developing the Work Plans required by this Agreement. The Navy need not halt currently ongoing work but may be obligated to modify or supplement work previously done to meet the requirements of this Agreement. It is the intent of the Parties to this Agreement that work done and data generated prior to the Effective Date of this Agreement be retained and utilized as elements of the RI/FS to the maximum extent feasible.

B. Either Party may propose that a portion of the Site be designated as a distinct Operable Unit. If both Parties agree, it is not necessary to complete the SSP prior to designating an Operable Unit. This proposal must be in writing to the other Party, and must stipulate the reasons for such a proposal. The proposal should be discussed by the Project Managers within forty-five (45) days of the written notice. Dispute Resolution may be invoked if the Parties are not in agreement on the proposal of a specific Operable Unit. If Dispute Resolution is not invoked by either Party within thirty (30) days after the Project Manager's discussion concerning the proposal or if the need for an Operable Unit is established through Dispute Resolution, the portion of the Site proposed shall be an Operable Unit as that term is defined in Section II - DEFINITIONS, of this Agreement.

C. Either Party may propose that an established Operable Unit be modified. The proposal must be in writing to the other Party, and must state the reasons for the modification. The proposal should be discussed by the Project Managers within forty-five (45) days of the written notice. Dispute Resolution may be invoked if the Parties are not in agreement on the proposal to modify a specific Operable Unit. If Dispute Resolution is not invoked within thirty (30) days of the receipt of such a proposal by either Party, or if the need for modifying an Operable Unit is established through Dispute Resolution, the

Operable Unit, as defined in Section II-DEFINITIONS, shall be modified.

D. The Navy shall develop, implement and report upon the Site-Screening Areas (SSAs) as defined herein, and listed in Attachment A to this Agreement, in order to satisfy its obligations under RCRA/CERCLA integration. The Site-Screening Process (SSP), outlined in Subsection 9.3 of this Agreement, is intended to provide a simplified investigative method whereby identified RCRA units and CERCLA areas of concern can be evaluated to determine whether Remedial Investigations are required for these areas. Additional SSP investigations may be initiated at areas later identified by the Parties. The SSP investigation(s) shall be conducted in accordance with an SSP Work Plan as agreed to by the Parties.

E. SSP Reports(s) shall be subject to the review and comment procedures described in Section X - CONSULTATION. The SSP investigation(s) shall be conducted in accordance with the requirements set forth in Subsection 9.3, and the deadlines established therein and set forth in Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN.

F. The following 6 ranges will be managed according to the final Military Munitions Rule (40 C.F.R. Part 260, et seq.), dated February 1997. If a range closes, the Parties will apply the DoD and EPA Interim Final Management Principles for Implementing Response Actions at Closed, Transferring, and Transferred Ranges, dated March 7, 2000, and the final Range Rule, if it is promulgated.

Site 30	Stump Neck Impact Area
Site 31	Old Demolition Range
Site 58	Range 3 Burn Point
Site 61	Range 6
Stump Neck SWMU 28	Old Skeet and Trap Range
Stump Neck SWMU 29	Pistol Range

#### **Remedial Investigations for 26 Previously Identified Sites**

9.2 A. The Navy will conduct a remedial investigation and feasibility study for the following Sites.

Site 6	Building 1349, Hypo Spill
Site 11	Caffee Road Landfill
Site 12	Town Gut Landfill
Site 13	Paint Solvents Disposal Ground
Site 15	Mercury Deposits in Manhole, Fluorine Lab

Site 16	Laboratory Chemical Disposal
Site 17	Disposal Metal Parts Along Shoreline
Site 21	Bronson Road Landfill
Site 25	Hypo Discharge X-Ray Building No. 2
Site 39	Organics Plant
Site 40	Palladium Catalyst in Sediments
Site 41	Scrap Yard
Site 42	Olson Road Landfill
Site 43	Toluene Disposal Site
Site 44	Soak Out Area
Site 45	Abandoned Drums
Site 46	Cadmium Sandblast Grit
Site 47	Mercuric Nitrate Disposal Area
Site 48	Nitroglycerine Plant Disposal Area
Site 49	Chemical Disposal Area
Site 50	Building 103, Crawl Space
Site 53	Mercury Contamination of the Sewage System
Site 54	Building 101
Site 55	Building 102
Site 56	IW87 - Lead Contamination
Site 57	TCE Building 292 Area

B. The Navy previously completed RI work plans for Sites 12, 39 through 50, and 53 through 57. Remedial Investigation Reports for Sites 12, 41, 42 and 44 were completed in 1999. At Site 12, the RI recommended the preparation of a Feasibility Study (FS) to evaluate methods for mitigating environmental risks, and to address regulatory concerns connected with landfill closure requirements. At Site 41, the RI recommended the preparation of an FS to evaluate methods for mitigating human health and environmental risks posed by the surface soil at the Site. At Site 42, the RI recommended the preparation of an FS to evaluate methods to address regulatory concerns connected with landfill closure requirements. No further action was recommended at Site 44.

C. In the Draft Final Site Management Plan for FY 2001-2002 to be submitted pursuant to Subsection 12.4 of the Agreement, the Navy shall propose a deadline for submittal of the RI Work Plan for those Sites listed in 9.2 A. above. The RI Work Plan shall contain a proposed deadline for the submittal of the RI Report and the FS Report(s). The schedule and deadlines included in the Final RI Report shall be incorporated into the Site Management Plan in accordance with Section XI. - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement. The development of the FS(s) will proceed in accordance with Subsection 9.5 of this Agreement.

D. For those Sites determined by the Parties not to be included in a Phase 2 RI, the Navy shall propose a deadline in the Draft Final Site Management Plan for FY 2001-2002 for submittal of the FS Report for each of these Operable Units. These deadlines will be finalized in accordance with Sections XI and XII of this Agreement.

E. For those Sites which the Parties determine represent a negligible or minimal impact and are strong candidates for no action, or remediation limited to periodic monitoring, the Navy shall propose a schedule in the Draft Final Site Management Plan for FY 2001-2002 for submittal of a risk screening report and any limited sampling that may be recommended to support the risk screening. If the Parties determine that no further action is required, a no-action Proposed Plan will then be prepared. This schedule will be finalized in accordance with Section XI of this Agreement.

#### **Site-Screening Areas**

9.3 A. The following 37 areas are Site-Screening Areas (SSAs) under this Agreement:

Site 1	Thorium Spill
Site 2	Waste Crank Case Oil Applied to Torrense Road
Site 3	Nitroglycerin Explosion, Nitration Building Area
Site 4	Lloyd Road Oil Spill Sites
Site 5	X-Ray Building 731
Site 7	Building 682, HMX Spill
Site 8	Building 766, Mercury Deposits
Site 9	Patterson Avenue, Oil Spill
Site 10	Single-base Propellant Grains Spill
Site 14	Waste Acid Disposal Pit
Site 18	Hog Island
Site 19	Catch Basins at Chip Collection Houses
Site 20	Single-base Powder Facilities
Site 22	NG Slums Burning Site
Site 23	Hydraulic Oil Spill Discharges From Extrusion
Site 24	Abandoned Drain Lines
Site 26	Thermal Destructor 2
Site 27	Thermal Destructor 1
Site 28	Original Burning Ground
Site 29	The Valley
Site 30	Stump Neck Impact Area
Site 31	Old Demolition Range
Site 32	Suspected Tool Burial Site
Site 33	Scrap Metal Pit

Site 34	Tool Burial Site
Site 35	Torpedo Burial Site
Site 36	Inactive Disposal Site
Site 37	Causeway
Site 38	Rum Point Landfill
Site 58	Range 3 Burn Point
Site 59	Chicamuxen Creek's Edge Site A
Site 60	Chicamuxen Creek's Edge Site B
Site 61	Range 6
Site 62	Air Blast Pond
Site 63	Area 8
Site 64	IED
Site 65	IOD

B. Determination of Site-Screening Areas When a Party to this Agreement determines that an area on the Site which has not previously been identified as an area which may pose a threat, or potential threat, to public health, welfare, or the environment, does pose such a threat, or potential threat, such Party shall notify in writing the other Party of such determination. Notification of the other Party under this Paragraph shall at a minimum include the location of such area on the Site and the reason(s) the Party believes such an area poses a threat, or potential threat, to public health, welfare, or the environment. The Parties shall have forty-five (45) days from the date of receipt of notification to discuss the proposal and to agree whether such area shall be addressed under this Agreement as an SSA. If an agreement on whether to address such an area under the Agreement cannot be reached within forty-five (45) days from the date of receipt of notification, any Party can initiate the dispute resolution process pursuant to Paragraph 20.4 of this Agreement. If dispute resolution is not invoked within 45 days from the date of receipt of notification or if an SSA is established through the dispute resolution process the proposed SSA will be addressed as an SSA in accordance with this section.

C. Any area at the Site which is established as an SSA pursuant to the procedures described in this Section after the Effective Date of this Agreement shall be added to the list of SSAs found in Appendix A as an additional SSA to be investigated and possibly remediated pursuant to the requirements of this Agreement. For any SSAs established pursuant to this Section after the Effective Date of this Agreement, the Navy shall, in the next draft Amended Site Management Plan, propose Deadlines for the submittal of an SSP Work Plan(s). This deadline(s) shall be approved in accordance with Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN, and adopted in the Site Management Plan.



D. Appendix A contains a list of thirty-seven (37) Site-Screening Areas (SSAs) which the Parties agree may pose a threat, or potential threat to human health and the environment. The Navy shall submit to the EPA and the State SSP Work Plan(s) which shall outline the activities necessary to determine if there have been releases of hazardous substances, pollutants, contaminants, hazardous wastes, or hazardous constituents to the environment from the SSAs. The scope of the SSPs shall be determined by the Parties. The SSP Work Plan(s) shall include a proposed Deadline for the submittal of an SSP Report(s). The schedule and Deadlines included in the final SSP Work Plan will be incorporated into the Site Management Plan in accordance with Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement.

(1) In planning SSPs, the Navy shall consider current CERCLA and RCRA guidance to determine if there have been releases of hazardous substances, pollutants, contaminants, hazardous wastes or hazardous constituents to the environment from the SSAs. Upon conclusion of an SSP, the Navy shall submit to the EPA and State a draft SSP Report which shall provide the basis for a determination that either: (1) an RI/FS, and/or an FS, and/or another investigation, and/or remedial action, as appropriate be performed on the area addressed by the SSP or, (2) the area does not pose a threat, or potential threat to public health, welfare, or the environment and therefore the area should be removed from further study under this Agreement.

(2) Unless otherwise agreed to by the Parties, the Parties shall determine which (if any) of the SSAs listed in Appendix A or established pursuant to Subsection 9.3 will require an RI/FS or AOU within sixty (60) days of receipt by the Parties of the final SSP Report(s).

(3) For those SSAs which the Parties agree do not warrant an RI/FS or AOU, the Navy shall prepare, with EPA assistance, a brief decision document reflecting that agreement. This agreement must be signed by all the Project Managers.

(4) The Parties shall designate Operable Units for those SSAs that are to proceed with an RI, FS, or AOU. If the Parties cannot agree on the determination of whether an SSA(s) shall proceed to an RI/FS or AOU, dispute resolution may be invoked in accordance with Section XX - DISPUTE RESOLUTION. If an RI/FS is required, the Navy shall, within

the next draft Amended Site Management Plan, propose to EPA and the State a Deadline for the submission of the RI/FS Work Plan for each Operable Unit. The Schedule and Deadlines included in the final RI/FS Work Plan(s) will be incorporated into the next update of the Site Management Plan and will be the enforceable schedule for the submittal of the draft RI/FS.

#### E. Areas of Concern

Twenty-eight (28) areas at the Facility are listed as Areas of Concern (AOCs) in Appendix B of this Agreement. The following areas will be investigated as AOCs.

Main Area SWMU 4,5	Underground Storage Tanks(B 290/525)
Main Area SWMU 6	Used Battery Accumulation Area(B 766)
Main Area SWMU 27	Waste Oil Storage Area (Goddard Power)
Main Area SWMU 38	Caffee Road Waste Oil Storage Area
Main Area SWMU 40-46	Wastewater Collection/Treatment Tanks
Main Area SWMU 47-51	Spent Acid Storage/Treatment Tanks
Main Area SWMU 64-66	Waste Water Storage Tanks (Bldg. 1596)
Main Area SWMU 69	Temp Dumpster for Explosive Scrap
Main Area SWMU 70	Temp Areas for Drummed Explosive Scrap
Main Area SWMU 72	Oil/Water Separators
Main Area SWMU 74	Unlined Overland Drainage Ditches
Main Area AOC G	Sand Blasting Sand Storage Area
Main Area AOC H	Drum at Fuel Storage Area
Main Area SWMU 20	Safety Burn Point
Main Area SWMU 21	Caffee Road Decontamination Burn Point
Stump Neck SWMU 12	Waste Oil Storage Site
Stump Neck SWMU 15	Spent Photographic Solution Storage
Stump Neck SWMU 17	Building 2015 - Chemicals Lab Accum. Area
Stump Neck SWMU 18	Waste Pile
Stump Neck SWMU 19	Disposal Area #1
Stump Neck SWMU 20	Disposal Area #2
Stump Neck SWMU 21	Drum Storage Area
Stump Neck SWMU 28	Old Skeet and Trap Range
Stump Neck SWMU 29	Pistol Range
Stump Neck SWMU 16	Thermal Treatment Tank
Stump Neck SWMU 13	Pink Water Treatment Tank

Stump Neck SWMU 14  
Stump Neck SWMU 30

Photographic Lab Septic System  
Building 2015 Dry Well

Areas listed in Appendix B will undergo a "desk-top" evaluation, which involves a thorough review of all existing or easily obtainable documentation/information on the identified sites. If the Parties agree, in writing, the evaluation could also include obtaining discrete samples from the AOC without the development of a work plan. If the Parties cannot agree on whether discrete sampling can be performed at an AOC without the development of a work plan, then the AOC "desk-top" evaluation will continue without the performance of sampling. The "desk-top" evaluation will also involve assessing information concerning the handling of hazardous wastes at each AOC, or actions taken at each AOC, or actions that will be occurring under other regulatory programs. Based on this evaluation, a decision will be made by the Project Managers on which AOCs will proceed to the Site Screening Process (SSP) as SSAs, and which AOCs will require no further action and can be closed-out. For those AOCs which the Parties agree will not proceed to the Site Screening Process, the Navy shall prepare, with EPA assistance, a brief AOC Close-Out document.

