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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V
AND THE
MINNESOTA POLLUTION CONTROL AGENCY

IN THE MATTER OF:	)	
The U.S. Department of Defense's Twin Cities Army Ammunition Plant, Arden Hills, Minnesota and Impacted Environs	)	FEDERAL FACILITY AGREEMENT UNDER CERCLA SECTION 120
	)	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 hereto agree and it is hereby agreed as follows:

I.

Jurisdiction

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

(i) The U.S. Environmental Protection Agency (U.S. EPA), Region V, 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. §9620(e)(1), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499 (hereinafter jointly referred to as CERCLA/SARA) and the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 et seq;

(ii) U.S. EPA, Region V, enters into those portions of this Agreement that relate to interim remedial actions and final

remedial actions pursuant to Section 120(e)(2) of CERCLA/SARA and RCRA;

(iii) the Army enters into those portions of this Agreement that relate to the RI/FS pursuant to Section 120(e)(1) of CERCLA, RCRA, the Defense Environmental Restoration Program (DERP), 10 U.S.C. §2701 et seq., and Executive Order 12580;

(iv) the Army enters into those portions of this Agreement that relate to interim remedial actions and final remedial actions pursuant to Section 120(e)(2) of CERCLA/SARA, RCRA, DERP and Executive Order 12580.

(v) the Minnesota Pollution Control Agency (MPCA) enters into this Agreement pursuant to CERCLA/SARA, RCRA, and Minnesota Stats., chs. 115, 115B, and 116.

Pursuant to Section 120(a) of CERCLA/SARA, the Army agrees that it is bound by this Agreement and that its terms may be enforced against it pursuant to Part XXXVII of this Agreement.

II.

U.S. EPA AND MPCA DETERMINATIONS

A. On the basis of the results of the testing and analyses described in the Statement of Facts, infra, and U.S. EPA and MPCA files and records, the U.S. EPA and the MPCA have determined that:

(1) the Twin Cities Army Ammunition Plant (TCAAP) located at Arden Hills, Minnesota constitutes a facility within the meaning of 42 U.S.C. §9601(9) and Minn. Stat. §115B.02, subd. 5;

(2) hazardous substances, pollutants or contaminants within

the meaning of 42 U.S.C. §§9601 (14) and (33) and 9604 (a)(2) and Minn. Stat. §115B.02, subds. 8, 9 and 13, have been disposed of at TCAAP;

(3) there have been releases and there continue to be releases and threatened releases of hazardous substances, pollutants or contaminants into the environment within the meaning of 42 U.S.C. §§9601 (22), 9604, 9606 and 9607 and Minn. Stat. §115B.02, subd. 15, at and from TCAAP;

(4) with respect to those releases and threatened releases, U.S. Army is a responsible person within the meaning of 42 U.S.C. §9607 and Minn. Stat. §§115B.03, 115B.17 and 115B.18;

(5) the actions to be taken pursuant to this Agreement are reasonable and necessary to protect the public health or welfare or the environment; and

(6) a reasonable time for beginning and/or completing the actions required by this Agreement has been provided.

The U.S. EPA and MPCA have determined that the Submittals, actions, and other elements of work required by this Agreement are necessary to protect the public health and welfare, and the environment.

B. The U.S. EPA and MPCA have also determined that:

(1) TCAAP includes certain facilities authorized to operate under Section 3005(a) of RCRA, 42 U.S.C. §6925(a);

(2) TCAAP as shown on Attachment 1A constitutes a facility within the meaning of Section 3004 of RCRA, 42 U.S.C. §6924 and Minnesota Rules Part 7045. 0020, Subp. 24;

(3) The U.S. Army is the owner of the TCAAP facility.

III.

