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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII
AND THE
UTAH DEPARTMENT OF HEALTH
AND THE
DEFENSE LOGISTICS AGENCY

IN THE MATTER OF:	Federal Facility Agreement Under CERCLA Section 120
The U.S. DEFENSE LOGISTICS AGENCY	
Defense Depot Ogden, UT	Administrative Docket Number:

8RC 11/28/89

8RC Mitchell 11/28/89

8RC 11/28/89

8HWM-SR Bonnie 11/28/89

8HWM-SR Schaller 11/28/89

Dupnoy 11/28/89

8HWM-SR Shannon 11/28/89

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII
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UTAH DEPARTMENT OF HEALTH
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IN THE MATTER OF:	)	Federal Facility Agreement Under CERCLA Section 120
The U.S. DEFENSE LOGISTICS AGENCY	)	
Defense Depot Ogden, UT	)	Administrative Docket Number:

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

1. PARTIES BOUND

1.1 The Parties to this Agreement are the Environmental Protection Agency (EPA), the Defense Logistics Agency (DLA), and the Utah Department of Health. The terms of the Agreement shall apply to and be binding upon EPA, the State of Utah, and DLA and their successors and assigns.

1.2 This Agreement shall be enforceable against all of the Parties to this Agreement. This Article shall not be construed as an agreement to indemnify any person. DLA shall notify its agents, members, employees, contractors for the Site, and all subsequent owners, operators, and lessees of the Site of the existence of this Agreement.

1.3 Each Party shall be responsible for ensuring that its contractors and its successors and assigns comply with the terms and conditions of this Agreement. The failure of a Party to provide proper direction to its contractors and any resultant noncompliance with this Agreement by a contractor shall not be considered a Force Majeure event or other good cause for extensions under Section 12 (Extensions). DLA will notify EPA and the State of the identity and assigned tasks of each of its contractors performing work under this Agreement upon their selection.

1.4 The Utah Department of Health (UDOH) is the designated single State agency, in accordance with the laws of the State of Utah, responsible for Federal programs carried out under this Agreement, and the lead agency for the State of Utah, and its actions pursuant to this Agreement are binding on the State of Utah, as provided by 26-14b-20, Utah Code Annotated.

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2. JURISDICTION

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

(a) EPA enters into those portions of this Agreement that relate to the remedial investigation/feasibility study (RI/FS) pursuant to Section 120(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. Section 9620(e)(1), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499 (hereinafter jointly referred to as CERCLA), and the Resource Conservation and Recovery Act (RCRA) Sections 6001, 3008(h) and 3004(u) and (v), 42 U.S.C. Section 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 enters into those portions of this Agreement that relate to 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. Section 6961, 6928(h), 6924(u) & (v), and Executive Order 12580;

(c) DLA 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. Section 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.; and

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

(e) UDOH enters into this Agreement pursuant to CERCLA Sections 120(f) and 121(f) of CERCLA, 42 U.S.C. Sections 9607, 9620(f) and 9621(f), Section 3006 of RCRA, 42 U.S.C. Section 6926, and Title 26, Chapter 14 Utah Code Annotated.

3. STATEMENT OF PURPOSE

3.1 The general purposes of this Agreement are to:

(a) Ensure that the environmental impacts associated with past and present activities at the Site are thoroughly investigated and appropriate remedial action 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, 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.

3.2 Specifically, the purposes of this Agreement are to:

(a) Establish requirements for the performance of an RI 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 an FS 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 and applicable State law;

(b) Identify the nature, objective, and schedule of response action(s) to be taken at the Site. Response action(s) at the Site shall attain that degree of cleanup of hazardous substances, pollutants or contaminants mandated by CERCLA and applicable State law;

(c) Implement the selected remedial actions(s) in accordance with CERCLA and applicable State law and meet the requirements of CERCLA Section 120(e)(2), 42 U.S.C. Section 9620(e)(2), for interagency agreements;

(d) Assure compliance, through this Agreement, with RCRA and other Federal and State hazardous waste laws and regulations for matters covered herein;

(e) Coordinate response action(s) at the Site with the mission and support activities at the Defense Depot Ogden, Utah (DDOU).

(f) Expedite the cleanup process to the extent consistent with protection of human health and the environment;

(g) Provide for State involvement in the initiation, development, selection and enforcement of remedial action(s) to be undertaken at the Site, including review of all applicable data as it becomes available and the development of studies, reports, and action plans; and to identify, integrate, and assure compliance with State and Federal applicable or relevant and appropriate requirements (ARARs) to the extent required by CERCLA.

(h) Provide for operation and maintenance of any remedial action(s) selected and implemented pursuant to this Agreement.

4. DEFINITIONS

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

(a) "Additional work" shall mean any new or different work outside the originally agreed upon Scope of this Agreement.

(b) "Agreement" shall refer to this document and shall include all Appendices to this document to the extent they are consistent with the original Agreement as executed or modified. All such Appendices are integral and enforceable parts of this document.

(c) "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act, Public Law 96-510, 42 U.S.C. Section 9601 et. seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, and any subsequent amendments.

(d) "Days" shall mean calendar days, unless business days are specified. Any submittal which would be due under the terms of this Agreement on a Saturday, Sunday, or Federal or State of Utah holiday shall be due on the following business day.

(e) "DDOU" shall mean the Defense Depot Ogden, Utah, a field activity of the Defense Logistics Agency.

(f) "Deadline" shall mean the time limitation applicable to a discrete and significant portion of any submittal specifically established under the terms of this Agreement.

(g) "DLA" shall mean the U.S. Defense Logistics Agency, its employees, members and agents, as well as Department of Defense (DoD), to the extent necessary to effectuate the terms of this Agreement, including, but not limited to, appropriations and Congressional reporting requirements.

(h) "EPA" shall mean the United States Environmental Protection Agency, its employees and agents.

(i) "National Contingency Plan" or "NCP" shall refer to the regulations contained in 40 CFR 300.1 et seq. and any subsequent amendments thereto.

(j) "UDOH" shall mean the Utah Department of Health, its employees and agents.

(k) "RCRA" shall mean the Resource Conservation and Recovery Act of 1976, Public Law 94-580, 42 U.S.C. Section 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984, Public Law 98-616, and any subsequent amendments.

(l) "Removal" shall have the same meaning as provided in Section 101 (23) of CERCLA, 42 U.S.C. Section 9601 (23), and emergency removal, time critical removal and non-time critical removal, shall have the same meanings as provided in the NCP.

(m) "Schedule" shall mean time limitation established for the completion of remedial actions at operable units established under the terms of this Agreement.

(n) "Site" shall mean the entire 1681.84 acre parcel of land transferred to the Department of the Army which was established by the Third District Court of Salt Lake City, Utah, under "Declaration of Taking", Civil No. 177, dated 27 September 1940, and any area outside the boundaries of the parcel to or under which a release of hazardous substances, pollutants or contaminants has migrated from a source located on the parcel. For the purposes of obtaining permits, the terms "onsite" and "offsite" shall have the same meanings as provided in the NCP.

(o) "State" shall mean the State of Utah.

(p) "Target dates" shall mean dates by which secondary documents are proposed to be submitted.

(q) "Timetable" shall mean, collectively, the "deadlines" established pursuant to this Agreement.

5. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

5.1 The Parties intend to integrate DLA's CERCLA response obligations and RCRA corrective action obligations which relate to releases 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 Section 3004 (u) and (v), 42 U.S.C. Section 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 to 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.

5.2 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, that is, no further action will be required. The Parties agree that with respect to releases of hazardous waste covered by this Agreement, RCRA shall be considered an ARAR pursuant to CERCLA Section 121, 42 U.S.C. Section 9621.

5.3 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 activities at the Site 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, the Parties acknowledge that DDOU has submitted for UDOH's review, a final status hazardous waste storage plan (Part B application) under the Utah Solid and Hazardous Waste Act. Therefore, to integrate DLA's CERCLA response and RCRA corrective action obligations, the Parties intend that pursuant to Part 20, Permits, of this Agreement, this Agreement shall be incorporated into any ensuing approved plan (also called a permit). Through this incorporation the

Parties intend that all deliverables submitted to EPA and UDOH shall be submitted as deliverables pursuant to this Agreement and the state permit; that all timetables, deadlines and schedules as set forth or determined pursuant to this Agreement shall be incorporated in the UDOH permit; and that the procedures for evaluation, selection and implementation of response actions/corrective actions set forth in this Agreement shall be incorporated in the State permit. The U.S. EPA and DLA intend that any judicial review of any permit condition which references this Agreement shall, to the extent authorized by law, only be reviewed under the provisions of CERCLA. UDOH intends that its permit conditions shall be enforced consistent with Subsections 16.4 and 16.5 of Section 16, Enforceability, of this Agreement.

6. SCOPE OF AGREEMENT

6.1 Under this Agreement, DLA agrees it shall:

(a) Conduct a remedial investigation and feasibility study for each operable unit at the Site;

(b) Prepare a Record of Decision and Proposed Plan for Remedial Action for each operable unit at the Site;

(c) Prepare design and specification documents needed to implement remedial action for each operable unit;

(d) Implement remedial actions for each operable unit.

(e) Satisfy RCRA Corrective Actions obligations at the Site;

(f) Reimburse UDOH for its costs, including ongoing technical assistance pursuant to Section 32 (State Support Services) of this Agreement;

(g) Coordinate with the Agency for Toxic Substances and Disease Registry (ATSDR) on preparation of a Site Health Assessment.

7. CONCLUSIONS OF LAW

7.1 These conclusions are not to be construed as admissions by any Party, nor are they binding on any Party with respect to claims or causes brought by persons not a party to this Agreement.

7.2 This Agreement is based upon the placement of the Defense Depot Ogden, Utah, on the National Priorities List by the Environmental Protection Agency.

7.3 Defense Depot Ogden is a facility under the jurisdiction, custody, or control of the Department of Defense within the meaning of Executive Order 12580, 52 Federal Register 2923, 29 January 1987. The Defense Logistics Agency is authorized to act in behalf of the Secretary of Defense for all functions delegated by the President to the Secretary of Defense through E.O. 12580 which are relevant to this Agreement.

7.4 Defense Depot Ogden is a Federal facility to which CERCLA Section 120, 42 U.S.C. Section 9620, and Superfund Amendments and Reauthorization Act of 1986 (SARA) Sec. 211, 10 U.S.C. Section 2701 et seq. applies and subject to the Defense Environmental Restoration Program (DERP).

7.5 The Defense Logistics Agency is the authorized delegate of the President under E.O. 12580 for receipt of notification by the State of its ARARs as required by CERCLA Section 121(d)(2)(A)(ii), 42 U.S.C. Section 9621(d)(2)(A)(ii).

7.6 The Authority of DLA to exercise the delegated removal authority of the President pursuant to CERCLA Section 104, 42 U.S.C. Section 9604 is not altered by this Agreement.

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

7.8 There are areas within the boundaries of the Federal facility, as defined in 42 U.S.C. 9601(9), where hazardous substances, as defined in 42 U.S.C. 9601(14), have been deposited, stored, placed, or otherwise come to be located.