EPA shall review all information submitted by the Navy in support of the AOC "desk-top" evaluation and shall provide a response to the Navy as to whether the information provided is sufficient to close-out the AOC(s). The response shall be forwarded from EPA to the Navy within 30 days of receipt of the supporting documentation. In cases involving complex, numerous or unusually lengthy reports, the EPA may extend the thirty (30) day comment period for an additional twenty (20) days by written notice to the Navy prior to the end of the thirty (30) day period. Within 120 days of the Effective Date of this Agreement, the final determination of which AOCs shall be closed-out shall be completed. Those AOCs which are not agreed upon by the Parties to be closed-out will proceed to the SSP, and the Navy shall include those AOCs in the draft Amended Site Management Plan for Fiscal Years 2001-2002 as SSAs and propose deadlines for submittal of SSP Work Plans as prescribed in Subsection 9.3.C.

If the Parties agree, in writing, the "desk-top" evaluation for specific AOCs may be extended beyond the 120-day finalization deadline. If the Navy submits supporting documentation to EPA in such a manner that the 30-day review and response time for EPA extends beyond the 120-day finalization date, the finalization date will automatically be extended to allow for a full 30 days of review and discussion.

### **Remedial Investigation and Feasibility Study**

9.4 The Navy agrees it shall develop, implement and report upon a Remedial Investigation (RI) for areas identified in Subsections 9.2 and 9.3. RIs shall be conducted in accordance with the requirements and schedules set forth in the approved RI/FS Work Plan and Site Management Plan. RIs shall meet the purposes set forth in Section IV - PURPOSE, of this Agreement. A Baseline Risk Assessment shall be a component of the RIs. Final Site clean-up level criteria will only be determined following completion of the Baseline Risk Assessment.

9.5 The Navy agrees it shall develop, implement and report upon a Feasibility Study (FS) for areas subject to an RI. The FS shall be conducted in accordance with the requirements and schedules set forth in the approved RI/FS Work Plan and Site Management Plan. The FS shall meet the purposes set forth in Section IV - PURPOSE, of this Agreement.

### **Procedures for Interim Remedial Actions**

9.6 A. The Navy shall implement those Interim Remedial Actions (IRA) necessary to prevent, minimize, or eliminate risks to human health and the environment caused by the release of hazardous substances, pollutants, or contaminants at or from the Site. An Interim Remedial Action is identified, proposed, and implemented prior to a final Remedial Action. An IRA shall attain ARARs to the extent required by CERCLA or the NCP and be consistent with and contribute to the efficient performance of a final Remedial Action(s) taken at an area or Operable Unit. An IRA must be protective of human health and the environment, and comply with CERCLA, the NCP, and State laws to the extent that they are legally applicable, or relevant and appropriate requirements in accordance with Section 121 of CERCLA, and this Agreement.

B. When a Party to this Agreement determines that an Interim Remedial Action is necessary for any area(s) within the Facility, such Party shall notify, in writing, the other Party, of the proposal. The Proposal Notification to the other Party under this Paragraph shall at a minimum include the location of such area(s) on the Facility and the reason(s) the Party believes an Interim Remedial Action is required. Either Party may propose an IRA for those Operable Unit(s) or SSAs most suitable for an Interim Remedial Action.

C. Within thirty (30) days of notification, either Party may request a meeting of the Parties to assist in expediting the decision to proceed with an IRA. If a dispute(s) arises over whether to address such an area(s) under this Agreement which cannot be settled between the Parties within thirty (30) days from receipt of notification, the dispute(s) shall be immediately brought to the Dispute Resolution Committee (DRC) pursuant to Section XX - DISPUTE RESOLUTION of this Agreement.

D. After the determination that an Interim Remedial Action is required under this Agreement, the Navy shall, in the next draft Amended Site Management Plan, submit to EPA and the State proposed Deadlines for the submission of Work Plan(s) for the performance of a Focused Feasibility Study (FFS) for the identified area(s). The deadlines will be finalized in accordance with Section XI. Each FFS Work Plan shall contain a proposed deadline for the submittal of the FFS. The schedule and deadlines included in the approved, final FFS Work Plan will immediately be incorporated in the Site Management Plan. The FFS shall include a limited number of proposed Interim Remedial Action alternatives. To the extent possible, the FFS shall provide an assessment of the degree to which these alternatives were analyzed during their development and screening. The Navy shall develop, implement, and report upon each FFS in accordance with the requirements set forth in the final FFS Work Plan.

E. Within forty-five (45) days of submission of a final FFS Report, the Navy shall prepare and submit a Proposed Plan for the IRA. The Navy shall make a Proposed Plan for the IRA available for public review and comment in accordance with Paragraph 9.7B. As required, the Navy shall follow the steps outlined in Paragraphs 9.7B through 9.14 below.

#### **Records of Decision and Plans for Remedial Action**

9.7 A. This Section shall apply to selection of remedial actions and any disputes relating thereto.

B. Within forty-five (45) days after finalization of an RI and FS or FFS, the Navy shall submit a draft Proposed Plan to EPA and the State for review and comment as described in Section X - CONSULTATION, of this Agreement. Within fourteen (14) days after receiving EPA acceptance of the Proposed Plan, the Navy shall publish its Proposed Plan for forty-five (45) days of public review and comment. During the public comment period, the Navy shall make the Administrative Record available to the public and distribute the Proposed Plan. The Navy shall hold a public

information meeting during the public comment period to discuss the preferred alternative for each Remedial Action. 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), and applicable EPA and State guidance.

C. Following public comment, the Navy, in consultation with EPA and the State, will determine if the Proposed Plan should be modified based on the comments received. These modifications will be made by the Navy and the modified documents will be provided to EPA and the State for review. The Parties may recommend that additional public comment be solicited if modifications to the Proposed Plan substantially change the remedy originally proposed to the public. The determination concerning whether a Proposed Plan should be modified or whether additional public comment is necessary is subject to the dispute resolution provisions of this Agreement, Section XX - DISPUTE RESOLUTION.

D. The Navy shall submit its draft ROD to EPA and the State within forty-five (45) days following the close of the public comment period, including any extensions, on the Proposed Plan. The draft ROD will include a Responsiveness Summary, in accordance with applicable EPA Guidance. Pursuant to CERCLA Section 120(e)(4)(A), 42 U.S.C. Section 9620(e)(4)(A), the EPA and the Navy, in consultation with the State, shall make the final selection of the remedial action(s) for each Remedial Action.

E. At a minimum, EPA and the Navy, shall have thirty (30) days to attempt to select a remedy following the Navy's submission of a draft ROD.

F. The selection of a remedy that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria or limitation is one basis on which the State may determine not to concur with a final remedial action plan. In accordance with CERCLA Section 121(f)(3)(A), 42 U.S.C. Section 9621(f)(3)(A), at least thirty (30) days prior to the publication of the Navy's final remedial action plan, if the Navy proposes to select a remedial action that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria or limitation, the Navy shall provide an opportunity for the State to concur or not concur in the selection of such plan. If the State concurs or does not act within thirty (30) days of receipt of notification by the Navy of pending publication of the final remedial action plan, the remedial action may proceed. If

the State does not concur, it may act pursuant to Section 121(f)(3)(B) of CERCLA, 42 U.S.C. Section 9621(f)(3)(B).

G. If the EPA and the Navy are unable to reach agreement on the selection of the remedy, after exhausting the Dispute Resolution process set forth in Section XX - DISPUTE RESOLUTION, then the Administrator shall select the remedy in accordance with all applicable laws and procedures. EPA shall then prepare and issue the final ROD. EPA shall comply with the public participation requirements of the NCP. Such RODs shall not be subject to dispute resolution under this Agreement.

H. 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). The final ROD shall include a statement that the State has concurred or not concurred with the selection of the remedy.

#### **Remedial Design and Remedial Action**

9.8 A. The Site Management Plan shall include a target date for submission of a preliminary/conceptual Remedial Design; a Target Date for submission of prefinal Remedial Design; and a Deadline for the final Remedial Design, which documents shall be prepared in accordance with this Agreement and applicable guidance issued by EPA. The Remedial Design shall provide the appropriate plans and specifications describing the intended remedial construction and shall include provisions necessary to ensure that the remedial action will achieve ARARs and performance standards identified in the ROD.

B. The RA Work Plan(s) shall at a minimum contain a schedule for the completion of the Remedial Action, a Health and Safety Plan, a Sampling and Analysis Plan, and a Quality Assurance Project Plan, if necessary. The schedule contained in the final RA Work Plan(s) will be immediately incorporated in the Site Management Plan.

C. After the final design document is approved, pursuant to Section X - CONSULTATION, the Navy shall begin performance of the Remedial Action (RA) in accordance with the final Remedial Design and the RA Work Plan. The Remedial Action shall be completed in accordance with the approved final Remedial Design and RA Work Plan and all applicable EPA and State Guidance.

### **Finalization of Remedial Actions**

9.9 A. The Navy agrees that it shall submit to EPA and the State a remedial action report for each OU in accordance with the Schedule in the Site Management Plan when physical construction of the Remedial Action has been completed and, if applicable, it is determined to be operating properly and successfully. In the case of ground water and surface water restoration remedies, this report shall be a Remedial Action Interim Report, which can be amended to create the Remedial Action Completion Report when cleanup goals are achieved. In the case of remedies not involving ground water or surface water restoration, this report shall be a Remedial Action Completion Report.

B. The remedial action report shall provide a history of Site operations and contamination at the Site; outline in specifics the Remedial Actions taken and detail, and provide an explanation for, any activities that were not conducted in accordance with the final RD and/or RA Work Plan(s); document, in the case of a Remedial Action Completion Report, that all Performance Standards for that OU have been met; and describe activities to be conducted during Operation and Maintenance, including, in the case of a Remedial Action Interim Report, the ongoing surface or ground water restoration activities, and a projection of when the cleanup goals will be achieved. In addition, in accordance with the schedule provided in the Site Management Plan, after the completion of the Remedial Action for each OU, but prior to the finalization of the remedial action report, the Navy shall submit a draft Operation and Maintenance Plan (if necessary) to EPA and the State for review. The Operation and Maintenance Plan(s) finalized under this Agreement shall contain schedules for completion of the Work described therein, and these schedules shall be incorporated in the Site Management Plan and become enforceable pursuant to the terms of this Agreement.

### **Accelerated Operable Unit**

9.10 A. Accelerated Operable Units (AOUs), as defined in Section II - DEFINITIONS, will follow a streamlined remedial process as set forth below. Any Party may propose in writing that an Operable Unit (OU) be conducted as an AOU. The Party proposing an AOU shall be responsible for drafting an AOU proposal which shall clearly define the purpose, scope and goals of the AOU. The Navy shall evaluate all proposed AOUs.



B. Within thirty (30) days of notification, any Party may request a meeting of the Parties to assist in expediting selection of an AOU. If dispute resolution is not invoked within thirty (30) days following receipt of a proposal for an AOU by the Parties, or thirty (30) days after the meeting, or if the need for an AOU is established through Section XX - DISPUTE RESOLUTION, the proposed AOU shall be incorporated into the Site Management Plan as an AOU. The Navy agrees to pursue additional funding within ten (10) days to initiate the AOU(s).

C. Within fifteen (15) days after the determination that an AOU is required under this Agreement, the Navy shall submit to EPA and the State proposed Deadlines for the submission of Work Plan(s) for the performance of an AOU Focused Feasibility Study (FFS) for the identified AOU(s). Each AOU FFS Work Plan shall contain a proposed deadline for submittal of the AOU FFS and Proposed Plan. The Schedule and Deadlines included in the final AOU FFS Work Plan will be incorporated in the next draft Amended Site Management Plan. The Navy shall develop, implement and report upon each AOU FFS in accordance with the requirements set forth in the final AOU FFS Work Plan. The Navy shall follow the steps outlined in Subsections 9.7B through 9.9.

### **Supplemental Response Action**

9.11 The Parties recognize that subsequent to finalization of a ROD, a need may arise for one or more supplemental response actions to remedy continuing or additional releases or threats of releases of hazardous substances, pollutants or contaminants at or from the Site. If such release or threat of release may present an immediate threat to public health or welfare or the environment, it shall be addressed pursuant to Section XVIII - REMOVALS AND EMERGENCY ACTIONS. If such release or threat of release does not present an immediate threat to public health or welfare or the environment, it shall be addressed pursuant to Subsections 9.12 through 9.15.