Parties

The Parties to this Agreement are the U.S. EPA, MPCA and the Army. The terms of this Agreement shall apply to and be binding upon the U.S. EPA, the MPCA, their agents, employees and response action contractors for the Site and the Army, its agents, employees, response action contractors for the Site and all subsequent owners, operators and lessees of TCAAP. The Army will notify U.S. EPA and MPCA of the identity and assigned tasks of each of its contractors performing work under this Agreement upon their selection. This Agreement shall be enforceable against all of the foregoing via the Parties to this Agreement. This Part shall not be construed as an agreement to indemnify any person. The Army shall notify its agents, employees, response action contractors for the Site, and all subsequent owners, operators and lessees of TCAAP of the existence of this Part. Each undersigned representative of a Party certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement.

IV.

Definitions

Except as noted below or otherwise explicitly stated, the definitions provided in CERCLA and SARA shall control the meaning of the terms used in this Agreement.

In addition:

A. "Authorized representative" may include a Party's

contractors acting in any capacity, including an advisory capacity.

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

C. "Consistency Test" shall mean a review by U.S. EPA and MPCA to determine whether an activity or element of work undertaken or performed pursuant to this Agreement including a document, Submittal, contract or action developed or taken pursuant to this Agreement meets all appropriate procedural and substantive objectives, standards and requirements set forth pursuant to promulgated State laws and regulations, CERCLA/SARA, the National Contingency Plan (NCP), RCRA, U.S. EPA guidelines, regulations, rules, criteria, national Superfund policy and Superfund practices in effect at the time of performance of the activity or element of work. These standards shall be applied by U.S. EPA and MPCA in the same manner and to the same extent that such standards are applied to any nongovernmental entity or facility.

D. "Days" shall mean calendar days, unless business days are specified. Any Submittal, Written Notice of Position or written statement of dispute that under the terms of this Agreement would be due on a Saturday, Sunday or holiday shall be due on the following business day.

E. "Determination of Consistency" or "passing the Consistency Test" shall mean that an item subjected to the Consistency Test meets or exceeds the standards applied pursuant to such Test.

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

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

H. "Interim Remedial Actions" or "IRA" shall mean all discrete response actions implemented prior to a final remedial action which are consistent with the final remedial action and which are taken to prevent or minimize the release of hazardous substances, pollutants or contaminants so that they do not migrate or endanger public health, welfare or the environment. All interim remedial actions shall be undertaken in accordance with 40 CFR Part 300.68 and with the requirements of CERCLA/SARA.

I. " MPCA" shall mean the Minnesota Pollution Control Agency, its employees and authorized representatives.

J. "Remedial Investigation" or "RI" means that investigation conducted to fully determine the nature and extent of the release or threat of release of hazardous substances, pollutants or

contaminants and to gather necessary data to support the feasibility study and endangerment assessment (to be conducted by U.S. EPA).

K. "RCRA" shall mean the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984, Pub. L. 98-616.

L. "Site" shall include TCAAP and any other areas contaminated by the migration of a hazardous substance, pollutant or contaminant from TCAAP as discussed in Part V of this Agreement. The term shall have the same meaning as "facility" as defined by Section 101(9) of CERCLA/SARA, 42 U.S.C. §9601(9).

M. "Submittal" shall mean every document, report, schedule, deliverable, work plan or other item to be submitted to U.S. EPA or MPCA pursuant to this Agreement.

N. "TCAAP" shall mean the Twin Cities Army Ammunition Plant located in Ramsey County in Minnesota, including all Areas identified in Attachment 1A.

O. "timetables and deadlines" shall mean schedules as well as that work and those actions which are to be completed and performed in conjunction with such schedules (including performance of actions established pursuant to the dispute resolution procedures set forth in Part XV of this Agreement).

P. " U.S. Army" or "Army" shall mean the U.S. Army, its employees, contractors, agents, successors, assigns and authorized

representatives as well as the 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.

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

R. "Written Notice of Position" shall mean a written statement by a Party of its position with respect to any matter which any other Party may dispute pursuant to Part XV of this Agreement.

V.