7.9 There have been releases, as defined in 42 U.S.C. 9601(22), of hazardous substances, pollutants or contaminants, as defined in 42 U.S.C. 9601(33), at or from the Federal facility into the environment.

7.10 With respect to these releases, the Defense Logistics Agency is an owner and/or operator as defined in 42 U.S.C. 9601(20).

7.11 Included as an Attachment A to this Agreement is a Statement of Facts concerning DDOU.

7.12 Included as an Attachment B to this Agreement is a map showing sources of suspected contamination and the areal extent of known contamination, based on information available at the time of the signing of this Agreement.

8. WORK TO BE PERFORMED

8.1 It is the intent of the Parties 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 without violating pertinent laws, regulations, or guidance and without risking significant technical errors.

8.2 The Parties agree to perform the tasks, obligations, and responsibilities described in this Section in accordance with CERCLA, CERCLA guidance and policy; the NCP; pertinent provisions of RCRA, RCRA guidance and policy; E.O. 12580; the Work Plan (RI/FS Work Plan, Sampling and Analysis Plan and Health and Safety Plan) at Appendix A; pertinent State laws and regulations; and all terms and conditions of this Agreement including documents prepared and incorporated into this Agreement in accordance with Section 10 (Consultation).

8.3 DLA agrees to undertake, seek adequate funding for, fully implement and report on the following tasks, (more fully described in the Work Plan at Appendix A) with participation of the Parties as set forth in this Agreement:

(a) Remedial Investigations of the Site;

(b) Feasibility Studies for the Site;

(c) All remedial design and response actions for the Site;

(d) Operation and Maintenance of response actions at the Site; and

(e) Funding State Support Services (see Section 32).

8.4 The Parties agree to use their best efforts to expedite the initiation of response actions for the Site.

8.5 To enable DLA to more efficiently implement response actions at the Site, the Parties agree that discrete areas within the Site have been designated as operable units. Remedial actions for those operable units shall be carried out in accordance with the Work Plan. The Parties contemplate that subsequent to the execution of this Agreement, additional, discrete areas of surface or subsurface contamination or pollution may be identified. DLA agrees that subject to the consent of all the Parties, any such areas shall be designated as additional operable units subject to the provisions of this Agreement. Amendments to the Work Plan for newly identified operable units will be proposed by DLA in accordance with the 'Consultation' Section of this Agreement. At this time the Parties believe that the completion of all currently identified operable units should constitute final remedial action for this Site.

8.6 Upon request, EPA and UDOH agree to provide any Party with guidance or reasonable assistance in obtaining guidance relevant to the implementation of this Agreement.

9. TECHNICAL REVIEW COMMITTEE

The Parties shall participate in a Technical Review Committee composed of members from DLA, EPA, UDOH, local government and a public representative. Where appropriate, the Parties will seek the views of the Committee on the technical actions to be taken pursuant to this Agreement. The Committee shall normally hold quarterly meetings unless the Parties agree to meet more or less frequently.

10. CONSULTATION: Review and Comment Process for Draft and Final Documents

10.1 Applicability: The provisions of this Section establish the procedures that shall be used by the Parties to provide each other with appropriate technical support, notice, review, comment, and response to comments regarding RI/FS and RD/RA documents, specified herein as either primary or secondary documents. In accordance with CERCLA Section 120, 42 U.S.C. Section 9620, and 10 U.S.C. Section 2705, DLA will normally be responsible for issuing primary and secondary documents to EPA and the UDOH. As of the effective date of this Agreement, all draft, draft final and final

reports for any deliverable document identified herein shall be prepared, distributed and subject to dispute in accordance with subsections 10.2 through 10.10 below. The designation of a document as "draft" or "final" is solely for purposes of consultation with EPA and UDOH 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 required by law.

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

(a) Primary documents include those reports that are major, discrete, portions of RI/FS and/or RD/RA activities. Primary documents are initially issued by DLA in draft subject to review and comment by EPA and the UDOH. Following receipt of comments on a particular draft primary document, DLA 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 reports that are discrete portions of the primary documents and are typically input or feeder documents. Secondary documents are issued by DLA in draft subject to review and comment by EPA and the UDOH. DLA will respond in writing to each of the comments received indicating whether and how DLA intends to address the comment in the corresponding primary document. The draft secondary documents may be finalized in the context of the corresponding primary documents.

10.3 Primary Reports:

(a) DLA shall complete and transmit draft reports of the following primary documents to EPA and UDOH, for review and comment in accordance with the provisions of this Section.

(1) Workplan for Burial Site #3
(2) Baseline Risk Assessment
(3) Community Relations Plan
(4) Phase II Remedial Investigation
(5) Memorandum on Remedial Action Objectives (for each operable unit)
(6) Phase III Remedial Investigation Work Plan for each operable unit and Treatability Study Work Plan
(7) RI Report (for each operable unit)
(8) Memorandum on Detailed Analysis of Alternatives (for each operable unit)
(9) Feasibility Study (for each operable unit)
(10) Proposed Plan (for each operable unit)
(11) Responsiveness Summary and Record of Decision (for each operable unit)
(12) RD Work Plan
(13) Intermediate Design Stage Report - 60% stage (for each operable unit)

(14) Final Remedial Design Document - 100% completion stage (for each operable unit)
(15) Remedial Action Work Plans (for each operable unit)
(16) Sampling and Data Results*
(17) Workplan for Surface Water Investigation for Mill Creek, Fourmile Creek

* Not subject to Section 11, Deadlines

(b) Except as provided in paragraph 10.2 above, only draft final reports for primary documents shall be subject to dispute resolution. DLA shall complete and transmit draft primary documents in accordance with the timetable and deadlines established in the Work Plans and in the Deadlines Section of this Agreement.

10.4 Secondary Documents:

(a) DLA shall complete and transmit draft reports of the following secondary documents to EPA and UDOH for review and comment.

(1) Outline of Baseline Risk Assessment
(2) Summary Identification of Contaminants and List of Proposed Indicator Chemicals
(3) Memorandum on Exposure Scenarios and Fate and Transport Models
(4) Memorandum on Toxicological and Epidemiological Studies
(5) Assembled Alternative Screening Memorandum
(6) Preliminary Design Report - 30% completion stage (for each operable unit)
(7) Prefinal Design Report - 95% completion stage (for each operable unit)

(b) Although EPA and UDOH may comment on the draft reports for the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by 10.2 above. Target dates for the completion and transmission of draft secondary reports shall be established by the Work Plan at Appendix A or pursuant to the Deadlines Section of this Agreement. The Project Managers also may agree upon additional secondary documents that are within the scope of the listed primary reports.

10.5 Meetings of the Project Managers. The Project Managers shall meet in Utah in person approximately every ninety (90) days, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the Site, including progress on primary and secondary documents. Prior to preparing any draft report, specified in subsections 10.3 and 10.4 above, the Project Managers shall meet in an effort to reach a common understanding on the contents of the draft report.

10.6 Identification and Determination of Potential ARARs:

(a) For those primary reports or secondary documents for which ARAR determinations are appropriate, prior to the issuance of a draft report,

the Project Managers shall meet to identify and propose, to the best of their ability, all potential ARARs pertinent to the report being addressed, including any permitting requirements which may be a source of ARARs. In a timely manner, UDOH shall identify potential State ARARs as required by CERCLA Section 121 (d)(2)(A)(ii) which are pertinent to those activities for which it is responsible and the report being addressed. Draft ARAR determinations shall be prepared by DLA in accordance with CERCLA Section 121(d)(2), the NCP and pertinent guidance issued by EPA.

(b) UDOH will contact those State and local governmental agencies which are a potential source of proposed ARARs. The proposed ARARs obtained will be submitted to DLA, along with a list of those agencies who failed to respond to UDOH's solicitation of proposed ARARs. DLA will contact those agencies who failed to respond and again solicit their input.

(c) 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 or contaminants at the Site, the particular actions proposed as a remedy and the characteristics of the Site. The Parties recognize that ARAR determination is necessarily an iterative process and that potential ARARs must be identified and discussed among the Parties in a timely manner, and must be reexamined throughout the RI/FS process until a ROD is issued.

10.7 Review and Comment on Draft Reports:

(a) DLA shall complete and transmit each draft primary report to EPA and UDOH on or before the corresponding deadline established for the issuance of the report. The DLA shall complete and transmit the draft secondary documents in accordance with the target dates established for the issuance of such reports.

(b) Unless the Parties mutually agree to another time period, all draft reports shall be subject to a thirty (30) day period for review and comment. Review of any document by EPA and UDOH may concern all aspects of the report and should include technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP, applicable State law and pertinent guidance or policy issued by EPA or UDOH. At the request of any Project Manager, and to expedite the review process, DLA shall make an oral presentation of the report to the Parties at the next scheduled meeting of the Project Managers following transmittal of the draft report. Comments by EPA and UDOH shall be provided with adequate specificity so that DLA may respond to the comment and, if necessary, make corrections to the draft report. Comments shall refer to any pertinent sources of authority or references upon which the comments are based and, upon request of DLA, the EPA or UDOH, as appropriate, shall provide a copy of the cited authority or reference. EPA or UDOH may extend the thirty (30) day comment period for an additional twenty (20) days by written notice to DLA prior to the expiration of the thirty (30) day period. On or before the close of the comment period, EPA and UDOH shall transmit their written comments to DLA. In appropriate circumstances, this time period may be further extended in accordance with the Extensions Section of this Agreement.

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

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

(e) Following the close of the comment period for a draft report, DLA will give full consideration to all written comments. Within fifteen (15) days following the close of the comment period on a draft secondary report or draft primary report, the Parties will meet to discuss all comments received. On a draft secondary report DLA shall transmit, within thirty (30) days after the close of the comment period, to EPA and UDOH its written response to the comments received. On a draft primary report, DLA shall, within thirty (30) days after the close of the comment period, transmit to EPA and UDOH a draft final primary report, which shall include DLA's response to all written comments received within the comment period. While the resulting draft final report shall be the responsibility of DLA, it shall be the product of consensus to the maximum extent possible.

(f) DLA may extend the thirty (30) day period for either responding to comments on a draft report or for issuing the draft final primary report for an additional twenty (20) days by providing written notice to EPA and UDOH. In appropriate circumstances, this time period may be further extended in accordance with the Section of this Agreement on Extensions.

10.8 Dispute Resolution for Draft Final Primary Documents:

(a) Dispute resolution shall be available to the Parties on draft final primary reports as set forth in the provisions of this Agreement on Dispute Resolution.

(b) When dispute resolution is invoked on a draft final primary report, work may be stopped in accordance with the procedures contained in the Section for Dispute Resolution.

10.9 Finalization of Reports: The draft final primary report shall serve as the final primary report if no party invokes dispute resolution regarding the document or, if invoked, at completion of the dispute resolution process if DLA's position is sustained. If DLA's determination is not sustained in the dispute resolution process, DLA shall prepare, within not more than thirty-five (35) days, a revision of the draft final report which conforms to the results of dispute resolution. This period may be extended where appropriate in accordance with the Section on Extensions.