9.12 A supplemental response action shall be undertaken only when:

A. A determination is made that:

(1) As a result of the release or threat of release of a hazardous substance, pollutant or contaminant at or from the Site, an additional response action is necessary and appropriate

to assure the protection of human health or the environment; or,

(2) There is or has been a release of hazardous waste or hazardous constituents into the environment and corrective response action is necessary to protect human health or the environment; and,

B. Either of the following conditions is met for any determination made pursuant to Subsection 9.12 A., above:

(1) For supplemental response actions proposed after finalization of the ROD, but prior to EPA Certification of completion of Remedial Action, the determination must be based upon conditions at the Site that were unknown at the time of finalization of the ROD or based upon new information received in whole or in part by EPA following finalization of the ROD; or

(2) For supplemental response actions proposed after EPA Certification of completion of Remedial Action, the determination must be based upon conditions at the Site that were unknown at the time of EPA Certification or based upon new information received in whole or in part by EPA following EPA Certification.

9.13 If, subsequent to ROD signature, either Party concludes that a supplemental response action is necessary, based on the criteria set forth in Subsection 9.12, such Party shall promptly notify the other of its conclusion in writing. The notification shall specify the nature of the modification needed and the new information on which it is based. The Project Managers shall confer and attempt to reach consensus on the need for such an action within a thirty (30) day period after receipt of the notification. If the Project Managers have failed to reach consensus within thirty (30) days, either Party may notify the other Party in writing within ten (10) days thereafter that it intends to invoke dispute resolution. If the Project Managers are still unable to reach consensus within fourteen (14) days of the receipt of the notice, the question of the need for the supplemental response action shall be resolved through dispute resolution.

9.14 If the Project Managers agree, or if it is determined through dispute resolution, that a supplemental response action is needed based on the criteria set forth in Paragraph 9.12, the Navy shall propose a deadline for submittal of the Supplemental Work Plan(s) and a schedule for performance of the work thereunder to the EPA and the State in the next Amended Site Management Plan.

9.15 After finalization of a Supplemental Work Plan, the Navy shall conduct a Supplemental Response Action RI/FS. Following finalization of the Supplemental Response Action RI/FS, the procedures described in Sections 9.7 through 9.9 shall be followed.

**9.16 EPA Certification**

A. When the Navy determines that the final Remedial Action(s) for a given Operable Unit has been completed in accordance with the requirements of this Agreement, it shall so advise EPA and the State in writing, and shall schedule and conduct a close-out inspection to be attended by the Navy, EPA and the State. Within thirty (30) days of each close-out inspection, the Navy shall submit an Operable Unit Close-Out Inspection Report, signed by the Navy's signatory authority or designee, certifying that the Remedial Action(s) has been completed in full satisfaction of the requirements of this Agreement, and a request for EPA certification of the completion of the Remedial Action.

The Close-Out Inspection Report shall contain a brief summary of the Operable Unit, the Remedial Action(s) undertaken for this Operable Unit, the post-remedial activities planned for the Operable Unit, and any noteworthy observations made during the close out inspection. Within ninety (90) days of EPA's receipt of the Navy's request for certification, EPA, in consultation with the State, shall advise the Navy in writing that:

(1) EPA certifies that the Remedial Action has been completed in accordance with CERCLA, the NCP, and this Agreement, based on conditions known at the time of certification; or

(2) EPA denies the Navy's request for certification, stating in full the basis of its denial and detailing the additional work needed for Remedial Action completion and certification.

B. If EPA denies the Navy's request for certification that a Remedial Action has been completed in accordance with this Agreement, the Navy may invoke dispute resolution within twenty (20) days of receipt of EPA's written denial to review EPA's determination on certification or additional work needed. If EPA's denial of certification is upheld in Dispute Resolution, the Navy will perform the requested additional work.

C. If dispute resolution is not invoked, or if EPA's denial of certification is upheld in dispute resolution, the Navy shall, in the next draft Amended Site Management Plan submitted after receipt of the written denial of certification, propose a deadline for the submittal of a draft Supplemental Work Plan. The draft Supplemental Work Plan shall contain a schedule for completion of the additional work required which will be incorporated into the Site Management Plan. After performing the additional work, the Navy may resubmit a request for certification to EPA. EPA shall then grant or deny certification pursuant to the process set forth in this Section.

## X. CONSULTATION

### Review and Comment Process for Draft and Final Comments

#### 10.1 Applicability:

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. The Navy will normally be responsible for issuing primary and secondary documents to EPA and the State. As of the effective date of this Agreement, all draft and final reports for any deliverable document identified herein shall be prepared, distributed and subject to dispute in accordance with Sections 10.2 through 10.10 below. The designation of a document as "draft" or "final" is solely for purposes of consultation with EPA and the State 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 and the NCP.

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

A. Primary Documents include those documents 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 EPA and the State. 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 issuance if dispute resolution is not invoked or as modified by decision of the dispute resolution process.

B. Secondary Documents include those documents 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 EPA and the State. Although the Navy will respond to comments received, the draft Secondary Documents may be finalized in the context of the corresponding draft final Primary Documents. A Secondary Document may be disputed at the time the corresponding draft final Primary Document is issued.

### 10.3 Primary Documents:

A. All Primary Documents shall be prepared in accordance with the NCP and applicable EPA Guidance. The Navy shall complete and transmit drafts of the following primary documents to EPA and the State for review and comment in accordance with the provisions of this Section, except that Proposed Plans shall be reviewed and commented on in accordance with the provisions of Section 9.7, Records of Decision and Plans for Remedial Action; and Site Management Plans and Amended Site Management Plans shall be reviewed and commented on in accordance with Sections XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN and XII - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN, of this Agreement:

- (1) Site Screening Process Work Plans
- (2) Site Screening Process Reports
- (3) RI/FS (including Baseline Risk Assessment for human health and the environment) and FFS Work Plans
- (4) Remedial Investigation Reports (including baseline Risk Assessments for human health and the environment)
- (5) FS and FFS Reports
- (6) Proposed Plans
- (7) Final Remedial Designs

- (8) Remedial Action Work Plans
  - Remedial Action Sampling Plan
  - Remedial Action Construction Quality Assurance Plan
  - Remedial Action Environmental Monitoring Plan
- (9) Remedial Action Completion Reports
- (10) Remedial Action Interim Reports
- (11) Operation and Maintenance Plans
- (12) Site Management Plan and Amendments to SMP

B. Only the draft final Primary Documents identified above shall be subject to dispute resolution in accordance with Section XX - DISPUTE RESOLUTION of this Agreement. The Navy shall complete and transmit draft Primary Documents in accordance with the schedule and deadlines established in Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN, of this Agreement.

C. The Community Relations Plan and the Long-Term Remedial Action Monitoring Plans will be considered Primary documents for submission and as secondary documents for review and comment.

D. Prior to the effective date of this Agreement, the Navy has completed and transmitted the following documents to EPA and the State for review and comment:

- (1) Engineering Evaluation/Cost Analysis for IR Site 5 Swale No. 2, Indian Head Division, Naval Surface Warfare Center, Indian Head, Maryland, May 1994
- (2) Engineering Evaluation and Cost Analysis (EECA) for IR Site 8, Nitroglycerin Plant Office, of January 1993
- (3) Engineering Evaluation and Cost Analysis (EECA) for IR Site 5 of May 1994
- (4) Installation Restoration (IR) Site 56 Engineering Evaluation and Cost Analysis Report (EECA) of August 1995
- (5) RCRA Facility Investigation Work Plan NAVEODTECHCEN - Stump Neck Annex Indian Head, Maryland, October 1995
- (6) Final Project Specific Remedial Investigation (RI) Work

Plan dated May 1997

(7) Installation Restoration (IR) Community Relations Plan (CRP) of October 1997

(8) Installation Restoration (IR) Site 57 Engineering Evaluation and Cost Analysis Report (EECA) of June 1998

(9) Remedial Investigation Work Plan for IR Site 57, Former Drum Loading Area Building 292 of July 1998

(10) Final Remedial Investigation Report for IR Sites 12 (Town Gut Landfill), 39/41 (Scrap Yard), 42 (Olsen Road Landfill), and 44 (Soak Out Area) dated March 1999

(11) Final Remedial Investigation Report for IR Site 57 (Former Drum Disposal Area, Building 292) dated July 2000

(12) Final Site-Specific Remedial Investigation (RI) Work Plan for Installation Restoration (IR) Site 11 - Caffee Road Landfill, IR Site 13 - Paint Solvents Disposal Ground, IR Site 17 - Discarded Metal Parts Along Mattawoman Creek Shoreline, IR Site 21 - Bronson Road Landfill, and IR Site 25 - Hypo Discharges from Building 588 dated July 2000

#### 10.4 Secondary Documents:

A. All Secondary Documents shall be prepared in accordance with the NCP and applicable EPA Guidance. The Navy shall complete and transmit drafts of the following Secondary Documents to EPA and the State for review and comment in accordance with the provisions of this Section:

- (1) Health and Safety Plans
- (2) Non-Time Critical Removal Action Plans  
(40 C.F.R. Section 300.415(b)(4)(ii))
- (3) Pilot/Treatability Study Work Plans
- (4) Pilot/Treatability Study Reports
- (5) Engineering Evaluation/Cost Analysis Report
- (6) Well Closure Methods and Procedures

- (7) Preliminary/Conceptual Remedial Designs, or Equivalents
- (8) Prefinal Remedial Designs
- (9) Periodic Review Assessment Reports
- (10) Removal Action Memoranda

B. Although EPA and the State may comment on the draft Secondary Documents listed above, such documents shall not be subject to dispute resolution except as provided by Subsection 10.2 hereof. Target dates shall be established for the completion and transmission of draft Secondary Documents pursuant to Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement.

#### 10.5 Meetings of the Project Managers on Development of Documents:

The Project Managers shall meet approximately every ninety (90) days, and confer by telephone every thirty (30) days, except as otherwise agreed by the Parties, to review and discuss the development of primary and secondary documents. Prior to preparing any draft document specified in Subsections 10.3 and 10.4 above, the Project Managers shall meet or confer by telephone to discuss the document in an effort to reach a common understanding, to the maximum extent practicable, with respect to the content of draft documents.

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

A. For those Primary Documents or Secondary Documents that consist of, or include ARAR determinations, the Project Managers shall meet prior to the issuance of a draft report, to identify and propose, to the best of their ability, all potential ARARs pertinent to the document being addressed. The Navy shall request that the State shall identify all potential State ARARs as early in the remedial process as possible consistent with the requirements of CERCLA Section 121(d)(2)(A)(ii), 42 U.S.C. Section 9621(d)(2)(A)(ii), and the NCP.

The Navy shall consider any State ARARs and written interpretations of ARARs provided by the State. Draft ARAR determinations shall be prepared by the Navy in accordance with CERCLA Section 121(d)(2), 42 U.S.C. Section 9621(d)(2), the NCP, and pertinent guidance issued by EPA, that is consistent with CERCLA and the NCP.



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

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

A. The Navy shall complete and transmit each draft Primary Document to EPA and the State on or before the corresponding deadline established pursuant to Section XI - DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement for the issuance of the document. The Navy shall complete and transmit the draft secondary document in accordance with the target dates established for the issuance of such documents.

B. Unless the Parties mutually agree to another time period, all draft documents, except the Site Management Plan, the prefinal Remedial Design and the final Remedial Design shall be subject to a sixty (60)-day period for review and comment. The Site Management Plan shall be reviewed and commented on in accordance with Section XI or as agreed to by the Parties. The Parties recognize that time periods for review and comment on the draft Remedial Design and Remedial Action Work Plans may need to be expedited in order for the Navy to satisfy the requirement of Section 120(e)(2) of CERCLA, 42 U.S.C. Section 9620(e)(2). The prefinal Remedial Design shall be subject to a forty-five (45) day period for review and comment. The final Remedial Design will be subject to a two (2) week period for review and comment by the Parties. In the event that the final Remedial Design differs substantially from the prefinal Remedial Design, EPA may extend the two (2) week review and comment period for an additional two (2) weeks by providing written notice to the Navy prior to the end of the initial two (2) week comment period. Review of any document by EPA may concern all aspects of the document (including completeness) and should include, but not be limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP, and any pertinent policy or guidance issued by EPA or the State. Comments by EPA 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, EPA or the State shall provide a copy

of the cited authority or reference. In cases involving complex or unusually lengthy reports, the EPA 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 any comment period, EPA shall transmit by next day mail its written comments to the Navy.

C. The review period for documents shall not begin until the submission date specified in the Site Management Plan.

D. In the event documents not scheduled in the current Site Management Plan are determined by mutual agreement of the program managers to be necessary, review periods, Deadlines, and Target Dates shall be established and shall be incorporated into the draft Amended Site Management Plan.

E. Representatives of the Navy shall make themselves readily available to EPA and the State during the comment period for purposes of informally responding to questions and comments on draft documents. Oral comments made during such discussions need not be the subject of a written response by the Navy at the close of the comment period.

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

G. 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 EPA and the State 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 EPA and the State a draft final Primary Document, which shall include the Navy's response to all written comments received within the comment period. While the resulting draft final document shall be the responsibility of the Navy, it shall be the product of consensus to the maximum extent possible.

H. The Navy may extend the 60-day period for either responding to comments on a draft document or for issuing the draft final Primary Document for an additional twenty (20) days

by providing timely notice to EPA and the State. In appropriate circumstances, this time period may be further extended in accordance with Section XIII - EXTENSIONS, hereof.

10.8 Availability of Dispute Resolution on draft final Primary Documents:

A. Dispute resolution shall be available to the Parties for draft final Primary Documents as set forth in Section XX - DISPUTE RESOLUTION.

B. When dispute resolution is invoked on a draft final Primary Document, Work may be stopped in accordance with the procedures set forth in Section XX - DISPUTE RESOLUTION.