Site

For the purposes of this Agreement, the approximately twenty-five (25) square mile area where ground water is contaminated by volatile organic compounds (VOC) as identified on Attachment 1, shall constitute the Twin Cities Army Ammunition Plant/New Brighton/ Arden Hills/St. Anthony Area Site (hereafter referred to as the Site). The U.S. EPA and the MPCA Director may change the Site designation on the basis of additional investigations including the Phase 1A study performed by U.S. EPA and the MPCA, and the Site Remedial Investigation performed by the Army, as described in Part X below and Attachment 3, to more accurately reflect the areas contaminated by VOCs, other hazardous substances, pollutants or contaminants, or radiological wastes related in whole or in any part to the TCAAP. The work

to be performed under this Agreement will conform to the definition of the Site as established by the U.S. EPA and the MPCA Director.

TCAAP lies within the boundaries of the current Site. TCAAP is approximately four (4) square miles in area and is located in T30N, R23W, Sections 9, 10, 15 and 16, Ramsey County, Minnesota (see Attachment 1).

VI.

Purpose

A. The general purposes of this Agreement are to:

(1) ensure that the environmental impacts associated with past and present activities at the TCAAP are thoroughly investigated and appropriate remedial action taken as necessary to protect the public health, welfare and the environment;

(2) establish a procedural framework and schedule for developing, implementing and monitoring appropriate response actions at the Site in accordance with CERCLA/SARA, the NCP, Superfund guidance and policy, RCRA, RCRA guidance and policy; and,

(3) facilitate cooperation, exchange of information and participation of the Parties in such actions.

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

(1) Identify Interim Remedial Action (IRA) alternatives which are appropriate to prevent the further migration of contaminated groundwater prior to the implementation of final remedial action(s) for the Site. IRA alternatives shall be

identified and proposed to the Parties as early as possible prior to final selection of IRAs by U.S. EPA pursuant to CERCLA/SARA. This process is designed to promote cooperation among the Parties in identifying IRA alternatives prior to selection of final IRAs by U.S. EPA.

(2) Establish requirements for the performance of an on TCAAP 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 TCAAP and to establish requirements for the performance of a FS for the Site to identify, evaluate, and select alternatives for the appropriate remedial action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants or contaminants at the Site in accordance with CERCLA/SARA.

(3) Identify the nature, objective and schedule of response actions to be taken at the Site. Response actions at the Site shall attain that degree of clean up of hazardous substances, pollutants or contaminants mandated by CERCLA/SARA.

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

(5) Assure compliance with federal and state hazardous waste laws and regulations for matters covered by this Agreement.

The Parties recognize that on-going operations at TCAAP require the issuance of permits under Section 3005 of RCRA, 42 U.S.C. §6925, and federal hazardous waste regulations

found at 40 CFR Parts 260 through 271, and under Minn. Stat. §116.07, Subd. 4b, Section 116.081, and Minn. Rules Chapters 7001 and 7045. This Agreement does not affect the requirement to obtain federal and state hazardous waste permits for activities at TCAAP unrelated to this Agreement. However, the Parties do intend that actions conducted in accordance with this Agreement will be deemed to satisfy the currently promulgated corrective action requirements of Section 3004(u) and (v) of RCRA, 42 U.S.C. §6924(u) and (v), for a RCRA permit, and Section 3008(h), 42 U.S.C. §6928(h), for interim status facilities and requirements of State law. The above-mentioned requirements and any other promulgated corrective action requirements that are in effect at the time of selection of remedial action shall be considered ARARs in accordance with §121 of CERCLA/SARA. At the time a permit is issued to the Army for on-going hazardous waste management activities at the TCAAP, U.S. EPA and the MPCA Director shall reference and incorporate any appropriate provisions, including appropriate schedules and deadlines (and the provision for extension of such schedules and deadlines), of this Agreement into such permit. The Parties intend that the review of any permit conditions which reference this Agreement shall, to the extent authorized by law, only be reviewed under the provisions of CERCLA/SARA.

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

VII.

Determination of Facts

For purposes of this Agreement, the following constitutes a summary of the facts upon which this Agreement is based. None of the facts related herein shall be considered admissions by any Party. This Part contains a determination of facts, determined solely by the U.S. EPA and MPCA, and shall not be used by any person related or unrelated to this Agreement for purposes other than determining the basis of this Agreement.