10.10 Subsequent Modification to Final Reports:

Following the finalization of any primary report pursuant to Subsection 10.8 above, any Party may seek to modify the report including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in subparagraphs (a) and (b)

(a) Any Party may seek to modify a report after finalization if it determines, based on new information (i.e., information that becomes available, or conditions that become known, after the report is finalized) that the requested modification is necessary. Any 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 dispute resolution to determine if such modification shall be allowed. Modification of a report shall be required only upon a showing that:

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

(2) It could be of significant assistance in evaluating the 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 Section shall alter EPA's or UDOH's ability to request additional work which was not within the scope of this Agreement. DLA's obligation to perform such work pursuant to this Agreement must be established by either a modification of a report or a document or by amendments to this Agreement.

(d) This Agreement shall not be construed to restrict EPA or UDOH from taking any appropriate action under any pertinent statute, law, regulation, or other authority relative to matters which are not within the scope of this Agreement. * See next page for 10.11.

11. DEADLINES

11.1 The deadlines for primary reports and the target dates for secondary documents shall be set forth in the schedules contained in Appendix A hereto have been established for the submittal of draft primary documents and secondary documents, respectively, pursuant to this Agreement.

11.2 By 1 March 1990, DLA shall submit a Work Plan for completion of an RI/FS for Burial Site #3 (Operable Unit #3). By December 29, 1989, DLA shall submit a Work Plan for Surface Water Investigation for Mill Creek and Fourmile Creek. These Work Plans shall be deemed a primary report subject to the procedures in Section 10 relating to primary reports, including Dispute Resolution.

11.3 Within twenty-one (21) days of issuance of the Record of Decision for each operable unit, DLA shall propose deadlines for completion of the

*10.11 EPA and UDOH agree to consult with each other before making determinations under this Agreement. This consultation shall include, but not be limited to: reviewing the other Party's comments and recommendations; advising the other Party of proposed determinations; if requested, giving in writing reasons for disagreeing with any comments or recommendations by the other Party; and, if requested, meeting with the other Party to resolve differences before announcing a determination.

following draft primary documents:

(a) Remedial Design Work Plan
(b) Intermediate Design State Report (60% completion stage)
(c) Final Remedial Design Document (100% completion stage)
(d) Remedial Action Work Plan.

These deadlines shall be proposed, finalized, and published using the procedures set forth in 11.2 above.

11.4 Within twenty-one (21) days of issuance of the Record of Decision for each operable unit, DLA shall propose target dates for the submittal of the following draft secondary documents:

(a) Preliminary Design Stage Report (30% completion stage)

(b) Prefinal Design Stage Report (95% completion stage)

Within fifteen (15) days of receipt, EPA and UDOH shall review and provide comments to the DLA regarding the proposed target dates. Within fifteen (15) days after receipt of the comments, as appropriate, DLA shall revise and reissue the proposal. The Parties shall meet as necessary to discuss and finalize the proposed target dates. All agreed-upon target dates shall be incorporated into the appropriate Work Plans.

11.5 For any operable unit not identified as of the effective date of this Agreement, DLA shall propose deadlines for all documents listed in Subsection 10.3 and target dates for those in 10.4 within 21 days of aggreement on the proposed operable unit by all the Parties. These deadlines shall be proposed, finalized and published using the procedures set forth in 11.2 above and target dates established as provided in 11.4 above.

11.6 The deadlines set forth in this Section, or to be established as set forth in this Section, may be extended pursuant to the Extension Section of this Agreement. The Parties recognize that one possible basis for extension of the deadlines for completion of the RI/FS Reports is the identification of significant new Site conditions during the performance of the RI.

12. EXTENSIONS

12.1 Timetables, deadlines and schedules shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension. Any request for extension by a Party shall be submitted to the other Parties 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) The extent to which any related timetable and deadline or schedule would be affected if the extension were granted.

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

(a) An event of Force Majeure;

(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;

(e) Any work stoppage within the scope of the Section of this Agreement on Emergencies and Removals, provided neither the emergency nor the delay arises due to the fault or negligence of the party seeking the extension; or

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

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

12.4 Within seven days of receipt of a request for an extension of a timetable, deadline or schedule, each receiving Party shall advise the requesting Party in writing of the receiving Party's position on the request. Any failure by a receiving Party to respond within the seven-day period shall be deemed to constitute concurrence with the request for extension. If a receiving Party does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

12.5 If there is consensus among the Parties that the requested extension is warranted, DLA 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.

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

12.7 A timely and good faith request by DLA 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.

13. FORCE MAJEURE

A Force Majeure shall mean any event arising from causes beyond the control of a Party requesting an extension under Part 12 that causes a delay in or prevents the performance of any obligation under this Agreement, provided that neither the event nor the delay could have been prevented or overcome by the Party's due diligence. Force Majeure events shall include, but not be limited to: acts of God; fire; war; insurrection; civil disturbance; explosion; breakage or accident to machinery, equipment or lines of pipe; adverse weather conditions; unusual delay in transportation; inability to obtain any necessary authorizations, approvals, permits, or licenses due to action or inaction of any Governmental agency or authority other than the Parties; inability to obtain, at reasonable cost, any necessary authorizations, approvals, permits, or licenses due to action or inaction by any local government agency or authority; abnormal delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, provided that the events arise from causes beyond the control of the Party, and that neither the event nor the delay could have been prevented or overcome by the Party's due diligence. A Force Majeure shall also include any strike or other labor dispute, whether or not within the control of the Party affected thereby provided that neither the event nor the delay could have been prevented or overcome by the Party's due diligence. A Force Majeure shall not include increased costs or expenses of Response Actions, whether or not anticipated at the time such Response Actions were initiated.

14. EMERGENCIES AND REMOVALS

14.1 Discovery and Notification.

If any Party discovers or becomes aware of an emergency at or near the Site, which is related to or may affect the work performed under this Agreement, that Party shall immediately orally notify all other Parties. If the emergency arises from activities conducted pursuant to this Agreement, DLA shall then take immediate action to notify the appropriate State and local agencies and affected members of the public.

14.2 Work Stoppage

In the event any Party determines that activities conducted pursuant to this Agreement will cause or otherwise be threatened by a situation described in Subsection 14.1, the Party may propose the termination of such activities. If the Parties mutually agree, the activities shall be stopped for such period of time as required to abate the danger. In the absence of mutual agreement, the activities shall be stopped in accordance with the proposal, and the matter shall be immediately referred to the EPA Hazardous Waste Management Division Director for a work stoppage determination in accordance with Section 15.9 (Dispute Resolution).

14.3 Removal Actions

(a) The provisions of this Section shall apply to all removal actions as defined in CERCLA Section 101(23), 42 U.S.C. Section 9601(23).

(b) Any removal actions conducted at the Site shall be conducted in a manner consistent with this Agreement, CERCLA, the NCP and Executive Order 12580.

(c) Nothing in this Agreement shall alter DLA's authority with respect to removal actions conducted pursuant to Section 104 of CERCLA, 42 U.S.C. Section 9604.

(d) Nothing in this Agreement shall alter any authority the State or EPA may have with respect to removal actions conducted at the Site.

(e) All reviews conducted by EPA and UDOH pursuant to 10 U.S.C. § 2705(b)(2) will be expedited to the maximum extent practicable.

14.4 Notice and Opportunity to Comment

(a) DLA shall provide the other Parties with timely notice and the opportunity to review and comment upon any proposed removal action for the Site, in accordance with 10 U.S.C. § 2705(a) and (b). DLA agrees to provide the information described below.

(b) For emergency removal actions, DLA shall provide EPA and UDOH with notice in accordance with Subsection 14.1. Such notification shall, except in the case of extreme emergencies, include adequate information concerning the Site background, threat to the public health and welfare or the environment (including the need for response), proposed actions and costs, comparison of possible alternatives, means of transportation of any hazardous substances offsite, and proposed manner of disposal, expected change in the situation should no action be taken or should action be delayed (including associated environmental impacts), any important policy issues and recommendations of the DLA Project Manager. Within thirty (30) days of completion of the emergency removal action, DLA will furnish EPA and UDOH with an Action Memorandum addressing the information provided in the notification, and any other information required pursuant to CERCLA and the NCP, and in accordance with pertinent EPA guidance for such actions.

(c) For other removal actions (both time critical and non-time critical), DLA will provide EPA and UDOH with any information required by CERCLA, the NCP, and in accordance with pertinent EPA guidance, such as the Action Memorandum, the Engineering Evaluation/Cost Analysis (in the case of non-time-critical removals) and, to the extent it is not otherwise included, all information required to be provided in accordance with paragraph (b) of this Subsection. Such information shall be furnished at least thirty (30) days before the response action is to begin.

(d) All activities related to ongoing removal actions shall be reported by DLA in the progress reports as described in the Section on Project Managers.

14.5 Any dispute among the Parties as to whether a removal action (emergency, time critical or nontime critical), as defined by the NCP and this

Agreement, is properly considered a removal action, or as to the consistency of such a removal action with any remedial action, or whether such proposed removal action should be considered a remedial action, shall be subject to Section 15, Dispute Resolution. Such dispute may be brought directly to the Dispute Resolution Committee (DRC) or the Senior Executive Committee (SEC) at any Party's request.

15. DISPUTE RESOLUTION

15.1 Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Section shall apply. Any Party may invoke this dispute resolution procedure. 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.

15.2 Within thirty (30) days after: (a) the issuance of a draft final primary document pursuant to Section 10, Consultation, or (b) any action or refusal to take action which leads to or generates a dispute, the disputing Party shall submit to the Dispute Resolution Committee (DRC) 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.

15.3 Prior to any Party's issuance of a written statement of a 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 as many times as are necessary to discuss and attempt resolution of the dispute.

15.4 The DRC will serve as a forum for resolution of dispute 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 representative on the DRC is the Hazardous Waste Management Division Director of EPA's Region 8. DLA's designated member is the Commander, DDOU. The UDOH representative is the Director, Bureau of Solid and Hazardous Waste or other delegated State offficial. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures in Section 36, Notice to the Parties.

15.5 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 within seven (7) days after the close of the twenty-one (21) day resolution period.

15.6 The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The EPA representative on the SEC is the Regional Administrator of EPA Region 8. The DLA representative on the SEC is the Staff Director, Directorate of Installation Services and Environmental Protection, DLA. The UDOH representative is the Director, Division of Environmental Health. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision signed by all Parties. If unanimous resolution of the dispute is not reached within twenty-one (21) days of elevation to the SEC, EPA's Regional Administrator shall issue a written position on the dispute. DLA or UDOH may, within fourteen (14) days of the Regional Adminstrator's issuance of EPA's position, issue a written notice elevating the dispute to the Administrator of EPA for resolution in accordance with all applicable laws and procedures. In the event DLA or UDOH elects not to elevate the dispute to the Administrator within the designated fourteen (14) day escalation period, DLA and UDOH shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.

15.7 Upon escalation of a dispute to the Administrator of EPA pursuant to Subsection 15.6 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 DLA Director, or his designee, and the UDOH Director or his designee to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide DLA and UDOH with a written final decision setting forth resolution of the dispute. The duties of the Administrator set forth in this Section shall not be delegated.