10.9 Finalization of Documents:

The draft final Primary Document shall serve as the final Primary Document if no party invokes dispute resolution regarding the document or, if invoked, at the completion of the dispute resolution process should the Navy's position be sustained. If the Navy's determination is not sustained in the dispute resolution process, the Navy shall prepare, within not more than 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 XIII - EXTENSIONS, hereof.

10.10 Subsequent Modification of Final Document:

Following finalization of any Primary Document pursuant to Subsection 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 Subsections A. and B. below.

A. A Party may seek to modify a 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 Managers of the other Parties. The request shall specify the nature of the requested modification and how the request is based on new information.

B. In the event that a consensus is not reached by the Project Managers on the need for a modification, any Party may invoke the

dispute resolution process to determine if such modification shall be conducted. Modification of a document shall be required only upon a showing that:

(1) The requested modification is based on significant new information; and

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

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

#### **XI. DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN**

11.1. This Agreement establishes a process for creating and amending the Site Management Plan (SMP). The SMP and each annual Amendment to the SMP shall be Primary Documents. Milestones established in a SMP or established in a final Amendment to a SMP remain unchanged unless otherwise agreed to by the Parties or unless directed to be changed pursuant to the agreed dispute resolution process set out in Subsections 12.5 or 12.6. In addition, if an activity is fully funded in the current FY, Milestones associated with the performance of Work and submittal of Primary Documents associated with such activity (even if they extend beyond the current FY) shall be enforceable.

11.2 The SMP includes proposed actions for both CERCLA responses and actions which would otherwise be handled pursuant to RCRA corrective actions per Section VIII - STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION, and outlines all response activities and associated documentation to be undertaken at the Facility. The SMP incorporates all existing Milestones contained in approved Work Plans, and all Milestones approved in future Work Plans immediately become incorporated into the SMP.

11.3 Milestones in the SMP reflect the priorities agreed to by the Parties through a process of "Risk Plus Other Factors" Priority Setting. Site activities have been prioritized by weighing and balancing a variety of factors including, but not limited to: (i) the DOD relative risk rankings for the Site;

(ii) current, planned, or potential uses of the Facility; (iii) ecological impacts; (iv) impacts on human health; (v) intrinsic and future value of affected resources; (vi) cost effectiveness of the proposed activities; (vii) environmental justice considerations; (viii) regulatory requirements; and, (ix) actual and anticipated funding levels. While Milestones should not be driven by budget targets, such targets should be considered when setting Milestones. Furthermore, in setting and modifying Milestones, the Parties agree to make good faith efforts to accommodate Federal Fiscal constraints, which include budget targets established by the Navy.

11.4 The SMP and its annual Amendments include:

11.4.1 A description of actions necessary to mitigate any immediate threat to human health or the environment;

11.4.2 A listing of all currently identified Site Screening Areas (SSAs), Operable Units (including Accelerated Operable Units (AOUs), Interim Remedial Actions, Supplemental Response Actions, and Critical and Non-Time Critical Removal Actions covered or identified pursuant to this Agreement;

11.4.3 Activities and schedules for response actions covered by the SMP, including at a minimum:

- Identification of any Primary Actions;
- All Deadlines;
- All Near Term Milestones;
- All Out Year Milestones;
- All Target dates;
- Schedule for initiation of Remedial Designs, Interim Response Actions, Non-Time Critical Removal Actions, AOUs, and any initiation of other planned response action(s) covered by this Agreement; and
- All Project End Dates.

11.5 The Navy shall submit an Amendment to the SMP on an annual basis as provided in Section XII - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN. All Amendments to the SMP shall meet all of the requirements set forth in this Section.

11.6 The Milestones established in accordance with this Section and Section XII - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN remain the same unless otherwise agreed by the Parties, or unless changed in accordance with the dispute resolution procedures set out in Subsections 12.5 and 12.6. The Parties recognize that possible bases for requests for changes or extensions of the Milestones include but are not limited to--(i) the identification of significant new Site conditions at this installation; (ii) reprioritization of activities under this Agreement caused by changing priorities or new site conditions elsewhere in the Navy; (iii) reprioritization of activities under this Agreement caused by budget adjustments (e.g., rescissions, inflation adjustments, and reduced Congressional appropriations); (iv) an event of force majeure; (v) a delay caused by another Party's failure to meet any requirement of this Agreement; (vi) a delay caused by the good faith invocation of dispute resolution or the initiation of judicial action; (vii) a delay caused, or which is likely caused, by the grant of an extension in regard to another timetable and Deadline or Schedule; and (viii) any other event or series of events mutually agreed to by the Parties as constituting good cause.

11.7 The Deadlines established in the SMP and its Amendments shall be published by EPA and the State.

## **XII. BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN**

12.1 The Navy, as a Federal agency, is subject to fiscal controls, hereinafter referred to as the Future Years Defense Plan (FYDP). The planning, programming, and budgeting process, hereinafter referred to as the POM process, is used to review total requirements for DOD programs and make appropriate adjustments within the FYDP for each program while adhering to the overall FYDP control. The Parties recognize that the POM process is a multi-year process. The Parties also agree that all Parties should be involved in the full cycle of POM activities as specified in this Agreement. Further, the Parties agree that each Party should consider the factors listed in Subsection 11.3, including Federal fiscal constraints as well as each of the other factors, in their priority-setting decisions. Initial efforts to close any gap between cleanup needs and funding availability shall be focused on the identification and implementation of cost savings.

## Facility-Specific Budget Building

12.2 In order to promote effective involvement by the Parties in the POM process, the Parties will meet at the Project Manager level for the purpose of (1) reviewing the FYDP controls; (2) developing a list of requirements/Work to be performed at the Site for inclusion in the Navy POM process; and, (3) participating in development of the Navy submission to the President's proposed budget, based on POM decisions for the year currently under consideration. Unless the Parties agree to a different time frame, the Navy agrees to notify EPA and the State within ten (10) days of receipt, at the Project Manager level, that budget controls have been received. Unless the Parties agree to a different time frame or agree that a meeting is not necessary, the Parties will meet, at the Project Manager level, within five (5) days of receiving such notification to discuss the budget controls. However, this consultation must occur at least ten (10) days prior to the Navy's initial budget submission to the Naval Facilities Engineering Command (NAVFAC). In the event that the Project Managers cannot agree on funding levels required to perform all Work outlined in the SMP, the Parties agree to make reasonable efforts to informally resolve these disagreements, either at the immediate or secondary supervisor level; this would also include discussions, as necessary, with NAVFAC. If agreement cannot be reached informally within a reasonable period of time, the Navy shall resolve the disagreement, if possible with the concurrence of EPA, and notify both EPA and the State. If EPA and the Navy do not concur in the resolution, the Navy will forward through NAVFAC to the Navy Headquarters, its budget request with the views of the Party not in agreement and also inform Navy Headquarters of the possibility of future enforcement action should the money requested not be sufficient to perform the Work subject to disagreement. In addition, if the Navy's budget submission to NAVFAC relating to the terms and conditions of this Agreement does not include sufficient funds to complete all Work in the existing SMP, such budget submission shall include supplemental reports that fully disclose the Work required by the existing SMP, but not included in the budget request due to fiscal controls (e.g., a projected budget shortfall). These supplemental reports shall accompany the cleanup budget that the Navy submits through its higher Headquarters levels until the budget shortfall has been satisfied. If the budget shortfall is not satisfied, the supplemental reports shall be included in the Navy's budget submission to the DOD Comptroller. The Deputy Under Secretary of Defense (Environment and Safety) (DUSD(ES)) shall receive information copies of any supplemental reports submitted to the DOD Comptroller.

### Navy Budget for Clean Up Activities

12.3 The Navy shall forward to the EPA and the State documentation of the budget requests (and any supplemental reports) for the Site, as submitted by the Navy to NAVFAC, and by NAVFAC to the Navy Headquarters, within 14 days after the submittal of such documentation to the Navy Headquarters by NAVFAC. If the Navy proposes a budget request relating to the terms and conditions of this Agreement that impacts other installations, discussions with other affected EPA Regions and States regarding the proposed budget request need to take place.

### Amended SMP

12.4 No later than June 15 of each year after the initial adoption of the SMP, the Navy shall submit to the EPA and the State a draft Amendment to the SMP. When formulating the draft Amendment to the SMP, the Navy shall consider funding circumstances (including OMB targets/guidance) and "risk plus other factors" outlined in Subsection 11.3 to evaluate whether the previously agreed upon Milestones should change. Prior to proposing changes to Milestones in its annual Amendment to the SMP, the Navy will first offer to meet with the EPA and the State to discuss the proposed changes. The Parties will attempt to agree on Milestones before the Navy submits its annual Amendment by June 15, but failure to agree on such proposed changes does not modify the June 15 date, unless agreed by both Parties. Any proposed extensions or other changes to Milestones must be explained in a cover letter to the draft Amendment to the SMP. The draft Amendment to the SMP should reflect any agreements made by the Parties during the POM process outlined in this Section. Any disagreement over adjustment of Milestones pursuant to this subsection shall be resolved pursuant to Subsection 12.5.

12.5.1 The Parties shall meet as necessary to discuss the draft Amendment to the SMP. The Parties shall use the consultation process contained in Section X - CONSULTATION, except that neither of the Parties will have the right to use the extension provisions provided therein. Accordingly, comments on the draft Amendment will be due to the Navy no later than 30 days after receipt by EPA of the draft Amendment. If EPA provides comments and is not satisfied with the draft Amendment during this comment period, the Parties shall meet to discuss the comments within 15 days of the Navy's receipt of comments on the draft Amendment. The draft final Amendment to the SMP will be due from the Navy no later than 30 days after the end of the EPA comment period. During this second 30-day time period, the Navy will, as



appropriate, make revisions and re-issue a revised draft herein referred to as the draft final Amendment. To the extent that Section X - CONSULTATION contains time periods differing from these 30 day periods, this provision will control for consultation on the Amendment to the SMP.

12.5.2.1 If the Navy proposes, in the draft final Amendment to the SMP, modifications of Milestones to which EPA has not agreed, those proposed modifications shall be treated as a request by the Navy for an extension. Milestones may be extended during the SMP review process by following Subsections 12.4 through 12.7. All other extensions will be governed by Section XIII - EXTENSIONS. The time period for EPA to respond to the request for extension will begin on the date EPA receives the draft final Amendment to the SMP, and EPA shall advise the Navy in writing of its position on the request within thirty days. If EPA approves of the Navy's draft final Amendment, the document shall then await finalization in accordance with Subsections 12.5.3 and 12.6. If EPA denies the request for extension, then the Navy may amend the SMP in conformance with EPA comments or seek and obtain a determination through the dispute resolution process established in Section XX - DISPUTE RESOLUTION within 21 days of receipt of notice of denial. Within 21 days of the conclusion of the dispute resolution process, the Navy shall revise and reissue, as necessary, the draft final Amendment to the SMP. If EPA initiates a formal request for a modification to the SMP to which the Navy does not agree, EPA may initiate dispute resolution as provided in Section XX - DISPUTE RESOLUTION with respect to such proposed modification. In resolving a dispute, the persons or person resolving the dispute shall give full consideration to the bases for changes or extensions of the Milestones referred to in Subsection 11.6 asserted to be present, and the facts and arguments of each of the Parties.

12.5.2.2 Notwithstanding Subsection 12.5.2.1, if the Navy proposes, in the draft final Amendment to the SMP, modifications of Project End Dates which are intended to reflect the time needed for implementing the remedy selected in the Record of Decision but to which EPA has not agreed, those proposed modifications shall not be treated as a request by the Navy for an extension, but consistent with Section XX - DISPUTE RESOLUTION, EPA may initiate dispute resolution with respect to such Project End Date.

12.5.2.3 In any dispute under this Section, the time periods for the standard dispute resolution process contained in Subsections 20.2, 20.5, and 20.6 of Section XX - DISPUTE RESOLUTION, shall be

reduced by half in regard to such dispute, unless the Parties agree to dispute directly to the SEC level.

12.5.3 The Navy shall finalize the draft final Amendment as a final Amendment to the SMP consistent with the mutual consent of the Parties, or in the absence of mutual consent, in accordance with the final decision of the dispute resolution process. The draft final Amendment to the SMP shall not become final until 21 days after the Navy receives official notification of Congress' authorization and appropriation of funds if funding is sufficient to complete Work in the draft final SMP or, in the event of a funding shortfall, following the procedures in Subsection 12.6. However, upon approval of the draft final Amendment or conclusion of the dispute resolution process, the Parties shall implement the SMP while awaiting official notification of Congress' authorization and appropriation.

12.5.4 Although the State of Maryland is not a Party to this Agreement, it shall nevertheless be entitled to participate in the consultation process for the Amendment to the SMP as if it were a Party; however, this shall not include a right to dispute resolution.