1. The United States acquired approximately four (4) square miles of farmland and commenced construction of the TCAAP in 1941. TCAAP has operated consistently since 1942, mainly for arms manufacture.

2. Eighteen (18) inch and twenty-four (24) inch forcemain sewer lines connect TCAAP to the Minneapolis sewer system. The lines carry both TCAAP industrial and domestic wastes. A thirty-six (36) inch overflow line connects TCAAP to nearby Round Lake as an alternative to discharge to Rice Creek during forcemain breakdown periods.

3. Federal-Hoffman, Inc., previously known as Federal Cartridge Corporation (hereafter referred to as FCC), has operated the TCAAP facility under contract with the Army for most of the forty-six (46) years of the TCAAP existence and has also been engaged in production activities for part of this time period.

4. Numerous companies and government entities, including Honeywell, Inc., have leased or otherwise arranged for use of facilities at TCAAP. Production has been facilitated through commercial and defense contracts. Some or all of the production, storage and/or disposal activities have caused or are contributing to the releases and threatened releases of hazardous substances, pollutants and contaminants at the Site.

5. In 1978, as part of the DOD's Installation and Restoration Assessment Program, the U.S. Army Toxic Hazardous Materials Agency prepared a report entitled Installation Assessment of Twin Cities Army Ammunition Plant, Report No. 129 (hereinafter "Report 129"). The report detailed extensive waste disposal activities and use of radioactive materials at TCAAP. The report indicated present or past use of at least fifteen (15) areas on TCAAP used for the disposal of waste solvents, acids, caustics, heavy metals and other production wastes.

6. A copy of Report 129 was received and reviewed by MPCA staff in May, 1981 and as a result, MPCA staff conducted volatile organic compound (VOC) and metal sampling activities. Subsequent analysis of those samples by the Minnesota Department of Health (MDH) Environmental Health Lab indicated production wells at TCAAP, the Arden Manor Trailer Park well in Arden Hills, and a number of residential wells in Arden Hills, Shoreview, and New Brighton were contaminated with VOCs.

7. As a result of MPCA requests to the Army and others, the Army proceeded with a preliminary Phase I investigation of the hydrologic, geologic and contaminant conditions at TCAAP.

FCC assisted in this activity.

8. Later MPCA and MDH staff sampling and MDH lab analysis of New Brighton and St. Anthony municipal wells and New Brighton rendering plant wells located southwest of TCAAP also showed the wells to be contaminated by VOC's. The MDH deemed the VOC contaminant levels in the municipal wells, using EPA guidance documents, to be chronically toxic in most wells and acutely toxic in several others.

9. The MDH recommended that a number of Arden Hills/New Brighton residents, the operators/owners of TCAAP, the Arden Manor Trailer Park, New Brighton/St. Anthony municipalities, and the New Brighton rendering plants with VOC-contaminated ground water find alternate drinking water supplies.

10. The Army provided bottled water to several Arden Hills residents with contaminated water supplies beginning in 1983. In addition, the Army reimbursed the Arden Manor Trailer Park for costs related to replacing the Trailer Park's contaminated wells with an acceptable water supply.

11. As a result of the VOC contaminated ground water (a) the city of New Brighton abandoned several municipal wells, and either placed on standby or deepened several others, (b) the city of St. Anthony closed down one well and connected a portion of the city with Roseville water supplies through U.S. EPA/MPCA funds; (c) a number of Arden Hills/New Brighton residents with VOC-contaminated wells were provided municipal water through construction of a U.S. EPA/MPCA funded watermain extension and (d) a New Brighton residence was provided MPCA Superfund dollars

for connection to the New Brighton municipal water supply.

12. Honeywell, Inc., a TCAAP lessee since 1958, initiated environmental investigations relative to hydrology, geology and contaminant conditions at TCAAP Buildings 103 and 502.