15.8 The pendency of any dispute under this Section shall not affect any Party's responsibility for timely performance of the work required by this Agreement, except that the time period for completion of work affected by such dispute shall be extended for a period of time usually not to exceed the actual time taken to resolve any good faith dispute in accordance with the procedures specified herein. All elements of the work required by this Agreement which are not affected by the dispute shall continue and be completed in accordance with the applicable timetable and deadline or schedule.

15.9 When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Hazardous Waste Management Division (HWMD) Director for EPA Region 8 requests, in writing, that work related to the dispute be stopped because, in EPA's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. The UDOH may request the EPA HWMD Director to order work stopped for the reasons set forth above. To the extent possible, the Party seeking a work stoppage shall consult with the other Parties prior to initiating a work stoppage request. After work stoppage, if a Party believes that the work stoppage is inappropriate or may have potential significant adverse impacts, the Party may meet with the other Parties to discuss the work stoppage. Following this meeting, and further considerations of this issue the EPA (HWMD) Director will issue, in writing, a final decision with respect to the

work stoppage. This final decision may immediately be subject to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the Party requesting dispute resolution.

15.10 Within thirty-five (35) days of resolution of a dispute pursuant to the procedures specified in this Section, DLA shall incorporate the resolution and final determination into the appropriate document, plan, schedule or procedures and proceed to implement this Agreement according to the amended document, plan, schedule or procedures.

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

16. ENFORCEABILITY

16.1 The Parties 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;

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

(c) All terms and conditions of this Agreement which relate to remedial actions, including corresponding timetables, deadlines or schedules, and all work associated with 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; and

(d) Any final resolution of a dispute pursuant to Section 15 (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.

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

16.3 Upon issuance or modification of a hazardous waste permit by UDOH to incorporate this Agreement, all terms and conditions of this Agreement become enforceable by UDOH as terms and conditions of that permit, except as otherwise provided by this Agreement.

16.4 Consistent with this Agreement, UDOH agrees to exhaust fully the remedies provided in Section 10, Consultation, and Section 15, Dispute Resolution, of this Agreement prior to taking any other enforcement action it may have the authority to exercise relative to the NPL site.

16.5 The Parties agree to exhaust their rights under Section 15, Dispute Resolution, prior to exercising any rights to judicial review that they may have.

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

16.7 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).

17. STIPULATED PENALTIES

17.1 In the event DLA fails to submit a primary document listed in Section 10, Consultation with EPA and UDOH, pursuant to the appropriate timetable or deadline in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement which relates to a remedial action, EPA, after consultation with UDOH, may assess a stipulated penalty against DLA. A stipulated penalty may be assessed in an amount not to exceed $2,500 for the first day and $416.67 for each day thereafter for the first week and $5,000 for the 8th day and $833.34 for each additional day thereafter for which a failure set forth in this paragraph occurs.

17.2 Upon determining that DLA has failed in a manner set forth in Subsection 16.1, EPA shall so notify DLA in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, DLA 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. DLA 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.

17.3 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 DLA under this Agreement, each of the following:

(a) The Federal 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 at the relevant Federal facility, or a statement of why such measures were determined to be inappropriate;

(d) A statement of any additional action taken by or at the Federal 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.

17.4 Stipulated penalties assessed pursuant to this Section shall be payable to the Hazardous Substances Response Trust Fund only in the manner and to the extent expressly provided for in acts authorizing funds for, and appropriations to, the DOD.

17.5 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.

17.6 This Section shall not affect DLA's ability to obtain an extension of a timetable, deadline or schedule pursuant to Section 12 (Extensions).

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

18. FUNDING

18.1 It is the expectation of the Parties to this Agreement that all obligations of DLA arising under this Agreement will be fully funded. DLA agrees to seek sufficient funding through the DoD budgetary process to fulfill its obligations including payment of stipulated penalties, if necessary, under this Agreement.

18.2 In accordance with CERCLA Section 120 (e)(5)(B), 42 U.S.C. Section 9620 (e)(5)(B), DLA shall include, in its submission to the Department of Defense's Annual Report to Congress, the specific cost estimates and budgetary proposals associated with the implementation of this Agreement.

18.3 Any requirement for the payment or obligation of funds, including stipulated penalties, by DLA 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.

18.4 If appropriated funds are not available to fulfill the DLA's obligations under this Agreement, EPA and UDOH reserve the right to initiate an action against any person, or to take any response action, which would be appropriate absent this Agreement.

18.5 Funds authorized and appropriated annually by Congress under the "Environmental Restoration, Defense" appropriation in the Department of Defense Appropriation Act and allocated by the Deputy Assistant Secretary of Defense for Environment to DLA will be the source of funds for activities required by this Agreement consistent with Section 211 of CERCLA, 10 U.S.C. Chapter 160. However, should the Environmental Restoration, Defense appropriation be inadequate in any year to meet the total DLA CERCLA implementation requirements, the DoD shall employ and DLA shall follow a standardized DoD prioritization process which allocates that year's appropriations in a manner which maximizes the protection of human health and the environment. A standardized DoD prioritization model shall be developed and utilized with the assistance of EPA and the states.

18.6 If DLA shall have made timely request for funds pursuant to 18.5 above, and insufficient appropriated funds are made available, the resultant delay will be treated as a Force Majuere.

19. PROJECT MANAGERS

19.1 On or before the effective date of this Agreement, EPA, DLA, and UDOH shall each designate a Project Manager and an alternate (each hereinafter referred to as Project Manager), for the purpose of overseeing the implementation of this Agreement. The Project Managers shall be responsible on a daily basis for assuring proper implementation of the RI/FS and the RD/RA in accordance with the terms of the Agreement. In addition to the formal notice provisions set-forth in Section 36 (Notice to the Parties), to the maximum extent possible, communications among DLA, EPA, and UDOH on all documents, including reports, comments, and other correspondence concerning the activities performed pursuant to this Agreement, shall be directed through the Project Managers.

19.2 DLA, EPA, and UDOH may change their respective Project Managers. The other Parties shall be notified in writing within five days of the change.

19.3 The Project Managers shall meet in the State of Utah to discuss progress as described in Subsection 10.5. Although DLA has ultimate responsibility for meeting its respective deadlines or schedule, the Project Managers shall assist in this effort by consolidating the review of primary and secondary documents whenever possible, and by scheduling progress meetings to review reports, evaluate the performance of environmental monitoring at the Site, review RI/FS or RD/RA progress, discuss target dates for elements of the RI/FS to be conducted in the following one hundred and eighty (180) days, resolve disputes, and propose adjustments of deadlines or schedules. At least one week prior to each scheduled progress meeting, the DLA will provide to the other Parties a draft agenda and summary of the status of the work subject to this Agreement. The minutes of each progress meeting, with the meeting agenda and all documents discussed during the meeting (which were not previously provided) as attachments, shall constitute a progress report, which will be sent to all Project Managers within 10 business days after the meeting ends. If an extended period occurs between Project Manager progress meetings, the Project Managers may agree that the DLA shall prepare an interim progress report and provide it to the other Parties. Such reports shall be provided

on a monthly basis. The report shall include the information that would normally be discussed in a progress meeting of the Project Managers. Other meetings shall be held more frequently upon request by any Project Manager.

19.4 The authority of the Project Managers shall include, but is not limited to:

(a) Taking samples and ensuring that sampling and other field work is performed in accordance with the terms of any final Work Plan and QAPP; (b) Observing, and 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 24, Access to Federal Facility, hereof;

(c) Reviewing records, files and documents relevant to the work performed;

(d) Determining the form and specific content of the Project Manager meetings and of progress reports based on such meetings; and

(e) Recommending and requesting minor field modifications to the work to be performed pursuant to a final Work Plan, or in techniques, procedures, or design utilized in carrying out such Work Plan.

19.5 The DLA Project Manager or the UDOH Project Manager may also recommend and request field modifications to the work to be performed pursuant to this Agreement, or in techniques, procedures, or designs utilized in carrying out this Agreement, which are necessary to the completion of the project. Any major modification must be approved in advance by all Parties in writing. The DLA Project Manager shall have the authority to order a cessation of work in circumstances in which, in his or her professional judgment, a threat to the public health or the environment would occur if such work were to continue. In the event an order to halt work is given, the DLA Project Manager shall notify the EPA Project Manager and the UDOH Project Manager verbally within one (1) working day of the order, and in writing within five (5) business days, and provide reasons therefor. If agreement cannot be reached on any proposed additional work or modification of work necessitated by such work stoppage, dispute resolution as set forth in Section 15, Dispute Resolution, may be used in addition to this Section.

19.6 The DLA Project Manager will make a contemporaneous record of such minor field modification and approval in a written log, and a copy of the log entry will be provided to the Parties as part of the next progress report.

19.7 The Project Manager for DLA shall be responsible for day-to-day field activities at the Site. The DLA Project Manager or other designated employee of DDOU shall be present at the Site or reasonably available to supervise work during all hours of work performed at the Site pursuant to this Agreement. For all times that such work is being performed, the DLA Project Manager shall inform the command post at DDOU of the name and telephone number of the designated employee responsible for supervising the work.

19.8 The Project Managers shall be reasonably available to consult on work performed pursuant to this Agreement and shall make themselves available to each other for the pendency of this Agreement. The absence of EPA, the State, or DLA Project Manager from the facility shall not be cause for work stoppage of activities taken under this Agreement.

20. PERMITS

20.1 DDOU has submitted for UDOH's review a final status hazardous waste storage plan (Part B application) under the Utah Solid and Hazardous Waste Act. DLA's Part B application requests incorporation of this Agreement into the permit, and the permit will be issued as provided by Utah law. Utah law requires a public comment period before a permit is issued.

After selection of final remedial action(s) for the Site, DDOU shall submit to UDOH a request to modify the permit to incorporate the final remedial action(s) into the permit, and the permit will be modified as provided by Utah law. Any comment period for the requested modification shall run concurrently with the comment period discussed in paragraph 25.1 of Section 25 (Public Participation and Community Relations).

1. The Parties recognize that under Section 121(e)(1) of CERCLA/SARA, 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 onsite are exempted from the procedural requirement to obtain a Federal, state, or local permit, but to the extent required CERCLA Section 121, must satisfy all substantive state standards, requirements, criteria, or limitations which would have been included in any such permit. When DLA proposes a response action (including a Work Plan pursuant to this Agreement) to be conducted entirely onsite, which in the absence of Section 121(e) of CERCLA/SARA and the NCP would require a Federal or state permit, DLA shall include in the submittal:

(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;

(c) Explanation of how the response action proposed will meet the standards, requirements, criteria or limitations identified in Subparagraph (b) immediately above.

The foregoing does not relieve EPA and UDOH of any obligation under CERCLA Section 121 and this Agreement to identify ARARs. Upon request of DLA, U.S. EPA, and UDOH will provide their position with respect to a and b above in a timely manner.

2. Subsection 1.(a) above is not intended to relieve DLA of the requirement(s) of obtaining a Federal, state, or local permit whenever it proposed response action involving the shipment or movement off the site of a hazardous substance. The Parties intend that all documents submitted as deliverables, pursuant to this Agreement, shall also be considered as deliverables for purposes of satisfying corrective action requirements under RCRA as conditions of DDOU's hazardous waste storage permit.