#### Resolving Appropriations Shortfalls

12.6 After authorization and appropriation of funds by Congress and within 21 days after the Navy has received official notification of Navy's allocation based on the current year's Environmental Restoration, Navy (ER,N) Account, the Navy shall determine if planned Work (as outlined in the draft final Amendment to the SMP) can be accomplished with the allocated funds. (1) If the allocated funds are sufficient to complete all planned Work for that fiscal year and there are no changes required to the draft final Amendment to the SMP, the Navy shall immediately forward a letter to the EPA and the State indicating that the draft final Amendment to the SMP has become the final Amendment to the SMP. (2) If the Navy determines within the 21-day period specified above that the allocated funds are not sufficient to accomplish the planned Work for the Site (an appropriations shortfall), the Navy shall immediately notify the EPA and the State. The Project Managers shall meet within thirty (30) days to determine if planned Work (as outlined in the draft final Amendment to the SMP) can be accomplished through: 1) rescoping or rescheduling activities in a manner that does not cause previously agreed upon Near Term Milestones and Out Year Milestones to be missed; or 2) developing and implementing new cost-saving measures. If, during this thirty (30) day discussion period, the Parties determine that rescoping or implementing

cost-saving measures are not sufficient to offset the appropriations shortfall such that Near Term Milestones, Out Year Milestones, and Project End Dates should be modified, the Parties shall discuss these changes and develop modified Milestones. Such modifications shall be based on the "Risk Plus Other Factors" prioritization process discussed in Subsection 11.3, and shall be specifically identified by the Navy. The Navy shall submit a new draft final Amendment to the SMP to EPA and the State within 30 days of the end of the 30 day discussion period. In preparing the revised draft final Amendment to the SMP, the Navy shall give full consideration to EPA and State input during the 30-day discussion period. If the EPA concurs with the modifications made to the draft final Amendment to the SMP, EPA shall notify the Navy and the revised draft final Amendment shall become the final Amendment. In the case of modifications of Milestones due to appropriations shortfalls, those proposed modifications shall, for purposes of dispute resolution, be treated as a request by the Navy for an extension, which request is treated as having been made on the date that EPA receives the new draft final SMP or draft final Amendment to the SMP. EPA shall advise the Navy in writing of its position on the request within 21 days. The Navy may seek and obtain a determination through the dispute resolution process established in Section XX - DISPUTE RESOLUTION. The Navy may invoke dispute resolution within fourteen days of receipt of a statement of nonconcurrence with the requested extension. In any dispute concerning modifications under this Section, the Parties will submit the dispute directly to the SEC level, unless the Parties agree to utilize the standard dispute resolution process, in which case the time periods for the dispute resolution process contained in Subsections 20.2, 20.5, and 20.6 of Section XX - DISPUTE RESOLUTION shall be reduced by half in regard to such dispute. Within 21 days after the conclusion of the dispute resolution process, the Navy shall revise and reissue, as necessary, the final Amendment to the SMP.

12.7 It is understood by the Parties that the Navy will work with representatives of EPA to reach consensus on the reprioritization of work made necessary by any annual appropriations shortfalls or other circumstances as described in Section 12.6. This may also include discussions with other EPA Regions and States with installations affected by the reprioritization; the Parties may participate in any such discussions with other States.

## Public Participation

12.8 In addition to any other provision for public participation contained in this Agreement, the development of the SMP, including its annual Amendments, shall include participation by members of the public interested in this action. The Navy must ensure that the opportunity for such public participation is timely; but this Subsection 12.8 shall not be subject to Section XXI - STIPULATED PENALTIES.

12.8.1 The Parties will meet, after seeking the views of the general public, and determine the most effective means to provide for participation by members of the public interested in this action in the POM process and the development of the SMP and its annual Amendments. The "members of the public interested in this action" may be represented by inclusion of a restoration advisory board or technical review committee, if they exist for the NSWC Indian Head, or by other appropriate means.

12.8.2 The Navy shall provide timely notification under Section 12.6, regarding allocation of ER,N, to the members of the public interested in this action.

12.8.3 The Navy shall provide opportunity for discussion under Sections 12.2, 12.5, 12.6, and 12.7 to the members of the public interested in this action.

12.8.4 The Navy shall ensure that public participation provided for in this Subsection 12.8 complies with Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

## XIII. EXTENSIONS

13.1 A timetable, deadline or schedule shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension as described in Subsection 13.2, below. Any request for extension by the Navy shall be submitted in writing and shall specify:

- A. The timetable, deadline or schedule that is sought to be extended;
- B. The length of the extension sought;
- C. The good cause(s) for the extension; and

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

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

A. An event of Force Majeure, as defined in Section XXII;

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

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

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

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

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

13.4 Within seven (7) days of receipt of a request for an extension of a timetable and deadline or a schedule, the other Party shall advise the requesting Party in writing of its position on the request. Any failure by the other Party to respond within the seven (7) day period shall be deemed to constitute concurrence in the request for extension. If a Party does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

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

13.6 Within seven (7) days of receipt of a statement of nonconcurrence with the requested extension, the requesting Party may invoke dispute resolution.

13.7 A written, timely and good faith request by the Navy for an extension shall toll any assessment of stipulated penalties or application for judicial enforcement of the affected timetable and deadline or schedule until a decision is reached on whether the requested extension will be approved. If dispute resolution is invoked and the requested extension is denied, stipulated penalties may be assessed and may accrue from the date of the original timetable, deadline or schedule. Following the grant of an extension, an assessment of stipulated penalties or an application for judicial enforcement may be sought only to compel compliance with the timetable and deadline or schedule as most recently extended.

#### XIV. PROJECT MANAGERS

14.1 On or before the effective date of this Agreement, EPA and the Navy, shall each designate a Project Manager and notify the other Party of the name and address of their Project Manager. The Project Managers shall be responsible for assuring proper implementation of all work performed under the terms of the Agreement. To the maximum extent practicable, communications between the Navy and EPA on all documents, including reports, comments and other correspondence concerning the activities performed pursuant to this Agreement, shall be directed through the Project Managers. The parties may designate an Alternate Project Manager to exercise the authority of the Project Manager in his or her absence.

14.2 The Parties may change their respective Project Managers. Such change shall be accomplished by notifying the other Party, in writing, within five (5) days of the change and prior to the new Project Manager exercising his or her delegated authority.

14.3 The Parties' Project Managers shall meet or confer informally as necessary as provided in Section X - CONSULTATION, of this Agreement. Although the Navy has ultimate responsibility for meeting its respective deadlines, the EPA Project Manager shall endeavor to assist in this effort by scheduling meetings to review documents and reports, overseeing the performance of environmental monitoring at the Site, reviewing SSP, RI/FS or RD/RA progress, and attempting to resolve disputes informally. At least seven (7) days prior to each scheduled Project Manager meeting, the Navy will provide to the EPA and the State Project

Managers a draft agenda and summary of the status of the work subject to this Agreement.

These status reports shall include, when applicable:

- (1) identification of all data received and not previously provided by the Navy during the reporting period consistent with the limitations of Subsection 32.1;
- (2) all activities completed pursuant to this Agreement since the last Project Manager meeting as well as such actions and plans which are scheduled for the upcoming ninety (90) days; and
- (3) a description of any delays, the reasons for such delays, anticipated delays, concerns over possible timetable implementation or problems that arise in the execution of a Work Plan during the quarter and any steps that were or will be taken to alleviate the delays or problems.

The minutes of each Project Manager meeting will be prepared by the Navy and, with the meeting agenda, will be sent to all Project Managers within twenty-one (21) days after the meeting. Any documents requested during the meeting will be provided in a timely manner.

14.4 Necessary and appropriate adjustments to Deadlines or schedules may be proposed by either Party. The Party which requested the modification shall prepare a written memorandum detailing the modification and the reasons therefor and shall provide a copy of the memorandum at least seven (7) days prior to the Deadline to the other Party for signature and return prior to the Deadline.

14.5 A Project Manager may also recommend and request minor field modifications to the work performed pursuant to this Agreement, or in techniques, procedures or designs utilized in carrying out this Agreement. The minor field modifications proposed under this Part must be approved orally by the other Party's Project Manager to be effective. No such work modifications can be so implemented if an increase in contract cost will result without the authorization of the Navy Contracting Officer. If agreement cannot be reached on the proposed additional work or modification to work, dispute resolution as set forth in Section XX - DISPUTE RESOLUTION, shall be invoked by the Navy, by submitting a written statement to EPA in accordance with Section XX - DISPUTE RESOLUTION. If the

14.7 Each Party's Project Manager shall be responsible for assuring that all communications received from the other Project Managers are appropriately disseminated to and processed by the Party which each represents.

14.9 Notice to the individual Parties shall be provided under this Agreement to the following addresses:

A. For the Navy: Engineering Field Activity Chesapeake  
Attn: Code 181, Environmental  
Restoration Branch - NSWC Indian Head  
Remedial Project Manager  
1314 Harwood Street, SE  
Washington Navy Yard, DC 20374-5018



NSWC Indian Head  
Installation Restoration Program  
Attn: Code 046C  
Environmental Office Bldg. D-327  
101 Strauss Avenue  
Indian Head, Maryland 20640-5035

For EPA:

U. S. Environmental Protection Agency  
Attn: Remedial Project Manager - NSWC  
Indian Head  
Federal Facilities Section  
1650 Arch Street (3HS13)  
Philadelphia, PA 19103-2029

14.10 Delivery may be by overnight mail/express mail/next day delivery. Time limitations will not commence until receipt by the Engineering Field Activity Chesapeake Project Manager as provided in Subsection 14.9.

14.11 Nothing in this Section shall be construed to interfere with or alter the internal organization or procedures of a Party, including, without limitation, signature authority.

14.12 The EFA Chesapeake Project Manager for the Navy shall represent the Navy with regard to the day-to-day field activities at the Site. The Navy Project Manager or other designated employee of the Navy shall be physically present at the Site or available to supervise Work during implementation of all the Work performed at the Site pursuant to this Agreement. The absence of the EPA Project Manager from the Site shall not be cause for Work stoppage or delay, unless the Project Managers agree otherwise in writing.

14.13 The authority of the Project Managers shall include, but not be limited to:

A. Taking samples and ensuring that sampling and other field work is performed in accordance with the terms of any final Work Plans, and QA/QC Plan;

B. Observing, taking photographs, and making such other reports on the progress of the Work as the Project Managers deem appropriate, subject to the limitations set forth in Section XVI - ACCESS hereof;

C. Reviewing sampling data, records, files, and documents relevant to the Agreement, subject to the limitations set forth in Section XXX - RECORD PRESERVATION; and

D. Determining the form and specific content of the Project Manager meetings.

14.14 If any event occurs or has occurred that may delay or prevent the performance of any obligation under this Agreement, whether or not caused by a Force Majeure event, either Party shall notify by telephone the other Party within two (2) working days of when the Party first became aware that the event might cause a delay. If the Party intends to seek an extension of a deadline or schedule because of the event, the procedures of Section XIII - EXTENSIONS, shall apply.

#### **XV. EXEMPTIONS**

15.1 The Parties recognize that the President may issue an Executive Order, as needed to protect national security interests, regarding response actions at NSWC Indian Head, pursuant to Section 120(j) of CERCLA, 42 U.S.C. Section 9620(j). Such an Executive Order may exempt NSWC Indian Head or any portion thereof from the requirements of CERCLA for a period of time not to exceed one (1) year after the issuance of that Executive Order. This Executive Order may be renewed. The Navy shall obtain access to and perform all actions required by this Agreement within all areas inside those portions of NSWC Indian Head which are not the subject of or subject to any such Executive Order issued by the President.

#### **XVI. ACCESS**

16.1 The EPA and its representatives shall have the authority to enter the Site at all reasonable times for the purposes consistent with provisions of this Agreement. Such authority shall include, but not be limited to: inspecting records, logs, contracts, and other documents relevant to implementation of this Agreement; reviewing and monitoring the progress of the Navy, its contractors, and lessees in carrying out the activities under this Agreement; conducting, with prior notice to the Navy, tests which EPA deems necessary; assessing the need for planning additional Remedial Response Actions at the Site; and verifying data or information submitted to EPA. The Navy shall honor all reasonable requests for access to the Site made by EPA, upon

presentation of credentials showing the bearer's identification and that he/she is an employee or agent of the EPA . The Navy Project Manager or his/her designee will provide briefing information, coordinate access and escort to restricted or controlled-access areas, arrange for Base passes, and coordinate any other access requests which arise. The Navy shall use its best efforts to ensure that conformance with the requirements of this subsection do not delay access.

16.2 The rights granted in Paragraph 16.1 and 16.4 to EPA regarding access shall be subject to regulations and statutes, including NSWC Indian Head security regulations, OPNAVINST 5510.1H, April 29, 1986, as may be necessary to protect national security information ("classified information") as defined in Executive Order 12356, and comply with NSWC Indian Head's health and safety requirements. Such requirements shall not be applied so as to unreasonably hinder EPA from carrying out its responsibilities and authority pursuant to this Agreement.

16.3 The Navy shall provide an escort whenever EPA or the State require access to restricted areas of NSWC Indian Head for purposes consistent with the provisions of this Agreement. EPA shall provide reasonable notice to the Navy Project Manager, or his or her designee, to request any necessary escorts for such restricted areas. The Navy shall not require an escort to any area of this Site unless it is a restricted, controlled-access. Upon request of the EPA or the State, these areas can be identified.

16.4 The EPA and the State shall have the right to enter all areas of the Site that are entered by contractors performing work under this Agreement.

16.5 Upon a denial of any aspect of access, the Navy shall provide an immediate explanation of the reason for the denial, including reference to the applicable regulations, and upon request, a copy of such regulations. Within forty-eight (48) hours, the Navy shall provide a written explanation for the denial. To the extent possible, the Navy shall expeditiously provide a recommendation for accommodating the requested access in an alternate manner.

16.6 The Navy shall ensure that all response measures, ground water rehabilitation measures and remedial actions of any kind which are undertaken pursuant to this Agreement on any areas which: a) are presently owned by the United States and which are occupied by the Navy or leased by the Navy to any other entity; or b) are in any manner under the control of the Navy or any

lessees or agents of the Navy, shall not be impeded or impaired in any manner by any transfer of title or change in occupancy or any other change in circumstances of such areas.