13. In 1982 the area-wide VOC contaminant problem was included on the U.S. EPA's National Priorities List.

14. In 1983 the U.S. EPA issued Notice Letters to the Army and several other potential responsible parties requesting their investigation of VOC contaminated groundwater in the Arden Hills/ New Brighton area. The requests were declined.

15. Beginning in 1981, the MPCA requested U.S. EPA Superfund monies to fund a Remedial Investigation (RI) and Initial Remedial Measures for the area-wide VOC contaminant problem to determine any sources of VOC release or threatened release in the area. In June 1983 the U.S. EPA approved a 1.46 million dollar two-phased State-lead RI.

16. On June 28, 1983, the MPCA Board, pursuant to ERLA, issued the Army, FCC and Honeywell, Inc. a Request for Response Action (RFRA) requesting that they, as responsible parties, conduct an adequate RI of the hazardous waste disposal areas and VOC contaminated ground water at TCAAP. On October 25, 1983, the MPCA Board issued an Amended RFRA to the Army and FCC clarifying responsibilities and schedules for the TCAAP RI. Honeywell, Inc. was issued the same Amended RFRA on January 24, 1984.

17. Army submittals of investigations and studies at the TCAAP (Phase I, II and III) in 1983 and 1984 identified major

and minor disposal areas on-TCAAP that were sources of release or threatened release of hazardous substances (mainly VOCs). MPCA and U.S. EPA review of the reports noted inadequate investigations and studies, the need to address the extent and magnitude of contaminated groundwater and the need to complete an assessment of the disposal areas identified on TCAAP.

18. In 1984 and 1985 Honeywell, Inc. submitted (through the Army) investigative reports related mainly to VOC contamination at Honeywell-leased TCAAP Buildings 103 and 502 indicating the Buildings' operations were a source of VOC contaminated ground-water migrating towards (a) Rice Creek from Building 103 and (b) to the west or southwest from the Building 502 area.

19. Honeywell, Inc. announced, on July 28, 1984, a 3-phase off-TCAAP investigation to supplement the work being conducted by the MPCA to identify sources of release off-TCAAP.

20. On February 26, 1985, the MPCA Board issued a Second Amended RFRA to the Army, FCC and Honeywell recognizing investigative and study activities undertaken by Honeywell at TCAAP Buildings 103 and 502 and requesting completion of those activities and implementation of appropriate response actions at those buildings.

21. On April 23, 1985, the MPCA Board issued a Third Amended RFRA to the Army, FCC and Honeywell, Inc. requesting adequate and timely completion of the Army's Phase II and III activities to address the past hazardous waste disposal activities at TCAAP.

22. On May 28, 1985, the MPCA released the Phase I Report by Camp Dresser & McKee, entitled New Brighton/Arden Hills, Minnesota Multi-Point Source Remedial Investigation. The Report identified four potential source areas of release of VOCs in the study area that could have contaminated the area ground water. The source areas included two areas on-TCAAP and two areas adjacent to TCAAP. Phase IA RI activities were under taken beginning in July, 1986, to further identify or screen out potential disposal areas within the source areas outside of TCAAP. Completion of the Phase 1A RI is expected in January, 1988.

23. In the Spring of 1985, the U.S. EPA initiated an investigation of the forcemains off-TCAAP since a number of documented breaks had occurred in the line in the study area and because VOCs and other hazardous wastes and metals had been found in the sewer sediments on-TCAAP.

24. On June 6, 1985, the Army announced a plan to begin addressing ground water contamination found on TCAAP. The plan included a proposed ground water pump out and treatment system to address TCAAP ground water contaminated by VOCs. The plan also identified Honeywell as the coordinator of the TCAAP groundwater clean up efforts.

25. On July 7, 1985, the U.S. Department of Justice, the Army and Honeywell, Inc. executed an agreement that included recognition of Honeywell's off-TCAAP investigations and required Honeywell's off-TCAAP investigations to be coordinated with studies by the MPCA and the U.S. EPA.

26. During the Summer and Fall of 1985, Honeywell constructed a passive ground water collection system at TCAAP Building 103 for later discharge to TCAAP's forcemain.