3. DLA shall notify the UDOH and U.S. EPA in writing of any permits required for offsite activities as soon as it becomes aware of the requirement. Upon request, DLA shall provide the UDOH and U.S. EPA copies of all such permit applications, notice of dispositions and other documents related to the permit process.

4. If a permit which is necessary for the implementation of this Agreement, including the permit specified in paragraph 20.1 of this Part, is not issued, or is issued or renewed in a manner which is materially inconsistent with the requirements of this Agreement, DDOU agrees that it shall notify UDOH and EPA of its intention to propose modifications to this Agreement to obtain conformance with the permit (or lack thereof). Notification by DDOU to propose modifications shall be submitted within seven (7) calendar days of receipt by DDOU 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 thirty (30) days from the date it submits its notice of intention to propose modification, DDOU shall submit to UDOH and EPA its proposed modifications to this Agreement with an explanation of its reasons in support thereof.

5. Until issuance of the permit specified in paragraph 20.1, the Parties intend that this Agreement shall serve in lieu of any interim status corrective action order that could be issued by UDOH. In the event that an interim status corrective action order is issued or renewed by UDOH in a manner which is materially inconsistent with the requirements of this Agreement, DDOU agrees that it shall notify UDOH and EPA of its intention to propose modifications to this Agreement to obtain conformance with the Order.

6. During an appeal of any permit or order which is not issued, or is issued or renewed in a manner which is materially inconsistent with the requirements of this Agreement, or during review of any of DDOU's proposed modifications as provided in paragraph 20.4 or 20.5 of this Part, DDOU shall continue to implement those portions of this Agreement which can be implemented pending final resolution of the permit issue(s).

21. QUALITY ASSURANCE

21.1 In order to provide quality assurance and maintain quality control regarding all field work and sample collection performed pursuant to this Agreement, DLA agrees to designate a Quality Assurance Officer (QAO) who will

ensure that all work is performed in accordance with approved Work Plans, sampling plans and QAPPs. The QAO shall maintain a record of quality assurance field activities and provide a copy to the Parties upon request.

21.2 To ensure compliance with the QAPP, DLA shall arrange for access, upon request by EPA or the State, to all laboratories performing analysis on behalf of DLA pursuant to this Agreement.

22. SAMPLING AND DATA/DOCUMENT AVAILABILITY

22.1 Each Party shall make available to the other Parties the results of sampling, tests, or other data or documents generated through the implementation of this Agreement. Except as provided in CERCLA Section 120 (j), all quality assured data shall be supplied within sixty (60) days of completion of sampling. No claim of confidentiality or privilege shall be made for analytical data or data validation packages that have been validated to the QAPP. If the quality assurance procedure is not completed within sixty (60) days, raw data or results shall be submitted within the sixty (60) day period and quality assured data or results shall be submitted as soon as they become available.

22.2 The sampling Party's Project Manager shall notify the other Parties' Project Managers by telephone at least ten (10) days before conducting routine environmental sampling. If it is not possible to provide 10 days prior notification, the sampling Party's Project Manager shall notify the other Project Managers as soon as possible after becoming aware that samples will be collected. The Parties shall allow any other party to observe field work and to take split or duplicate samples. The Parties do not anticipate that duplicate samples will exceed 15% of all samples collected pursuant to this Agreement.

23. RECORD PRESERVATION

Each Party to this Agreement shall preserve, for a minimum of ten (10) years after termination of this Agreement, all records and documents in its possession or control which relate to actions taken pursuant to this Agreement. After this ten (10) year period, each Party shall notify the other Parties at least forty-five (45) days prior to proposed destruction or disposal of any such documents or records. Upon the request of any Party, the requested party shall make available such records or copies of any such records unless withholding is authorized and appropriate by law.

24. ACCESS TO FEDERAL FACILITY

24.1 Without limitations on any authority conferred on EPA or UDOH by statute or regulation, EPA, UDOH, and/or their authorized representatives, shall be allowed to enter DDOU at reasonable times for purposes consistent with the provisions of this Agreement, by providing reasonable advance notification to the DLA Project Manager, for the purposes of, among other things:

(a) Inspecting and copying records, operating logs, contracts, files, photographs, sampling and monitoring data, and other documents relevant to implementation of this Agreement;

(b) Reviewing the progress of DLA, its response-action contractors or lessees in implementing this Agreement;

(c) Conducting such tests as the EPA, UDOH, or the Project Coordinators deem necessary; and

(d) Verifying the data submitted to EPA and UDOH by DLA. DLA shall honor all reasonable requests for such access by EPA or UDOH conditioned only upon presentation of proper credentials and access shall not be denied. However, such access shall be obtained in conformance with statutory and regulatory requirements, including without limitation, DLA security regulations.

24.2 With respect to work which DLA is currently conducting or may conduct on property pursuant to access agreements with the landowner, DLA shall use its best efforts to the maximum extent of its authority, including CERCLA Section 104(e), to obtain agreement from the landowner allowing for access by EPA and UDOH. The access agreements shall also provide that no conveyance of title, easement, or other interest in the provide that the owners of any property where such response actions are conducted shall notify EPA, UDOH, and DLA by certified mail, at least thirty (30) days prior to any conveyance, of the property owner's intent to convey any interest in the property and of the provisions made for the continued operation or monitoring of such response actions underway pursuant to this Agreement.

24.3 The Parties agree that from time to time EPA and the UDOH may conduct unannounced inspections. In such instances, a telephone call from the gate at DDOU will be deemed reasonable advance notification for purposes of this Section.

24.4 In the event that Site access cannot be obtained as described in Subpart 23.2 above, DLA shall notify EPA and UDOH regarding the lack of, and efforts to obtain, such notice, DLA shall submit appropriate modification(s) to the work to be performed because of such inability to obtain access. In the event that the Parties cannot agree upon such modification(s), Dispute Resolution may be invoked.

24.5 DLA may request the assistance of EPA and UDOH where access problems persist and, where appropriate, DLA agrees to take action to obtain compliance pursuant to CERCLA Section 104 (e)(5). It will seek such approval for all Parties to this Agreement where practicable.

24.6 All Parties shall exercise access to the Site in compliance with all approved health and safety plans applicable to such access.

24.7 Except as specifically stated, nothing in this Section is intended to restrict EPA's or UDOH's right of access under applicable law.

25. PUBLIC PARTICIPATION AND COMMUNITY RELATIONS

25.1 The Parties agree that any proposed response action at the Site arising out of this Agreement shall comply with the administrative record and public participation requirements of CERCLA Sections 113(k) and 117, 42 U.S.C. Sections 9313(k) and 9617, EPA guidances, and, to the extent they may apply, State statutes and regulations. The UDOH agrees to inform DLA of all State requirements which it believes pertain to public participation. The provisions of this Section shall be carried out in a manner consistent with, and shall fulfill the intent of, Section 5 (Statutory Compliance - RCRA/CERCLA Integration).

25.2 DLA shall develop and implement a community relations plan (CRP) consistent with Section 10, Consultation, of this Agreement.

25.3 DLA shall establish and maintain an administrative record at a place, at or near the Federal facility, which is freely accessible to the public, which record shall provide the documentation supporting the selection of each response action. The administrative record shall be established and maintained in accordance with relevant provisions in CERCLA, the NCP, and EPA guidances. A copy of each document placed in the administrative record, not already provided, will be provided by the DLA to the other Parties. The administrative record developed by DLA shall be updated and new documents supplied to the other Parties on at least a quarterly basis. An index of documents in the administrative record will accompany each update of the administrative record.

25.4 Except in case of an emergency, any Party issuing a press release or initiating a media contact for the purposes of providing significant information to the media with reference to any of the work required by this Agreement shall advise the other Parties of such press release or media contact and the contents thereof, at least 48 hours prior to issuance.

26. FIVE YEAR REVIEW

26.1 Consistent with 42 U.S.C. Sections 9621(c) and in accordance with this Agreement, if the selected remedial action results in any hazardous substances, pollutants or contaminants remaining at the Site, the Parties shall review the remedial action program 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.

26.2 To synchronize the five-year reviews for all operable units the following procedure will be used: Review of operable units will be conducted every five years counting from the initiation of the first operable unit. Review of the final remedial action for all other operable units shall be conducted every five years thereafter.

27. AMENDMENT OR MODIFICATION OF AGREEMENT

This Agreement can be amended by unanimous agreement among EPA, UDOH, and DLA. Such amendments shall be in writing and shall have as their effective

date the date on which they are signed by all Parties, unless otherwise agreed.

28. TERMINATION AND SATISFACTION

28.1 The provisions of this Agreement shall be deemed satisfied and terminated upon receipt by DLA of written notice from EPA and UDOH that DLA has demonstrated to the satisfaction of EPA and UDOH that all the terms of the Agreement have been completed. If EPA ~~or UDOH~~ denies or otherwise fails to grant a termination notice within 90 days of receiving a written DLA request for such notice, EPA shall provide a written statement of the basis for its denial and describe DLA actions which, in the view of EPA, would be a satisfactory basis for granting a notice of completion. Such denial shall be subject to dispute resolution.

28.2 This provision shall not affect the requirements for periodic review at maximum five-year intervals of the efficacy of the remedial actions.

29. RESERVATION OF RIGHTS

29.1 By entering into this Agreement, and notwithstanding any other Part of this Agreement, UDOH does not waive any right, authority, or claim it may have under law, but expressly reserves all of the rights, authorities and claims it may have thereunder, except that UDOH expressly agrees to exhaust any applicable remedies as provided under Section 10, Consultation, and Section 15, Dispute Resolution, as provided in Section 16, Enforceability, prior to exercising any such rights.

29.2 Specifically, and without limitation, UDOH reserves any rights and any authority it may have to require corrective action in accordance with the Utah Solid and Hazardous Waste Act, 26-14 Utah Code Annot., its rights and authorities under Section 16, Enforceability, and any claim for natural resource damage assessments for damages to natural resources.

29.3 Unless expressly waived by law, Utah does not waive its Sovereign Immunity entering into this Agreement.

29.4 This reservation shall not apply with respect to claims for costs reimbursed by DLA pursuant to Section 32, State Support Services.

29.5 Nothing in this Agreement, including execution hereof, shall be deemed to constitute an authorization by the President pursuant to Section 122(e)(6) of CERCLA, 42 U.S.C. 9622(e)(6), and the Parties explicitly reserve all rights and authorities they may have pursuant to Section 122(e)(6) of CERCLA, 42 U.S.C. 9622(e)(6).

30. OTHER CLAIMS

Nothing in this Agreement shall constitute or be construed as a bar or release from any claim, cause of action or demand in law or equity by or against any person, firm, partnership or corporation not a signatory to this

Agreement for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous waste, pollutants, or contaminants found at, taken to, or taken from the the Site. Unless specifically agreed to in writing by the Parties, EPA and the State shall not be held as a party to any contract entered into by DLA to implement the requirements of this Agreement.