16.7 Nothing herein shall be construed as limiting EPA's statutory authority for access or information gathering.

## **XVII. PERMITS**

17.1 The Navy shall be responsible for obtaining all Federal, State and local permits which are necessary for the performance of all Work under this Agreement.

17.2 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), and the NCP, portions of the response actions called for by this Agreement and conducted entirely on the Site, where such response actions are selected and carried out in accordance with CERCLA, are exempt from the procedural requirement to obtain Federal, State, or local permits. All activities must, however, comply with all the applicable or relevant and appropriate Federal and State standards, requirements, criteria, or limitations which would have been included in any such permit.

17.3 When the Navy proposes a response action, other than an emergency removal action, to be conducted entirely onsite, which in the absence of Section 121(e)(1) of CERCLA, 42 U.S.C. Section 9621(e)(1), and the NCP would require a Federal, State or local permit, the Navy shall include in its Draft ROD or removal memorandum:

- A. Identification of each permit which would otherwise be required;
- B. Identification of the standards, requirements, criteria, or limitations which would have had to have been met to obtain each such permit; and
- C. An explanation of how the response action proposed will meet the standards, requirements, criteria or limitations identified immediately above.

17.4 Subsection 17.2 above is not intended to relieve the Navy from the requirement(s) of obtaining a permit whenever it proposes a response action involving the shipment or movement of a hazardous substance, pollutant, or contaminant or hazardous waste off the Site or in any other circumstances where the

exemption provided for at Section 121(e)(1) of CERCLA, 42 U.S.C. Section 9621(e), does not apply.

17.5 The Navy shall notify EPA and the State in writing of any permits required for any off-Site activities it plans to undertake as soon as it becomes aware of the requirement. The Navy shall apply for all such permits and provide EPA with copies of all such permits, applications, and other documents related to the permit process and final permits.

17.6 The Navy agrees to notify EPA of its intention to propose modifications to this Agreement to obtain conformance with the permit, or lack thereof if a permit or other authorization which is necessary for implementation of this Agreement is not issued, or is issued or renewed in a manner which is materially inconsistent with the requirements of this Agreement. Notification by the Navy of its intention to propose modifications shall be submitted within sixty (60) calendar days of receipt by the Navy of notification that: (1) a permit will not be issued; (2) a permit has been issued or reissued; or (3) a final determination with respect to any appeal related to the issuance of a permit has been entered. Within sixty (60) days from the date it submits its notice of intention to propose modifications to this Agreement, the Navy shall submit to EPA its proposed modifications to this Agreement with an explanation of its reasons in support thereof.

17.7 EPA shall review the Navy's proposed modifications to this Agreement in accordance with Section XXXVII - AMENDMENT OF AGREEMENT, of this Agreement. If the Navy submits proposed modifications prior to a final determination of any appeal taken on a permit needed to implement this Agreement, EPA may elect to delay review of the proposed modifications until after such final determination is entered.

17.8 During any appeal by any Party of any permit required to implement this Agreement or during review of any proposed modification(s) to the permit, the Navy shall continue to implement those portions of this Agreement which can be reasonably implemented independent of final resolution of the permit issue(s) under appeal. However, as to work that cannot be so implemented, any corresponding deadline, timetable, or schedule shall be subject to Section XIII - EXTENSIONS, of this Agreement.

17.9 Nothing in this Agreement shall be construed to affect the Navy's obligation to comply with any RCRA permit(s) that the Facility may already have or be issued in the future.

### XVIII. REMOVAL AND EMERGENCY ACTIONS

18.1 The Navy shall provide EPA and the State with timely notice of any proposed removal action.

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

18.3 If during the course of performing the activities required under this Agreement, a Party identifies an actual or a substantial threat of a release of any hazardous substance, pollutant, or contaminant at or from the Site, that Party may propose that the Navy undertake removal actions to abate the danger and threat which may be posed by such actual or threatened release. All removal actions conducted on NSWC Indian Head shall be conducted in a manner consistent with this Agreement, CERCLA, Executive Order 12580, DERP, including provisions for timely notification and consultation with EPA and appropriate State and local officials, and the NCP and shall, to the extent practicable, contribute to the efficient performance of any long term remedial action with respect to the release(s) or threatened release(s) concerned. Upon determination by the Navy to undertake such actions, the Navy shall submit to the EPA and the State:

A. Documentation of the actual or threatened release at or from the Site;

B. Documentation that the actions proposed will abate the danger and threat which may be posed by release of hazardous substances, pollutants, or contaminants at or from the Site;

C. Documentation that the action is consistent with the NCP, applicable State regulations, and, to the extent practicable, contributes to the efficient performance of any long-term remedial action with respect to the release or threatened release concerned;

D. Prepare an Engineering Evaluation/Cost Analysis ("EE/CA"), or its equivalent, for Non-Time Critical Removals. The EE/CA shall contain an analysis of removal alternatives for a site. The screening of alternatives shall be based on criteria as provided in CERCLA and the NCP, such as cost, feasibility, and effectiveness; and

E. A Non-Time Critical Removal Action Plan and target date for the proposed action.

The EPA shall expedite all reviews of these proposals to the maximum extent practicable.

18.4 The opportunity for review and comment for proposed removal actions, as stated in Subsection 18.3 above, may not apply if the action is in the nature of an emergency removal taken because a release or threatened release may present an imminent and substantial endangerment to human health or the environment. The Navy may determine that review and comment, as stated in Subsection 18.3 above, is impractical. However, in the case of an emergency removal action, the Navy shall provide EPA with oral notice as soon as possible and written notice within 48 hours after the Navy determines that an emergency removal is necessary. Within seven (7) days after initiating an emergency removal action, the Navy shall provide EPA and the State with the written basis (factual, technical and scientific) for such action and any available documents supporting 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 Section. Within sixty (60) days of completion of an emergency response action, the Navy will furnish EPA and the State with an Action Memorandum addressing the information provided in the oral notification, whether and to what extent the action varied from the description previously provided, and any other information required by CERCLA or the NCP, and in accordance with EPA guidance for such actions. Such actions may be conducted at anytime, either before or after the issuance of a ROD.

18.5 If an imminent health hazard (e.g., a drinking water well containing any contaminant at concentrations greater than any Federal or State drinking water action level) or an activity conducted pursuant to this Agreement which is creating a danger to the public health or welfare or the environment is discovered by any Party during the efforts covered by this Agreement, the discovering Party will notify the other Party and the Navy will take immediate action to promptly notify all appropriate State and local agencies, potentially affected persons and officials in accordance with 10 U.S.C. Section 2705(a). The Navy will expeditiously take appropriate measures to protect all persons affected.

18.6 All activities pursuant to this Agreement will be performed in accordance with the Health and Safety Plan and will be conducted so as to minimize the threat to the surrounding public.

### **XIX. PERIODIC REVIEW**

19.1 Consistent with Section 121(c) of CERCLA, 42 U.S.C. Section 9621(c), Section 300.430(f)(4)(ii) of the National Contingency Plan, and in accordance with this Agreement, if the selected remedial action results in any hazardous substance, pollutants or contaminants remaining at the Site at levels above that allowing for unlimited use and unrestricted exposure, the Parties shall review the remedial action program for each Operable Unit at least every five (5) years after the initiation of the final remedial action to assure that human health and the environment are being protected by the remedial action being implemented. As part of this review, the Navy shall report the findings of the review to EPA and the State upon its completion. This report, the Periodic Review Assessment Report, shall be a Secondary Document as described in Section X - CONSULTATION.

19.2 If upon such review it is the conclusion of either of the Parties that additional action or modification of remedial action is appropriate at the Site in accordance with Sections 104 or 106 of CERCLA, 42 U.S.C. Sections 9604 or 9606, the Navy shall implement such additional or modified action in accordance with Section IX - WORK TO BE PERFORMED, of this Agreement.

19.3 Any dispute by the Parties regarding the need for or the scope of additional action or modification to a remedial action shall be resolved under Section XX - DISPUTE RESOLUTION, of this Agreement and enforceable hereunder.

19.4 Any additional action or modification agreed upon pursuant to this Section shall be made a part of this Agreement.

19.5 The EPA reserves the right to exercise any available authority to seek the performance of additional work that arises from a Periodic Review, pursuant to applicable law.

19.6 The assessment and selection of any additional response actions determined necessary as a result of a Periodic Review shall be in accordance with Paragraphs 9.7 to 9.9, except for emergency response actions, which shall be governed by Section XVIII - REMOVAL AND EMERGENCY ACTIONS. Such response actions shall be implemented as a supplemental response action in accordance with Paragraphs 9.12 to 9.15.



19.7 When the final ROD for an Operable Unit contains the requirement for the development and implementation of a long-term monitoring plan because the selected remedial action results in any hazardous substance, pollutants or contaminants remaining at the Site at levels above that allowing for unlimited use and unrestricted exposure, the long-term monitoring plan shall be submitted in accordance with Section X - CONSULTATION.

## **XX. DISPUTE RESOLUTION**

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

20.2 Within thirty (30) days after: (1) issuance of a draft final Primary Document pursuant to Section X - CONSULTATION of this Agreement, or (2) any action which leads to or generates a dispute, the disputing Party shall submit to the other Party a written statement of dispute setting forth the nature of the dispute, the Work affected by the dispute, the disputing Party's position with respect to the dispute and the information the disputing Party is relying upon to support its position.

20.3 Prior to any Party's issuance of a written statement of dispute, the disputing Party shall engage the other Party in informal dispute resolution among the Project Managers and/or their immediate supervisors. During this informal dispute resolution period, the Parties shall meet and/or confer as many times as are necessary to discuss and attempt resolution of the dispute.

20.4 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. The EPA's representative on the DRC is the Hazardous Site Cleanup Division Director of EPA Region III. The Navy's designated member is the Commanding Officer, EFA Chesapeake, Naval

Facilities Engineering Command. Written notice of any delegation of authority from the Party's designated representative on the DRC shall be provided to the other Party pursuant to the procedures of Section XIV - PROJECT MANAGERS.

20.5 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.

20.6 The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The EPA's representative on the SEC is the Regional Administrator of EPA Region III, or his or her delegatee. The Navy's representative on the SEC is the Assistant Secretary of the Navy (Installations and Environment) or his or her delegatee. In the event of a delegation, the positions presented by the delegates shall represent the positions of the Regional Administrator of EPA Region III and the Assistant Secretary of the Navy (Installations and Environment). Any documents issued by the SEC or its members pertaining to a dispute shall be issued by the Regional Administrator of EPA Region III and/or the Assistant Secretary of the Navy (Installations and Environment). Notice of any delegation of authority from a Party's designated representative on the SEC shall be provided to the other Party in writing before the delegation takes effect. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a unanimous written decision signed by all Parties. If unanimous resolution of the dispute is not reached within twenty-one (21) days, the EPA Regional Administrator shall issue a written position on the dispute. The Secretary of the Navy may, within twenty-one (21) days of the Regional Administrator's issuance of EPA's position, issue a written notice elevating the dispute to the Administrator of U.S. EPA for resolution in accordance with all applicable laws and procedures. In the event that the Navy elects not to elevate the dispute to the Administrator within the designated twenty-one (21) day escalation period, the decision will become final and the Work will proceed in accordance with the Regional Administrator's written position with respect to the dispute.

20.7 Upon escalation of a dispute to the Administrator of EPA pursuant to Subsection 20.6 above, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the EPA Administrator shall meet and confer with the Secretary of the

Navy 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 pursuant to this Paragraph may be delegated only to the EPA Assistant Administrator for Enforcement and Compliance Assurance. The duties of the Secretary of the Navy pursuant to Paragraph 20.7 may be delegated only to the Assistant Secretary of the Navy (Installations and Environment).

20.8 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 the procedures specified herein. All elements of the Work required by this Agreement, which are not affected by the dispute, shall continue to be completed in accordance with the applicable Schedule.

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

20.10 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.

20.11 Resolution of a dispute pursuant to this Section of the Agreement constitutes a final resolution to 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.

#### **XXI. STIPULATED PENALTIES**

21.1 In the event that the Navy fails to submit a Primary Document, as listed in Section X - CONSULTATION, to EPA pursuant to the appropriate timetable or deadlines in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement which relates to an interim or final remedial action, EPA 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 Subsection occurs.

21.2 Upon determining that the Navy has failed in a manner set forth in Subsection 21.1, EPA shall so notify the Navy in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the Navy shall have 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 EPA if the failure is determined, through the dispute resolution process, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.

21.3 The annual reports required by CERCLA Section 120(e)(5), 42 U.S.C. Section 9620(e)(5), shall include, with respect to each final assessment of a stipulated penalty against the Navy under this Agreement, each of the following:

- A. The facility responsible for the failure;
- B. A statement of the facts and circumstances giving rise to the failure;
- C. A statement of any administrative or other corrective action taken, or a statement of why such measures were determined to be inappropriate;

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

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

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

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

21.6 This Section shall not affect the Navy's ability to obtain an extension of a timetable, deadline or schedule pursuant to Section XIII - EXTENSIONS.

21.7 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.

## **XXII. FORCE MAJEURE**

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

- A. Acts of God;
- B. Fire;
- C. War;
- D. Insurrection;
- E. Civil disturbance;
- F. Explosion;
- G. Unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance;
- H. Adverse weather conditions that could not be reasonably anticipated;
- I. Unusual delay in transportation due to circumstances beyond the control of the Navy;
- J. Restraint by court order or order of public authority;
- K. Inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits or licenses due to action or inaction of any

governmental agency or authority other than the Navy;

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

M. Insufficient availability of appropriated funds, if the Navy shall have made a timely request for such funds as a part of the budgetary process as set forth in Section XXVII - FUNDING, of this Agreement.