27. In October, 1985 Honeywell, Inc. submitted its Phase I off-TCAAP RI report indicating two VOC contaminated groundwater plumes were leaving TCAAP. Additional Phase I work was also proposed.

28. On January 14, 1986, the U.S. EPA asked the Army to participate in the Twin Cities Army Ammunition Plant/New Brighton/Arden Hills/St. Anthony Site studies since the TCAAP facility was a major source of the regional VOC contaminated ground water.

29. The U.S. EPA and the MPCA attempted to negotiate the terms of a Federal Facilities Compliance Agreement with the Army in the Spring of 1986. The negotiations were continued, pending the reauthorization of CERCLA and the guidance it would provide the Parties. In the meanwhile, the Army pledged to make TCAAP environmentally sound by May, 1987.

30. On August 22, 1986, the MPCA issued a Notice of Violation (NOV) to the Army and FCC for RCRA related violations at the TCAAP facility.

31. On August 26, 1986, the MPCA Board issued a Fourth Amended RFRA to the Army, FCC and Honeywell requesting they complete all site investigations and interim response actions on TCAAP, and that they conduct a Site Feasibility Study, a Site Remedial Design and implement necessary Site Response Actions. Their responses to the latest RFRA were determined to

be inadequate by MPCA staff.

32. On October 17, 1986, the Superfund Amendments and Reauthorization Act of 1986 (SARA) was signed into law by President Reagan. Section 120 of SARA specifically applies to federal facilities.

33. On October 5, 1984, the Army submitted a Part A RCRA permit application to the MPCA. In its application the Army described the activities for which it sought Interim Status as disposal activities--"open burning/open detonation." The Army identified itself as "owner" and FCC as "operator." The Army's application identified both TCAAP Sites F and G as the Open Burning Grounds. Honeywell used the open burning/open detonation grounds. The Army's response to the August 22, 1986, NOV listed Honeywell as the burn operator from September, 1983, to August 1, 1985. In addition, the Army listed a FCC safety engineer as being present for each burn.

34. In an amended State Part A RCRA permit application dated August 25, 1985, Honeywell described the activities for which it sought Interim Status for storage and treatment activities at certain specified buildings at TCAAP. In its application, Honeywell identified itself as "operator" and the Army as "owner". Honeywell's Part A application identifies the storage and/or treatment operations conducted in TCAAP Buildings 103, 502, 524A2, 961, 962, 962A, and 962B as the subject of the application.

35. On November 24, 1986, the MPCA Director advised the Army of its obligations under RCRA including its obligations

EPA and MPCA for a Determination of Consistency. Following the Determination of Consistency, the Army shall implement the interim remedial action(s) in a manner which passes the Consistency Test and in accordance with the requirements and time schedules set forth in Attachment 2 to this Agreement. A dispute arising under this Part on any matter other than U.S. EPA's final selection of an interim remedial action shall be resolved pursuant to Part XV.

All Submittals associated with the IRAs shall pass the Consistency Test set forth in Part XIV. All Submittals and elements of work undertaken pursuant to this Part shall be performed in accordance with the requirements and time schedules set forth in Attachment 2 to this Agreement. The IRAs shall meet the purposes set forth in Part VI of this Agreement.

X.

Remedial Investigation

The Army agrees it shall develop, implement and report upon a RI of TCAAP which passes the Consistency Test set forth in Part XIV and which is in accordance with the requirements and time schedules set forth in Attachment 3 to this Agreement. The RI shall meet the purposes set forth in Part VI of this Agreement. The Parties specifically agree that all criteria contained in Attachment 3 of this Agreement relate solely to the scope of the RI and do not reflect a predetermination of the Site clean-up level criteria. The parties further agree that final Site

clean-up level criteria will only be determined following completion of the Site-wide Endangerment Assessment by U.S. EPA.

XI.

Feasibility Study

The Army agrees it shall design, propose, undertake and report upon a FS for the Site which passes the Consistency Test set forth in Part XIV and which is in accordance with the requirements and time schedules set forth in Attachment 3 to this Agreement. The FS shall meet the purposes set forth in Part VI of this Agreement.