31. RECOVERY OF EPA EXPENSES

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

32. REIMBURSEMENT OF UDOH COSTS

32.1 Coverage

(a) This Section covers reimbursement of the costs associated with providing UDOH services pursuant to this Agreement. This Agreement does not cover the costs of services rendered prior to the onset of negotiations for this Agreement; services at properties other than the Site; and activities funded from sources other than the Environmental Restoration, Defense (ER,D) appropriation.

(b) DLA agrees to seek sufficient funding through the DoD budgetary process in accordance with Subsections 32.9, 32.10 and 32.11, and to pay UDOH for the services specified in Subsection 32.2 for those activities or portions of activities at the Site funded by ER,D subject to the conditions and limitations set forth in this Agreement.

32.2 Services

UDOH services that qualify for payment under this Agreement include the following type of assistance provided by UDOH under this Agreement commencing at Site identification and continuing through construction as well as any other activities that are funded by ER,D:

(a) Technical review, comments and recommendations on all documents or data required to be submitted to UDOH under this Agreement and all documents or data that are provided by DLA/DDOU to UDOH for review as a result of a request from UDOH made under applicable law.

(b) Identification and explanation of State of Utah applicable or relevant and appropriate requirements related to response actions at DDOU.

(c) Site visits and field activities including sampling to review DLA/DDOU response actions, ensure their consistency with appropriate State of Utah requirements and ensure data quality in accordance with this Agreement.

(d) Participation in cooperation with DLA/DDOU in the conduct of public education and public participation activities in accordance with Federal and State requirements for public involvement.

(e) Services provided at the request of DLA/DDOU in connection with participation in Technical Review Committees.

(f) Preparation and administration of a cooperative agreement to implement this Agreement, including the estimates of UDOH costs.

(g) This is not intended to change any obligations that DLA/DDOU may have to pay permit (plan) review fees.

32.3 Accounting Procedures

(a) Subject to the provisions of Subsections 32.2, 32.4 and 32.5, reimbursement of eligible UDOH costs shall be paid if the costs were incurred after the onset of negotiations of this Agreement and have been documented using accounting procedures and practices that reasonably identify the nature of the costs involved, the date the costs were incurred, and show that the costs were entirely attributable to activities at the Site.

(b) Payment of eligible UDOH costs for services provided after the effective date of this Agreement must comply with all applicable Federal procurement and auditing requirements.

32.4 Reimbursement Amounts

DLA estimates that its costs to complete the remedial actions for all operable units at DDOU may total $30M. Both parties recognize that as of the date of this Agreement, the estimate and the corresponding UDOH services which are to be reimbursed under this Section may change. DLA recognizes that more UDOH services are likely to be expended during the RI/FS than during the RD/RA. Assuming the DLA estimate of its costs is correct, DLA believes that its reimbursement to UDOH should be limited to $300,000. Since much of the Site is in the early stages of investigation, UDOH cannot accurately estimate its funding needs at this time, but it does not believe that reimbursement should be limited to $300,000. DLA agrees to negotiate in good faith for a higher reimbursement limit or with respect to any other matter subject to this Section if, during the life of the Agreement, the scope of the work at the Site or the corresponding level of State reimbursable services increases. DLA agrees to begin negotiations within 30 days of UDOH's request. If negotiations have not been successfully completed within 60 days after they begin, the matter shall be referred to Dispute Resolution pursuant to Subsection 32.13.

32.5 Annual Budget Limits

(a) UDOH may request, and DLA shall approve, subject to the restrictions specified in this Section, up to a maximum of $100,000 per fiscal year during fiscal years 1990 and 1991. DLA may approve an annual budget

limit that exceeds $100,000 if the UDOH demonstrates the need for higher funding based on the scope of the work projected during the fiscal year. UDOH may carry over unused funds into subsequent years. If the cost of UDOH services during a fiscal year exceeds the annual budget limit, UDOH may expend its own funds to pay the costs of those services. To the extent allowable under Federal procedures for cooperative agreements, UDOH may seek reimbursement of these costs in a subsequent year through the cooperative agreement as long as the total amount of the payments to the UDOH does not exceed the greater of $200,000 or any ceiling later agreed upon as an amendment to this Agreement or in any state-wide DSMOA, or the annual budget limit for that fiscal year specified in this Agreement, any amendment to this Agreement, or any state-wide DSMOA. A payment schedule for reimbursement of past costs will be devised by Utah or DLA.

(b) Annual budget limits for the fiscal years after 30 September 1991 shall be negotiated annually or for such other periods to which the Parties may agree. DLA and UDOH agree to begin such negotiations at least 30 days before the beginning of the new fiscal year.

32.6 Procedures for Reimbursement

Procedures for UDOH reimbursement will be in accordance with Office of Management and Budget (OMB) Circulars A-102, A-87 and A-128 and 32 CFR 278.1. This Agreement is considered a cooperative agreement within the meaning of 31 U.S.C. 6305. After this Agreement is executed, UDOH may submit requests for advance reimbursements on a quarterly basis. DLA will process the requests and make payment within 30 days after receipt of the request. Within 60 days after the end of each quarter, UDOH shall submit to DLA a status report, including cost summaries which directly relate allowable costs actually incurred by UDOH under this Agreement during the quarter. Allowability of costs shall be determined in accordance with this Agreement and OMB Cicrular 87. Audits shall be accomplished in accordance with OMB Circular A-128. DLA has the right to audit cost reports used by UDOH to develop the cost summaries.

32.7 Additional Work

When DLA requests that UDOH perform a specific technical study or similar technical support that could otherwise be done by a contractor, and UDOH agrees to do the work, funding will be negotiated between DLA and UDOH outside this Agreement.

32.8 Funding

The Office of the Deputy Assistant Secretary of Defense (Environment), as the designee of the Office of the Secretary of Defense responsible for carrying out the Defense Environmental Restoration Program, and DLA shall seek sufficient funding through the DoD budgetary process to carry out their obligations for response actions at DDOU. Funds authorized and appropriated annually by Congress under the ER,D appropriation in the DoD Appropriations Act shall be the source of funds for all work contemplated by this Agreement.

32.9 Priority System

Should the ER,D appropriation be inadequate in a year to meet the total DoD requirements for cleanup of hazardous or toxic contaminants, DoD shall establish priorities among sites in a manner which maximizes the protection of human health and the environment. In the prioritization process, DoD shall employ a model which has been and will be further developed with the assistance of the States and EPA. Future enhancements or refinements to the model shall occur in consultation with the States and the EPA. DoD shall also involve the States and the EPA in its use of this prioritization model through review of technical site information provided by the States regarding factors to be considered in decision-making in the annual prioritization process for allocating resources. DLA agrees, however, that full funding for UDOH support services pursuant to this Section will be provided in the event that funding is provided for site work under this Agreement.

(c) Nothing in this Section shall be interpreted to require obligation or payment with regard to a site remediation in violation of the Anti-Deficiency Act (31 U.S.C. 1341).

32.10 Coordinator

DLA shall designate an individual responsible for managing remedial and removal actions at DDOU. This individual will act as the remedial project manager (RPM). UDOH shall designate a State Agency Coordinator (SAC) who shall be the single point-of-contact for issues related to this Section.

32.11 Dispute Resolution

The RPM and the SAC shall be the primary points of contact for disputes relating reimbursement pursuant to this Section. For any such disputes, the following procedures shall govern in lieu of the procedures in Section 15:

(a) Should the RPM and the SAC be unable to agree, the matter shall be referred in writing as soon as practicable, but no more than 10 days after either party requests dispute resolution, to the Commander of DDOU and the Director of the Bureau of Solid and Hazardous Waste, UDOH, or their designees.

(b) Should the installation commander and the State designated official be unable to agree within 10 days, the matter shall be referred to the DLA Director and Director of the Division of Environmental Health, UDOH, or their designees.

(c) Should the parties in b. above be unable to agree, within 20 days, the matter shall be referred to the Director of the Department of Health of the State of Utah and the Deputy Assistant Secretary of Defense (Environment) for resolution.

(d) If the Director of the Department of Health and the Deputy Assistant Secretary of Defense are unable to resolve the dispute, the State may exercise any legal remedies which are available to it.

33. PUBLIC COMMENT

33.1 The provisions of this Section shall, to the maximum extent practicable, be carried out in a manner consistent with, and shall fulfill the intent of Section 5 (Statutory Compliance - RCRA/CERCLA Integration).

33.2 Within fifteen (15) days of the date on which the last Party signs this Agreement, the Parties shall announce the availability of this Agreement to the public for a forty-five (45) day period of review and comment, including publication in at least two major local newspapers of general circulation. The procedures of the NCP regarding persons to be notified, and regarding contents of the notice, shall apply. Comments received shall be transmitted promptly to the other Parties after the end of the comment period. The Parties shall review such comments and shall either:

(a) Determine that this Agreement should be made effective in its present form, in which case EPA shall promptly notify all Parties in writing, and this Agreement shall become effective on the date that DLA receives such notification; or

(b) Determine that modification of the Agreement is necessary, in which case the Parties will either amend the Agreement by unanimous agreement or, if the parties do not unanimously agree on the changes within thirty (30) days from the close of the public comment period, the Parties shall submit their written notices of position directly to the Dispute Resolution Committee, and the dispute resolution procedure of Section 15 (Dispute Resolution) shall apply.

(c) In the event that the Agreement is modified following the exhaustion of the dispute resolution procedures in Section 15, Dispute Resolution, DLA and UDOH reserve the right to withdraw from the Agreement within twenty (20) days of EPA'S submission of the modified Agreement to the Parties via overnight mail. If neither DLA nor UDOH provide EPA with written notice of withdrawl from the Agreement within such twenty (20) day period, the Agreement, as modified, shall automatically become effective on the twenty-first day, and EPA shall issue a notice to the Parties within three business days of the effective date of the modified Agreement.

33.3 When a final decision by the Parties is reached on whether to finalize the Agreement in its original form, modify, or withdraw from the Agreement, the Parties shall issue a notice of decision for the Agreement in accordance with the NCP. In addition, the Parties shall issue a response to comments in accordance with the NCP.

34. SUCCESSORS AND ASSIGNS

34.1 This Agreement shall apply to and be binding on DLA, UDOH and EPA and their officers, successors in office, agents and employees. DLA shall assure that no portion of the DDOU shall be used in any manner which would adversely affect the integrity of any monitoring system or response measure installed pursuant to this Agreement. This Agreement shall also apply to subsequent owners and operators of DDOU.

34.2 DLA shall include notice of this Agreement in any document transferring ownership to any subsequent owner or operator of any portion of DDOU in accordance with Section 120 (h) of CERCLA and to notify EPA and UDOH of any such change or transfer at least ninety (90) days prior to such transfer. Notice pursuant to Section 120 (h)(3)(B) of CERCLA of any transfer of ownership shall not relieve the Department of Defense (DoD) and DLA of their obligations to perform pursuant to this Agreement.

35. CONFIDENTIAL INFORMATION

DLA may assert a confidentiality claim covering all or part of the information requested by this Agreement, except that analytical data shall not be claimed as confidential by DLA. Information determined to be confidential by DLA pursuant to the Freedom of Information Act shall be afforded the protection specified therein. Information determined to be confidential by UDOH pursuant to 26-14b-21, and U.C.A. 26-14-9.5 and implementing rules shall be afforded to the protection specified therein by UDOH. If no claim of confidentiality accompanies the information when it is submitted to EPA and UDOH, the information may be made available to the public without further notice to DLA.