A Force Majeure shall also include any strike or other labor dispute, whether or not within control of the Parties affected thereby. Force Majeure shall not include increased costs or expenses of Response Actions, whether or not anticipated at the time such Response Actions were initiated.

22.2 When circumstances which may delay or prevent the completion of the Navy's obligation under this Agreement are caused by a Force Majeure event, the Navy shall notify the EPA Project Manager orally of the circumstances within forty-eight (48) hours after the Navy first became aware of these circumstances. Within fifteen (15) days of the oral notification, the Navy shall supply to EPA in writing an explanation of the cause(s) of any actual or expected delay and the anticipated duration of any delay. The Navy shall exercise its best efforts to avoid or minimize any such delay and any effects of such delay.

### **XXIII. ENFORCEABILITY**

23.1 EPA and the Navy agree that:

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

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

C. All terms and conditions of this Agreement which relate to interim or final remedial actions, including corresponding

timetables, deadlines or schedules, and all work associated with the interim or final remedial actions, shall be enforceable by any person pursuant to CERCLA Section 310(c), and any violation of such terms or conditions will be subject to civil penalties under CERCLA Sections 310(c) and 109, 42 U.S.C. Sections 9659(c) and 9609.

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

23.2 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 CERCLA Section 113(h), 42 U.S.C. Section 9613(h).

23.3 Nothing in this Agreement shall be construed as a restriction or waiver of any rights EPA may have under CERCLA, including but not limited to any rights under Sections 113, 120, 121 and 310, 42 U.S.C. Sections 9613, 9620, 9621 and 9659. The Navy 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.

23.4 The Parties agree to exhaust their rights under Section XX - DISPUTE RESOLUTION, prior to exercising any rights to judicial review that they may have.

23.5 The Parties agree that EPA and the Navy shall have the right to enforce the terms of this Agreement.

#### **XXIV. OTHER CLAIMS**

24.1 Subject to Section VIII - STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION, nothing in this Agreement shall restrict the Parties from taking any action under CERCLA, RCRA, State law, or other environmental statutes for any matter not specifically part of the Work performed under CERCLA, which is the subject matter of this Agreement.

24.2 Nothing in this Agreement shall constitute or be construed as a bar, or a discharge, or a release, from any claim, cause of action or demand in law or equity by or against any person, firm,

partnership, or corporation not a signatory to this Agreement for any liability it may have arising out of, or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous waste, pollutants, or contaminants found at, taken to, or taken from the Site.

24.3 This Agreement does not constitute any decision or pre-authorization by EPA of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. Section 9611(a)(2) for any person, agent, contractor or consultant acting for the Navy.

24.4 The EPA shall not be held as a party to any contract entered into by the Navy to implement the requirements of this Agreement.

24.5 The Navy shall notify the appropriate federal and State natural resource trustees of potential damages to natural resources resulting from releases or threatened releases under investigation, 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 State and federal law, including any claim for damages for destruction of, or loss of, natural resources.

24.6 This Agreement does not bar any claim for:

A. natural resources damage assessments, or for damage to natural resources; or

B. liability for disposal of any Hazardous Substances or waste material taken from NSWC Indian Head.

#### **XXV. RESERVATION OF RIGHTS**

25.1 Notwithstanding anything in this Agreement, EPA may initiate any administrative, legal or equitable remedies available to them, including requiring additional response actions by the Navy in the event that: (a) conditions previously unknown or undetected by EPA arise or are discovered at the Site; or (b) EPA receives additional information not previously available concerning the premises which they employed in reaching this Agreement; or (c) the implementation of the requirements of this Agreement are no longer protective of public health and the environment; or (d) EPA discovers the presence of conditions on the Site which may constitute an imminent and substantial danger



to the public health, welfare, or the environment; or (e) the Navy fails to meet any of its obligations under this Agreement; or (f) the Navy fails or refuses to comply with any applicable requirements of CERCLA or RCRA or State laws or regulations.

25.2 The Parties agree to exhaust their rights under Section XX - DISPUTE RESOLUTION, prior to exercising any rights to judicial review that they may have.

25.3 The Parties, after exhausting their remedies under this Agreement, reserve any and all rights, including the right to raise or assert any defense they may have under CERCLA, or any other law, where those rights are not inconsistent with the provisions of this Agreement, CERCLA, or the NCP.

#### **XXVI. PROPERTY TRANSFER**

26.1 No change or transfer of any interest in the Facility or any part thereof shall in any way alter the status or responsibility of the Parties under this Agreement. The Navy agrees to give EPA sixty (60) days notice prior to the sale or transfer by the United States of America of any title, easement, or other interest in the real property affected by this Agreement. The Navy agrees to comply with Section 120(h) of CERCLA, 42 U.S.C. Section 9620(h), including the Community Environmental Response Facilitation Act (CERFA), and any additional amendments thereof, and with 40 C.F.R. Part 373, if applicable.

26.2 In accordance with Section 120(h) of CERCLA, 42 U.S.C. Section 9620(h), and 40 C.F.R. Part 373, the Navy shall include notice of this Agreement in any Host/Tenant Agreement or Memorandum of Understanding that permits any non-NSWC Indian Head activity to function as an operator on any portion of the Site.

#### **XXVII. FUNDING**

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

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

27.3 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.

27.4 If appropriated funds are not available to fulfill the Navy's obligations under this Agreement, EPA reserves the right to initiate an action against any other person, or to take any response action, which would be appropriate absent this Agreement.

27.5 Funds authorized and appropriated annually by Congress under the Environmental Restoration, Navy (ER,N) appropriation in the Department of Defense Appropriations Act will be the source of funds for activities required by this Agreement consistent with 10 U.S.C. Chapter 160. However, should the ER,N appropriation be inadequate in any year to meet the Navy's total implementation requirements under this Agreement, the Navy will, after consulting with EPA and discussing the inadequacy with the members of the public interested in the action in accordance with Section XII - BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN, prioritize and allocate that year's appropriation.

#### **XXVIII. RECOVERY OF EPA EXPENSES**

28. The Parties agree to amend this Agreement at a later date in accordance with any subsequent national resolution of the issue of EPA cost reimbursement for CERCLA response costs incurred by EPA. Pending such resolution, EPA reserves the rights it may have with respect to cost reimbursement.

## XXIX. QUALITY ASSURANCE

29.1 The Navy shall use quality assurance, quality control, and chain of custody procedures throughout all field investigation, sample collection and laboratory analysis activities. A Quality Assurance/Quality Control (QA/QC) Project Plan shall be submitted as a component of each SSP, RI, FS, RD, and RA Work Plan(s), as appropriate. These work plans will be reviewed as Primary Documents pursuant to Section X - CONSULTATION, of this Agreement. QA/QC Plans shall be prepared in accordance with applicable EPA Guidance.

29.2 In order to provide for quality assurance and maintain quality control regarding all field work and samples collected pursuant to this Agreement, the Navy shall include in each QA/QC Plan submitted to EPA all protocols to be used for sampling and analysis. The Navy shall also ensure that any laboratory used for analysis is a participant in a quality assurance/quality control program that is consistent with EPA Guidance.

29.3 The Navy shall ensure that lab audits are conducted as appropriate and are made available to EPA upon request. The Navy shall ensure that EPA and/or its authorized representatives shall have access to all laboratories performing analyses on behalf of the Navy pursuant to this Agreement.

## XXX. RECORD PRESERVATION

30.1 Despite any document retention policy to the contrary, EPA and the Navy shall preserve, during the pendency of this Agreement and for a minimum of ten (10) years after its termination or for a minimum of ten (10) years after implementation of any additional action taken pursuant to Section XIX - PERIODIC REVIEW, all records and documents in their possession which relate to actions taken pursuant to this Agreement. After the ten (10) year period, each Party shall notify the other Party at least forty-five (45) days prior to the proposed destruction or disposal of any such documents or records. Upon the request by any Party, the requested Party shall make available such records or copies of any such records unless withholding is authorized and determined appropriate by law. The Party withholding such records shall identify any documents withheld and the legal basis for withholding such records. No records withheld shall be destroyed until forty-five (45) days after the final decision by the highest court or administrative body requested to review the matter.

30.2 All such records and documents shall be preserved for a period of ten (10) years following the termination of any judicial action regarding the work performed under CERCLA, which is the subject of this Agreement.

#### **XXXI. SAMPLING AND DATA/DOCUMENT AVAILABILITY**

31.1 Each Party shall make available to the other Party all the results of sampling, tests, or other data generated through the implementation of this Agreement as needed in a timely manner.

31.2 At the request of either Party, a Party shall allow the other Party or its authorized representatives to observe field work and to take split or duplicate samples of any samples collected pursuant to this Agreement. Each Party shall notify the other Party by telephone not less than fourteen (14) days in advance of any scheduled sample collection activity unless otherwise agreed upon by the Parties. The Party shall provide written confirmation within three (3) days of the telephone notification.

31.3 If preliminary analysis indicates that an imminent or substantial endangerment to human health or the environment may exist, the other Project Manager shall be immediately notified.

#### **XXXII. PROTECTED INFORMATION**

32.1 The Navy shall not withhold any physical, sampling, monitoring, analytical, or historical data. The EPA agrees that classified information will be handled in accordance with national security requirements.

32.2 National Security Information:

A. Any dispute concerning EPA access to national security information ("classified information"), as defined in Executive Order 12356, shall be resolved in accordance with Executive Order 12356 and 32 C.F.R. Part 159, including the opportunity to demonstrate that EPA representatives have proper clearances and a need to know, appeal to the Information Security Oversight Office, and final appeal to the National Security Council.

B. Upon receipt from EPA of a request to meet with the classifying officer regarding access to classified information, the Navy shall, within ten (10) calendar days of such request,

notify the requesting Party of the identity of the classifying officer and the level of classification of the information sought. If the document was classified by the Navy, the classifying officer and the representative of the requesting Party shall meet within twenty-one (21) calendar days following receipt of the request. The purpose of the meeting shall be to seek a means to accommodate the requesting Party's request for access to information without compromising national security or violating security regulations. If no resolution is reached at the meeting, the Navy shall notify the requesting Party of the classifying officer's decision within fourteen (14) calendar days following the meeting. Failure to render a timely decision shall be construed as a denial which is appealable in accordance with 32 C.F.R. Part 159. Failure to respond is subject to dispute resolution under this Agreement.

C. Nothing in this Subsection is intended to, or should be construed as, superseding any law, regulation, or promulgated Navy directive regarding access to, release of, or protection of national security information.

### **XXXIII. COMMUNITY RELATIONS**

33.1 The Navy has developed and is implementing a Community Relations Plan. This plan responds to the need for an interactive relationship with all interested community elements, both on and off the NSWC Indian Head, regarding environmental activities conducted pursuant to this Agreement by the Navy. Any revision or amendment to the Community Relations Plan shall be submitted to EPA for review and comment.

33.2 Except in case of an emergency requiring the release of necessary information, and except in the case of an enforcement action, any Party issuing a press release with reference to any of the work required by this Agreement shall use its best efforts to advise the other Party of such press release and the contents thereof upon issuance of such release.

33.3 The Parties agree to comply with all relevant EPA policy and guidance on community relations programs and the public participation requirements of CERCLA, the NCP and other applicable, relevant and appropriate requirements, laws and regulations.

33.4 The Parties agree that Work conducted under this Agreement and any subsequent proposed remedial action alternatives and subsequent plans for remedial action at the Site arising out of

this Agreement shall comply with all the Administrative Record and public participation requirements of CERCLA, including Sections 113(k) and 117, 42 U.S.C. Sections 9613(k) and 9617, the NCP, and all applicable guidance developed and provided by EPA. This shall be achieved through implementation of the Community Relations Plan.

33.5 The Navy has established and is maintaining copies of an Administrative Record at two locations at or near NSWC Indian Head, available to the public. These locations are: 1) Charles County Public Library La Plata Branch, Charles & Garrett Streets, La Plata, MD 20646; and 2) NSWC Indian Head General Library, Indian Head Division NSWC Bldg. 620, 101 Strauss Avenue, Indian Head, MD 20640-5035. Another copy is available at a central location, in accordance with CERCLA Section 113(k), 42 U.S.C. Section 9613(k), Subpart I of the NCP, and applicable guidance issued by EPA. This location is: EFA Chesapeake, 1314 Harwood Street, SE, Washington Navy Yard, DC 20374-5018. The Administrative Record developed by the Navy shall be periodically updated and a copy of the Index will be provided to the EPA and the State. The Navy will provide to the EPA on request any document in the Administrative Record.

33.6 Pursuant to 10 U.S.C. Section 2705(c) and Section XXXV - Restoration Advisory Board of this Agreement, the Navy has established a Restoration Advisory Board (RAB) for NSWC Indian Head. The purpose of the RAB is to afford a forum for cooperation between the Parties, local community representatives, and natural resource trustees on action and proposed actions at the Site.