XII.

Remedial Action Selection and Implementation

Following completion and a Determination of Consistency by U.S. EPA and MPCA of the RI and the FS, the U.S. Army shall, after consultation with U.S. EPA and MPCA, publish its proposed remedial action alternative(s) for public review and comment. Following public comment, the Army shall submit its proposed remedial action alternative(s) to U.S. EPA and MPCA. The U.S. EPA Administrator, in consultation with the Army and MPCA, shall make final selection of the remedial action(s) for the Site. The final selection of the remedial action(s) by the U.S. EPA Administrator shall be final and not subject to dispute by the Army. Following final selection by U.S. EPA, the Army shall design, propose and submit a plan for implementation of the selected remedial action, including appropriate timetables and schedules, to U.S. EPA and MPCA for a Determination of

Consistency. Following the Determination of Consistency, the Army shall implement the remedial action(s) in a manner which passes the Consistency Test and in accordance with the requirements and time schedules set forth in Attachment 5 to this Agreement. A dispute arising under this Part on any matter other than U.S. EPA's final selection of a remedial action shall be resolved pursuant to Part XV.

The purpose of the plan for remedial action is to establish procedures for implementation of selected response actions.

XIII.

Closure Requirements

The Army shall comply with closure requirements under the authorized State hazardous waste rules for sites D and F at TCAAP in accordance with the requirements and time schedules set forth in Attachment 6. Site G at TCAAP shall be closed in accordance with these rules, requirements, and time schedules unless the Army provides and MPCA approves certifications establishing that Site G is not subject to RCRA closure. Closure under this Part shall be regulated by the MPCA and shall not be subject to the Consistency Test of Part XIV or to the Dispute Resolution provision of Part XV.

The MPCA's closure requirements with respect to sites D, F and G may include source control measures such as capping, soil decontamination, and soil removal. Groundwater contamination from sites D, F, and G is intended to be addressed by the RI/FS,

intended to be remedied by the CERCLA/SARA processes established under this Agreement, and shall not be the subject of RCRA closure. The Army retains its rights to resolve disputes which arise over application of MPCA closure requirements in accordance with RCRA and State law.

XIV.

Review and Determination of Consistency of Submittals

The review of each submittal, document, report, or schedule (collectively referred to hereafter as "Submittal") which is required to be submitted to and reviewed by the U.S. EPA and the MPCA Director shall be as follows:

A. U.S. EPA and the MPCA Director shall review each Submittal made by the Army as required by this Agreement within forty (40) calendar days of receipt and notify the Army in writing by the forty-first (41) calendar day, or the first business day thereafter, of the results of the Consistency Test with respect to the Submittal. Certain complex Submittals, such as quality assurance project plans, may require a longer time for review, in which event the U.S. EPA and MPCA Director shall notify the Army of that fact. In the event that the Submittal passes the Consistency Test, it shall become an integral and enforceable part of this Agreement. In the event the Submittal fails the Consistency Test, in whole or part, the U.S. EPA and MPCA Director shall notify the Army, shall state the reasons therefor, and shall, as appropriate, recommend modification of the Submittal.

B. Within thirty (30) calendar days of receipt of any notice of a determination of failure of the Consistency Test, or on the first business day thereafter, the Army shall either submit revisions to U.S. EPA and MPCA or provide U.S. EPA and MPCA with a written statement of a dispute pursuant to Part XV, Subpart A.

C. If the Army submits a revised Submittal pursuant to Paragraph B above, U.S. EPA and MPCA shall re-review the revised Submittal within thirty (30) days of receipt. If the revised Submittal is also found to fail the Consistency Test, U.S. EPA and MPCA shall notify the Army of the results of its Consistency Test and shall either recommend additional modification of the Submittal or provide the Army with a Written Notice of Position. Any dispute of this Written Notice of Position shall be submitted within fifteen (15) days and such dispute shall go directly to the Dispute Resolution Committee established pursuant to Part XV of this Agreement.