36. NOTICE TO THE PARTIES

36.1 All Parties shall transmit primary and secondary documents, comments, notices, and other submissions required herein by certified mail, return receipt requested, Federal Express or similar method that provides a record of send and receipt dates. Routine correspondence may be sent by first class mail.

36.2 Submittals and Notices shall be sent to the following addresses:

(a) For DLA:

Mr. Del Fredde, Environmental Coordinator, DDOU-W
Defense Depot Ogden Ogden, UT 84401-5000

(b) For EPA:

Ms. Sandra A. Bourgeois,
Remedial Project Manager for the DDOU Site
U.S. EPA Region VIII (8HWM-SR)
Denver Place, 999 18th Street, Suite 500
Denver, Colorado 80202-2405

(c) For UDOH:

Mr. Mohammed Slam
Remedial Project Manager for the DOOU Site
Utah Department of Health
288 North 1460 West P.O. Box 16700
Salt Lake City, Utah 84116-0700

Unless otherwise indicated in this Agreement, notification of change of addressees specified in this Part shall be provided to the other Parties at least fifteen (15) days prior to the effective date of such change.

The Party requesting an extension due to the occurrence of a Force Majeure will provide the written notification described in Section 12.1, Extensions, within 48 hours after the Party knows, or should have known, of the Force Majeure event and of the resultant delay. The failure to provide timely notice does not constitute a waiver of the right to an extension due to a Force Majeure.

37. APPENDICES AND ATTACHMENTS

37.1 Appendices shall be an integral and enforceable part of this Agreement. They shall include the most current versions of:

(a) All final primary and secondary documents created in accordance with Section 10 (Consultation); and

(b) All deadlines established in accordance with Section 11 (Deadlines) and extended in accordance with Section 12 (Extensions).

(c) Deadlines previously established

37.2 Attachments shall be for information only and shall not be enforceable parts of this Agreement. The information in these attachments is provided to support the initial review and comment upon this Agreement, and they are only intended to reflect the conditions known at the signing of this Agreement. None of the facts related therein shall be considered admissions by, nor are they legally binding upon, any Party with respect to any claims unrelated to, or persons not a Party to, this Agreement. They shall include:

(A) Statement of Facts

(B) Map of Federal facility

(C) List of documents completed prior to execution of the Agreement

38. AUTHORIZED SIGNATURES

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

IT IS SO AGREED:

By

Defense Logistics Agency
CAPT C. D. Correll, SC, USN
Commander
Defense Depot Ogden

Date 11/20/89

By

U.S. Environmental Protection Agency
James J. Scherer
Region Administrator
Region VIII

Date 11-30-89

By

Utah Department of Health
Kenneth L. Alkema
Director, Division of Environmental Health

11/22/89
Date

By

Utah Department of Health
Sheldon B. Elman
Deputy Director

Date 11/22/89

ATTACHMENT A

A. STATEMENT OF FACTS

1. For purposes of this Agreement, the following constitutes a summary of the facts on which this Agreement is based. None of the facts related herein shall be considered admissions by any Party. They shall not be used by any Party related or unrelated to this Agreement for purposes other than determining the basis for this Agreement.

2. The Site is located in the northwest portion of Ogden, Utah. Originally called Utah General Depot, it was renamed Defense Depot Ogden, Utah and has been in operation since 1940. In the past, both liquid and solid wastes were disposed of at various locations on the Site. Oily liquid wastes and combustible solvents were disposed of in burning pits. Solid wastes have been disposed of by burial, burning and off-site disposal by commercial contract.

3. In 1979, the United States Army Toxic and Hazardous Materials Agency (USATHAMA) performed record searches and personnel interviews regarding past waste management practices at the Site. (This action was a part of the DLA Installation Restoration Program and the findings were summarized in a report issued in 1980.) These indicated that past practices were not compatible with current requirements and regulations. The study identified locations where hazardous materials might have been used, stored, treated or disposed of at the Site. USATHAMA recommended three of the locations for further study; Burial Site 3, Burial Site 4 and the French Drain area.

4. In 1981, the U.S. Army Environmental Hygiene Agency (USAEHA) installed a total of ten (10) initial monitoring wells at Burial Site 3, Burial Site 4 and the French Drain Site to assess whether the groundwater was contaminated in the vicinity of those areas. These wells have been monitored by the USAEHA and its consultants since 1981. Quarterly samples of wells AEHA-9 and AEHA-10 were collected from July 1983 to April 1984. On 1 August 1984, all ten (10) wells were sampled and analyzed. Wells AEHA-1 through AEHA-4 were sampled in August 1985 and again in April 1986. Analysis of the groundwater indicated the presence of low levels of volatile organic compounds in several of these wells. The material detected included vinyl chloride, benzene, trichloroethylene, tetrachloroethylene and chlordane, which are either known or suspected carginogens. All of these data were provided to EPA and UDOH.

5. In 1984, EPA proposed DDOU for inclusion on the National Priorities List (NPL) and directed DLA to conduct a study to determine the location of any past disposal sites and the potential for groundwater contamination from those sites.

6. Through the Army Corps of Engineers, DLA commissioned a contractor to conduct a Geohydrological Investigation and Evaluation during 1986. Evaluation identified five areas on the Site where hazardous substances, pollutants and contaminants may have been disposed of. These areas are shown on the map attached hereto as Attachment B and are described below.

(a) BURIAL SITE 1 - This area is adjacent to the southwest corner of the existing DDOU boundary. It is currently owned by the City of Ogden. A trench in the center of Burial Site 1 reportedly was used for the burial of riot control agent and white smoke in 1945. A second, less defined, area along the western margin may also have been used for burial of hazardous substances.

(b) BURIAL SITE 3 - This area may have been utilized for the disposal of mustard gas, phosgene gas, methyl bromide, rubber boots, chemical identification kits and water purification tablets. There are three distinct areas in Burial Site 3 where disposal may have occurred. Area 3-A, near the center of the Site, is where mustard gas, phosgene, methyl bromide and chemical identification kits were reportedly buried. In the other areas, 3-B and 3-C, rubber boots and water purification tablets were reportedly buried.

(c) BURIAL SITE 4 - This area is on the northern boundary of DDOU. There were five separate disposal areas identified within Burial Site 4. There are two burning pits where oil and solid materials were burned. In one area, fluorescent tubes were buried; another was a sanitary landfill; and, a final area was an oil-holding pit. Analysis of soil gas and groundwater in Burial Site 4 indicates that various volatile organic compounds have been released into the environment.

(d) OIL BURN PIT - Another oil burn pit is located about 600 feet west of Burial Site 4. It was used for fire fighter training.

(e) FRENCH DRAIN AREA - Empty pesticide and herbicide containers were rinsed in this area and the rinsate dumped on the ground.

(f) WESTERN BOUNDARY AREA - This area is not a suspected waste disposal site, but soil gas, soil and groundwater sampling were done in this area to determine whether hazardous substances were migrating off the boundaries of DDOU. Initial groundwater monitoring indicated no offsite migration was occurring from the western boundary.

7. During 1985, a Water Quality Engineering Stream Monitoring Survey was made of Mill Creek and Four Mile Creek which traverse DDOU. The survey showed that VOCs, pesticides and PCBs were not present in detectable concentrations in surface samples except for 4,4-DDD.

8. In June 1986, DLA, EPA and the UDOH entered into a Memorandum of Agreement for DLA to undertake an RI/FS at DDOU under the Installation Restoration Program. A Technical Review Committee composed of DDOU, UDOH, EPA and local officials was established in 1987.

9. In May of 1988, at the instance of DLA, the Army Technical Escort Team removed a variety of hazardous substances from Burial Site 3. These items were removed to an offsite location.

10. A Draft RI Phase 1 report dated June 1989 was completed by a DLA/Army Corps of Engineer contractor and provided to EPA Region VIII and to UDOH.

11. Currently, there are four OUs and nine contamination screening sites (CSSs) scheduled for investigation under the RI/FS. The following is a brief description of the four OUs and the nine CSSs:

(a) Operable Unit 1:

Burial Site 1. Burial Site 1 located adjacent to the southwest corner of DDOU is the only disposal site included in this phase of the site characterization investigation which lies outside the existing DDOU property boundaries. The site, which is currently owned by the City of Ogden, occupies approximately nine acres. It is bounded by DDOU fences on the north and east sides, by Mill Creek to the south, and by 1200 West Street to the west. The land within Burial Site 1 is currently undeveloped and unused. Vegetation generally consists of low weeds and grasses except for the southern portion where a dense growth of trees and brush exists. A small footbridge crosses Mill Creek at the south boundary of the site, providing public access to the area.

The property immediately south of Burial Site 1 is also undeveloped, except for a picnic area just off the southeast corner adjacent to Mill Creek. The Internal Revenue Service parking areas and buildings lie approximately 1500 feet farther south. The area west of Burial Site 1 consists of farmland and some homes. The areas adjacent to the site on the north and east are within DDOU property boundaries and are currently undeveloped and used as farmland.

A trench near the center of Burial Site 1 was reported to have been used for the disposal of riot control agent and white smoke in about 1945. Analysis of aerial photos from 1959 to 1985 reveals little concerning the use of this area during those years. However, an aerial photograph taken in 1958 shows a disturbed area near the southwest corner of the site.

In 1985, Environmental Science and Engineering (ESE) performed a series of magnetic surveys to locate buried ferrous materials. Two burial areas were identified: the first was located near the central portion of the site near the backfilled trench, and the second area was along the west margin of the site. Field observations made by ESE during the study reported corroding 55-gallon drums and smaller cannisters present on the ground surface near the center of Burial Site 1 in the vicinity of the backfilled trench. Items buried in areas 3-B and 3-C, rubber boots and water purificaiton tablets, respectively, are also included in Operable Unit 1.

(b) Operable Unit 3:

Burial Site 3. Burial Site 3 occupies approximately 8.5 acres of property near the southwest corner of the DDOU facility just northeast of Burial Site 1. The site is bounded on the west by 17th Street, on the north by Perry Ditch and the railroad tracks, on the east by undeveloped open land, and on the south by open land and several protective storage igloos.

Burial Site 3 contains three separate disposal areas designated 3-A, 3-B and 3-C, as shown in Figure 1-2. Area 3-A, which lies near the center of Burial Site 3, is approximately 150 feet square and bounded by chain link fencing. Area 3-B lies west of 17th Street and is approximately 100 feet square. Area

3-C is roughly 75 feet square and lies near the intersection of 17th Street and Perry Ditch in the northeast site corner. The land surface of Burial Site 3 is undeveloped, although it is currently used as a horse pasture. Vegetation in this area consists of low weeds and grasses. Because Area 3-A is isolated by fences, the weeds and grasses which cover it have grown to a height of several feet.

Materials reported to have been buried in area 3-A include mustard gas, phosgene gas, methyl bromide and chemical identification kits. Analysis of aerial photographs suggests activity in Area 3-A took place during a period from the early 1950s through the mid-1960s.