#### **XXXIV. PUBLIC COMMENT ON THIS AGREEMENT**

34.1 Within fifteen (15) days after the execution of this Agreement (the date by which both Parties have signed the Agreement or as soon thereafter as required to conform with RCRA integration requirements) EPA shall announce the availability of this Agreement to the public for their review and comment, including publication in at least two (2) major local newspapers of general circulation. Such public notices shall include information advising the public as to availability and location of the Administrative Record as discussed in Subsection 34.7. EPA shall accept comments from the public for forty-five (45) days after such announcement. Within twenty-one (21) days of completion of the public comment period, EPA shall transmit copies of all comments received within the comment period to the Navy. Within thirty (30) days after the transmittal, the Parties

shall review the comments and shall decide that either:

A. the Agreement shall be made effective without any modifications; or

B. the Agreement shall be modified prior to being made effective.

34.2 If the Parties agree that the Agreement shall be made effective without any modifications, and if the Parties agree on the Responsiveness Summary, EPA shall transmit a copy of the signed Agreement to the Navy. The Effective Date of the Agreement shall be the date of receipt by the Navy of the signed Agreement from EPA.

34.3 If the Parties agree that modifications are needed and agree upon the modifications and amend the Agreement by mutual consent within sixty (60) days after the expiration of the public comment period, EPA in consultation with the Navy, will determine whether the modified Agreement requires additional public notice and comment pursuant to any provision of CERCLA. If EPA determines that no additional notice and comment are required, and the Parties agree on the Responsiveness Summary, EPA shall transmit a copy of the modified Agreement to the Navy and shall notify the Navy in writing that the modified Agreement is effective as of the date of the notification. If the Parties amend the Agreement within the sixty (60) days and EPA determines that additional notice and comment are required, such additional notice and comment shall be provided consistent with the provisions stated in Subsection 34.1 above. If the Parties agree, after such additional notice and comment has been provided, that the modified Agreement does not require any further modification and if the Parties agree on the Responsiveness Summary, EPA shall send a copy of the mutually agreed upon modified Agreement to the Navy and shall notify them that the modified Agreement is effective. In either case, the Effective Date of the modified Agreement shall be receipt by the Navy from EPA of notification that the modified Agreement is effective.

34.4 In the event that the Parties cannot agree on the modifications or on the Responsiveness Summary within the time period listed in Subsection 34.3 above, the Parties agree to have at least one meeting within the thirty (30) days following the comment period to attempt to reach agreement. The Parties agree to negotiate in good faith for at least a fifteen (15) day period before invoking Dispute Resolution.

34.5 If, after the times provided in Subsection 34.4, the Parties have not reached agreement on:

- A. whether modifications to the Agreement are needed; or
- B. what modifications to the Agreement should be made; or
- C. any language, any provisions, any Deadlines, any Work to be performed or any content of the Agreement or any Attachments to the Agreement; or
- D. whether additional public notice and comments are required; or
- E. the contents of the responsiveness summary,

then the matters which are in dispute shall be resolved by the dispute resolution procedures of Section XX - DISPUTE RESOLUTION, above. For the purposes of this Section, the Agreement shall not be effective while the dispute resolution proceedings are underway. After these proceedings are completed, the Final Written Decision shall be provided to the Parties indicating the results of the dispute resolution proceedings. Each Party reserves the right to withdraw from the Agreement by providing written notice to the other within twenty (20) days after receiving from EPA the Final Written Decision of the resolution of the matters in dispute. Failure by a Party to provide such a written notice of withdrawal to EPA within this twenty (20) day period shall act as a waiver of the right of that Party to withdraw from the Agreement, and EPA shall thereafter send a copy of the final Agreement to the Navy and shall notify the Navy that the Agreement is effective. The Effective Date of the Agreement shall be the date of receipt of that letter from EPA to the Navy.

34.6 At the start of the public comment period, the Navy will transmit copies of this Agreement to the appropriate Federal, State, and local Natural Resource Trustees for review and comment within the time limits set forth in this Section.

34.7 Existing records maintained by NSWC Indian Head which will be included in the Administrative Record such as reports, plans, and schedules, shall be made available by the Navy for public review during the public comment period.



**XXXV. RESTORATION ADVISORY BOARD**

35.1 Pursuant to 10 U.S.C. Section 2705(d), the Navy has established a Restoration Advisory Board (RAB). The Parties shall participate in the RAB as follows:

- A. The Commanding Officer, NSWC Indian Head, who shall co-chair the RAB
- B. An EPA representative
- C. A State representative
- D. The Navy Project Manager(s)

The Parties shall encourage representatives from the following organizations to serve as members of the RAB:

- E. A representative from Charles County, Maryland government
- F. Charles County resident representatives
- G. A representative from the community of Indian Head, Maryland

35.2 The resident representatives of the RAB shall elect a community co-chair. The co-chairs shall schedule quarterly meetings of the RAB unless the Parties agree to meet more or less frequently. If possible, meetings shall be held in conjunction with the meetings of the Project Managers. Meetings of the RAB shall be for the purpose of reviewing progress under the Agreement and for the following purposes:

- A. to facilitate early and continued flow of information between the community, NSWC Indian Head, and the environmental regulatory agencies in relation to restoration actions taken by NSWC Indian Head under the Installation Restoration Program;
- B. to provide an opportunity for RAB members and the public to review and comment on actions and proposed actions under the Installation Restoration Program; and
- C. to facilitate regulatory and public participation consistent with applicable laws.

Special meetings of the RAB may be held at the request of the members.

**XXXVI. EFFECTIVE DATE**

36.1 This Agreement shall be effective in its entirety among the Parties in accordance with Section XXXIV - PUBLIC COMMENT ON THIS AGREEMENT.

**XXXVII. AMENDMENT OF AGREEMENT**

37.1 Except as provided in Section XIV - PROJECT MANAGERS, this Agreement can be amended or modified solely upon written consent of both the Parties. Such amendments or modifications shall be in writing, and shall become effective on the third business day following the date on which the EPA signs the amendments or modifications. The Parties may agree on a different Effective Date. As the last signing Party, the EPA will provide notice to the signatory for the Navy, pursuant to Section XIV - PROJECT MANAGERS, of the Effective Date.

37.2 The Party initiating the amendment of this Agreement shall propose in writing the amendment for distribution and signature of the other Party.

37.3 During the course of activities under this Agreement, the Parties anticipate that statutes, regulations, guidance, and other rules will change. Subject to Section 300.430(f)(1)(ii)(B)(1) of the National Contingency Plan, as it applies to ARARs, those changed statutes, regulations, guidance, and other rules will be applied to the activities under this Agreement in the following manner:

A. Applicable statutes and regulations shall be applied in accordance with the statutory or regulatory language on applicability, and if applied to ongoing activities, shall be applied on the effective date provided. However, the Parties shall, to the extent practicable, apply them in such a way as to avoid as much as possible the need for repeating work already accomplished.

B. Applicable policy or guidance shall be applied as it exists at the time of initiation of the Work in issue.

C. Applicable policy or guidance which is changed after the initiation of the Work in issue or after its completion shall be applied subject to Section XX - DISPUTE RESOLUTION. The Party proposing application of such changed policy or guidance shall have the burden of proving the

appropriateness of its application. In any case, the Parties shall, to the extent practicable, apply any changed policy or guidance in such a way as to avoid, as much as possible, the need for repeating Work already accomplished.

#### **XXXVIII. SEVERABILITY**

38.1 If any provision of this Agreement is ruled invalid, illegal, or unconstitutional, the remainder of the Agreement shall not be affected by such a ruling.

#### **XXXIX. TERMINATION AND SATISFACTION**

39.1 The provisions of this Agreement shall be deemed satisfied upon a consensus of the Parties that the Navy has completed its obligations under the terms of this Agreement. Following EPA Certification of all the response actions at the Site pursuant to Subsection 9.17 of Section IX - WORK TO BE PERFORMED, any Party may propose in writing the termination of this Agreement upon a showing that the requirements of this Agreement have been satisfied. The obligations and objectives of this Agreement shall be deemed satisfied and terminated upon receipt by the Navy of written notice from EPA that the Navy has demonstrated that all the requirements of this Agreement have been satisfied. A Party opposing termination of this Agreement shall provide a written statement of the basis for its denial and describe the actions necessary to grant a termination notice to the proposing Party within ninety (90) days of receipt of the proposal.

39.2 Any disputes arising from this Termination and Satisfaction process shall be resolved pursuant to the provisions of Section XX - DISPUTE RESOLUTION, of this Agreement.

39.3 Upon termination of this Agreement, the Navy shall place a public notice announcing termination in two (2) major local newspapers of general circulation.

39.4 This Section shall not affect the Parties' obligations pursuant to Section XIX - PERIODIC REVIEW of this Agreement. In no event will this Agreement terminate prior to the Navy's completion of the Work required by this Agreement.

**AUTHORIZED SIGNATURES**

Each of the undersigned representatives of the Parties certifies that he or she is fully authorized by the Party he or she represents to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement.

IT IS SO AGREED:

By

Elsie L. Munsell

Date

Elsie L. Munsell  
Deputy Assistant Secretary of the Navy  
(Environment & Safety)

By

Bradley M. Campbell

12/07/2000

Date

Bradley M. Campbell  
Regional Administrator  
Environmental Protection Agency, Region III

**Appendix A**  
**Indian Head Division Naval Surface Warfare Center**  
**Site Screening Areas**

SSA #	Former Unit Designation	Unit Name Description
Site 1	Main Area RCRA AOC E	Thorium Spill
Site 2	Main Area RCRA SWMU 75	Waste Crank Case Oil Applied to Torrense Road
Site 3	Main Area RCRA AOC B	Nitroglycerin Explosion, Nitration Building Area
Site 4	Main Area RCRA SWMU 75	Lloyd Road Oil Spill Sites
Site 5	Main Area RCRA SWMU 55	X-Ray Building 731
Site 7	Main Area RCRA SWMU 22	Building 682, HMX Spill
Site 8	Main Area RCRA SWMU 7	Building 766, Mercury Deposits
Site 9	Main Area RCRA AOC A	Patterson Avenue, Oil Spill
Site 10	Main Area RCRA AOC C	Single-base Propellant Grains Spill
Site 14	Main Area RCRA SWMU 14	Waste Acid Disposal Pit
Site 18	Site 18	Hog Island
Site 19	Site 19	Catch Basins at Chip Collection Houses
Site 20	Site 20	Single-base Powder Facilities
Site 22	Main Area RCRA SWMU 77	NG Slums Burning Site
Site 23	Site 23	Hydraulic Oil Spill Discharges From Extrusion
Site 24	Main Area RCRA AOC K	Abandoned Drain Lines
Site 26	Main Area RCRA SWMU 63	Thermal Destructor 2
Site 27	Main Area RCRA SWMU 62	Thermal Destructor 1
Site 28	Site 28	Original Burning Ground
Site 29	Main Area RCRA AOC F	The Valley
Site 30	Stump Neck SWMU 22	Stump Neck Impact Area
Site 31	Stump Neck SWMU 23	Old Demolition Range

Site 32	Stump Neck SWMU 11	Suspected Tool Burial Site
Site 33	Stump Neck SWMU 7	Scrap Metal Pit
Site 34	Stump Neck SWMU 8	Tool Burial Site
Site 35	Stump Neck SWMU 9	Torpedo Burial Site
Site 36	Stump Neck SWMU 10	Inactive Disposal Site
Site 37	Stump Neck SWMU 24	Causeway
Site 38	Stump Neck SWMU 1	Rum Point Landfill
Site 58	Stump Neck SWMU 2	Range 3 Burn Point
Site 59	Stump Neck SWMU 3	Chicamuxen Creek's Edge Site A
Site 60	Stump Neck SWMU 4	Chicamuxen Creek's Edge Site B
Site 61	Stump Neck SWMU 5	Range 6
Site 62	Stump Neck SWMU 6	Air Blast Pond
Site 63	Stump Neck SWMU 25	Area 8
Site 64	Stump Neck SWMU 26	IED
Site 65	Stump Neck SWMU 27	IOD

**Appendix B**  
**Indian Head Division Naval Surface Warfare Center**  
**Areas of Concern**

Areas of Concern	Unit Name Description
Main Area SWMU 4,5	Underground Storage Tanks (B 290/525)
Main Area SWMU 6	Used Battery Accumulation Area (B 766)
Main Area SWMU 27	Waste Oil Storage Area (Goddard Power)
Main Area SWMU 38	Caffee Road Waste Oil Storage Area
Main Area SWMU 40-46	Wastewater Collection/Treatment Tanks
Main Area SWMU 47-51	Spent Acid Storage/Treatment Tanks
Main Area SWMU 64-66	Waste Water Storage Tanks (Bldg. 1596)
Main Area SWMU 69	Temp Dumpster for Explosive Scrap
Main Area SWMU 70	Temp Areas for Drummed Explosive Scrap
Main Area SWMU 72	Oil/Water Separators
Main Area SWMU 74	Unlined Overland Drainage Ditches
Main Area SWMU G	Sand Blasting Sand Storage Area
Main Area SWMU H	Drum at Fuel Storage Area
Main Area SWMU 20	Safety Burn Point
Main Area SWMU 21	Caffee Road Decontamination Burn Point
Stump Neck SWMU 12	Waste Oil Storage Site
Stump Neck SWMU 15	Spent Photographic Solution Storage
Stump Neck SWMU 17	Building 2015 - Chemicals Lab Accum. Area
Stump Neck SWMU 18	Waste Pile
Stump Neck SWMU 19	Disposal Area #1
Stump Neck SWMU 20	Disposal Area #2
Stump Neck SWMU 21	Drum Storage Area
Stump Neck SWMU 28	Skeet Range
Stump Neck SWMU 29	Old Pistol Range
Stump Neck SWMU 16	Thermal Treatment Tank
Stump Neck SWMU 13	Pink Water Treatment Tank
Stump Neck SWMU 14	Photographic Lab Septic Tank System
Stump Neck SWMU 30	Bldg. 2015 Dry Well