(c) Operable Unit 4:

Burial Site 4. Burial Site 4 occupies approximately 11.25 acres along the northern property boundary of DDOU adjacent to U.S. Army Reserve property to the north and the Weber County Fairgrounds to the east. Five disposal areas, designated 4-A through 4-E, have been identified within Burial Site 4 (Figure 1-2). Area 4-A lies near the northwest corner of Burial Site 4 and consists of two burning pits surrounded by an airfield mat fence; a third burning area is located just north of this fence. Area 4-B lies adjacent to the north central border of Burial Site 4, area 4-C lies near the center of Burial Site 4, and area 4-D lies in the southwest corner of Burial Site 4. Area 4-E is an oil holding pit located about 120 feet west of the northwest corner of Burial Site 4. Area 4-E is an oil holding pit located about 120 feet west of the northwest corner of Burial Site 4.

Burial Site 4 is bounded by 12th Street and 9th Street along its west and east margins, respectively, and by railroad tracks and an open area along its south and north margins, respectively. The land is currently open and unused on all sides and vegetation consists of weeds and grasses, with the exception of the west side where the vegetation has been cleared for a now-vacant storage area. In the past, fluorescent tubes, methyl bromide and other solid wastes have been disposed of at Burial Siter 4. Reportedly, waste oils and solid materials were burned in open trenches at Area 4-A. Analysis of aerial photographs reveals that activity in Area 4-A began during the early 1960s and continued through the late 1970s. Fluorescent tubes were reportedly buried at Area 4-B. Aerial photographs reveal activity in this area began in the early 1950s and continued through the late 1970s. Area 4-C was operated as a sanitary landfill from 1969 to 1972 to bury cans of jelly and jam. Methyl bromide cylinders were reported to have been disposed of in Area 4-D, and activity in this area is believed to have begun during the mid-1940s and continued through the mid-1960s. Area 4-E was an oil holding pit from the mid-1950s to the mid-1960s.

The oil burning pits are located approximately 600 feet west of Burial Site 4. The pits were used in the past for fire fighting training by the DDOU Fire Department. The oil burning pits are considered a part of Burial Site 4 for the purposes of this report.

Historical aerial photographs of the oil burning pits showed no signs of activity. However, according to information supplied by DDOU personnel, the

oil burning pits were used for fire fighting training by DDOU personnel between 1941 and 1965.

Plain City Canal and the Parade Grounds area are also included in this operable unit.

(d) Operable Unit 2:

French Drain Area. The French Drain occupies a small area just north of Building 23. The French Drain has dimensions of about 6 x 9 feet at the surface and is covered by what appears to be a series of railroad rails spaced about three inches apart. The French Drain is contained within an asphalt parking and storage area.

Disposal activity at the French Drain is believed to have commenced during the early 1970s and continued until at least 1980. It is reported that empty pesticide and herbicide containers were rinsed and the rinsate was discharged into the French Drain. Since the French Drain is not tied to any sewer lines, it is assumed that the rinsate percolated into the ground.

Pesticide Storage. Pesticide storage has been identified as part of the operable unit that includes the French Drain area. Investigation of the area began in 1980 with the installation of four monitoring wells. This unit was also investigated in 1985 during the Geohydrological Investigation (ESE, 1986). The RI/FS will continue to address this location.

(e) Contamination Screening Sites:

(1) DDT Storage. Building 5X was used to store DDT when DDOU became the collection point for DDT storage for western states after EPA banned its use. The storage areas were regularly checked for damaged or leaking containers and all damaged containers were recontainerized in 55-gallon drums.

(2) DDT and Hazardous Chemical Storage. Building 4X was used to store DDT, acids, bases and solvents. DDT was managed in this building under the same procedures as in building 5X.

(3) Hazardous Chemical Storage. Building 275 is used for chemical storage under procedures similar to buildings 4X and 5X.

(4) Vaulted Leaking Transformers. This site included several different locations where a total of forty vault-enclosed transformers showed signs of light seeping or leaking. The transformers, containing Pyranol oil composed of polychlorinated biphenyls (PCBs) were replaced, and seepage on the vaults was cleaned up. The PCB transformers and residue was then disposed of in 1982 and 1983. The vaults presently contain serviceable transformers which show no signs of seepage or leakage.

(5) Transformer Storage. Leaking transformers removed from the vaults were held in Building 11B-2 prior to disposal by the Defense Property Disposal Office. The transformers were stored in metal pans in order

to catch any leaking oils.

(6) Nonvaulted Leaking Transformers. Eleven leaking transformers, mounted on racks in four areas, were found to be filled with Pyronal PCB oil. These leaking PCB transformers had contaminated the mounting racks and surface soil beneath them. The transformers, mounting racks and contaminated soil were removed and disposed of in 1982 and 1983 and new transformers and mounting racks were installed.

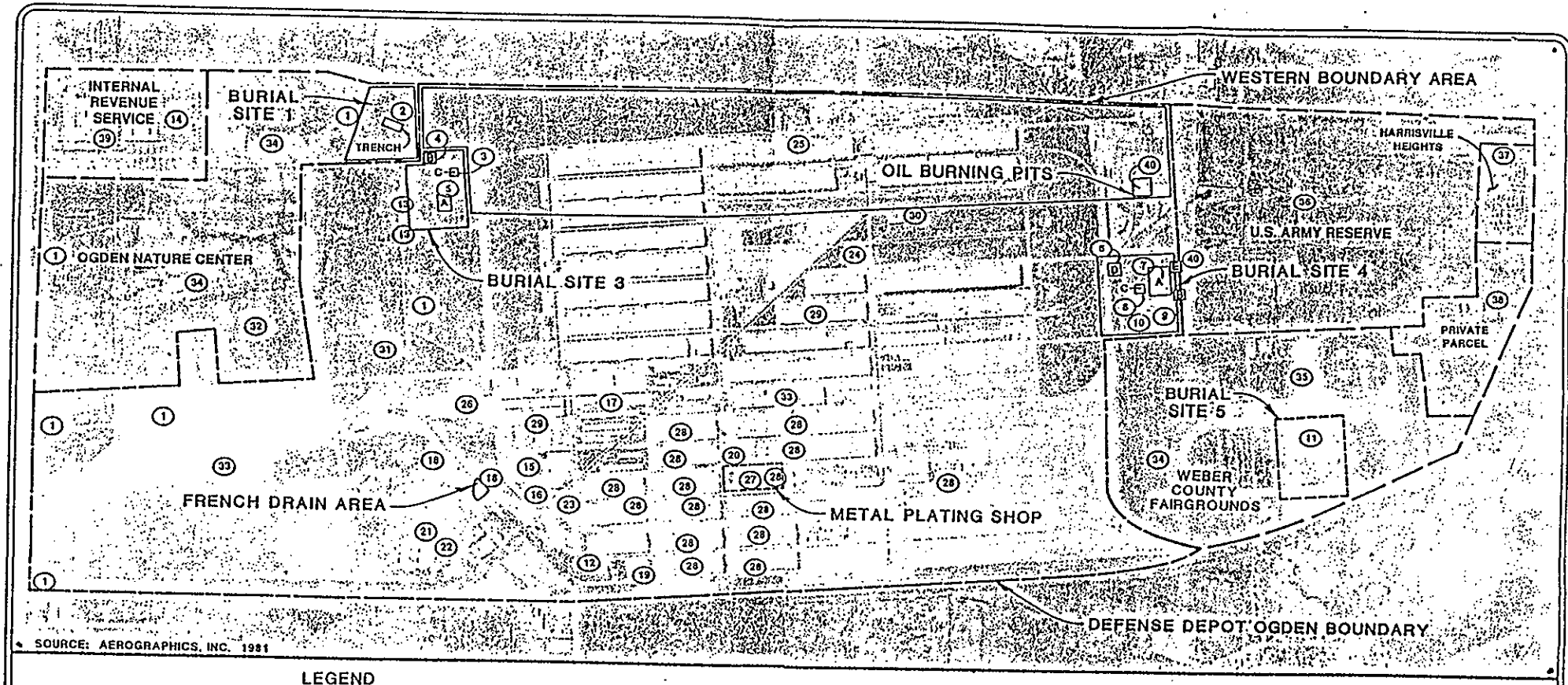
(7) Pistol Range and Old Skeet Range. The pistol and skeet ranges have never had extensive use and the spent cartridges from both ranges and the lead from the pistol range have always been cleaned up and turned in to the Defense Property Disposal Office.

(8) World War II Mustard Storage Area. Over one million pounds of mustard gas was stored in one-ton containers in the igloo area near Building 118 from 1942 to 1946. Chemical agent identification (I.D.) sets were also stored in this area. No problems were reported with storage of the one-ton containers. However, several substandard containers of the chemical agent I.D. sets were received and immediately disposed of in Burial Site 3. The storage area is being considered as part of the Burial Site 3 operable unit because the two sites are adjacent and materials from the storage area were disposed of in Burial Site 3.

(9) Western Boundary Area. The western boundary occupies a strip measuring approximately 7,000 feet along the western property boundary of the DDOU facility. Tomlinson Road extends in a north-south direction and lies just outside the entire western margin of the western boundary area.

Most of the land along the western boundary is currently covered with grass, although a large parking area exists just north of the west gate. These areas, excluding the parking lot, are currently undeveloped. Off-depot areas west of Tomlinson Road are currently used as farm and grazing lands, although several homes also exist in this area. There are no known disposal sites along the western boundary, excluding Site 1 at the far south end and the Oil Burning Pits Site at the north end. Since groundwater flow is generally to the west, the western boundary area will be investigated further to determine the potential for offsite migration of contamination.

12. Additional OUs and CSSs may be added to the attached RI/FS workplan if data support such additions.


INTERNAL REVENUE SERVICE
BURIAL SITE 1
TRENCH
WESTERN BOUNDARY AREA
HARRISVILLE HEIGHTS
OIL BURNING PITS
U.S. ARMY RESERVE
OGDEN NATURE CENTER
BURIAL SITE 3
BURIAL SITE 4
PRIVATE PARCEL
BURIAL SITE 5
WEBER COUNTY FAIRGROUNDS
FRENCH DRAIN AREA
METAL PLATING SHOP
DEFENSE DEPOT OGDEN BOUNDARY
SOURCE: AEROGRAPHICS, INC. 1981
LEGEND
PAST DISPOSAL SITES NOT INCLUDED IN THIS STUDY
REMEDIAL INVESTIGATION SITES
DDOU SITE AS IDENTIFIED IN USATHAMA (1980)
SEE TABLE 1-1 FOR EXPLANATION AND CURRENT STATUS OF EACH SITE
0 500 1000
SCALE IN FEET
James M Montgomery
Consulting Engineers Inc.
DDOU SITE
LOCATION MAP
FIGURE 1-2

ATTACHMENT C

Completed Documents

The following is a list of those documents which have been completed prior to the effective date of this agreement:

1. Phase 1 Remedial Investigation Report.

2. Site Characterization Summary.

3. Summary of Identified Chemicals and List of Proposed Indicator Chemicals.

4. Memorandum on Exposure Scenarios and Fate and Transport Models.

5. Memorandum on Toxicological and Epidemiological Studies.

********** END OF AGREEMENT **********