D. In the event that the Army receives notice of a determination of failure of the Consistency Test and request for additional modification of the Submittal pursuant to Subpart C, within fifteen (15) calendar days of receipt of such notice and request, or on the first business day thereafter, the Army shall submit revisions to U.S. EPA and MPCA conforming with the modifications requested pursuant to Subpart C, or provide a written statement of a dispute pursuant to Part XV.

E. If, following revisions by the Army pursuant to Subpart D above, the Submittal still fails the Consistency Test, U.S. EPA and MPCA may either make those changes necessary for the Submittal to pass the Consistency Test or provide the Army with a Written Notice of Position. Any dispute of the changes or of the Written Notice of Position shall be submitted within fifteen (15) days and such dispute shall go directly to the Dispute Resolution Committee established pursuant to Part XV of this Agreement.

F. If dispute resolution is sought pursuant to a disagreement under this Part, within fourteen (14) days of resolution of the dispute pursuant to Part XV the Army shall provide any final Submittal which may be required to reflect the final resolution of such dispute. If the Army does not dispute the changes made by U.S. EPA and MPCA, they become integral and enforceable terms of this Agreement which shall be implemented by the Army.

G. All Submittals, revisions or modifications thereto, and all elements of work, shall be of a quality sufficient to pass the Consistency Test.

H. The U.S. EPA, the MPCA Director and the Army shall provide the opportunity to consult with each other during the review of Submittals or modifications.

I. No work or work element related to an item failing the Consistency Test may proceed until after a Determination of Consistency has been made. A work or work element for which a

Determination of Consistency has been made, or any work or work element unrelated to an item failing the Consistency Test, shall not be stopped as a result of the failure of any unrelated item to pass the Consistency Test.

J. If U.S. EPA and MPCA disagree with respect to a Determination of Consistency, such disagreement constitutes a dispute which may be raised by any Party.

XV.

Resolution of Disputes

Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement the procedures of this Part shall apply. In addition, during the pendency of any dispute, the Army agrees that it shall continue to implement those portions of this Agreement which are not in dispute and which the U.S. EPA and the MPCA Director determine can be reasonably implemented pending final resolution of the issue(s) in dispute. If U.S. EPA and MPCA determine that all or part of those portions of work which are affected by the dispute should stop during the pendency of the dispute, the Army shall discontinue implementing those portions of the work. All Parties to this Agreement agree they shall make reasonable efforts to informally resolve all disputes.

A. The Army shall, within thirty (30) days of any action by U.S. EPA or MPCA which it is disputing, provide the U.S. EPA and the MPCA with a written statement of dispute setting forth the nature of the dispute, the Army's position with respect to

the dispute and the information the Army is relying upon to support its position. If the Army does not provide such written statement to U.S. EPA and MPCA within this thirty (30) day period, the Army shall be deemed to have agreed to the position taken by U.S. EPA.

B. Where U.S. EPA or MPCA issue a Written Notice of Position any other Party which disagrees with the Written Notice of Position may provide the issuing Party a written statement of dispute setting forth its position with respect to the dispute and the information it is relying upon to support its position. If neither other Party provides such a written statement within thirty (30) days of receipt of the Written Notice of Position, they shall be deemed to have agreed with the Written Notice of Position.

C. Upon receipt of the written statement of dispute, U.S. EPA, MPCA and the Army shall engage in dispute resolution among the Project Managers. The Project Managers shall have fourteen (14) days from the receipt by the U.S. EPA and the MPCA Director of the written statement of dispute to resolve the dispute. During this period the Project Managers shall meet as many times as are necessary to discuss and attempt resolution of the dispute. If agreement cannot be reached on any issue within this fourteen (14) day period, any Party may, by written notice, elevate the dispute to the Dispute Resolution Committee (DRC) for resolution. If none of the Parties elevate the dispute to the DRC within this fourteen (14) day period, the position of

U.S. EPA's Project Manager shall be final with respect to resolution of the dispute.

D. The Army, U.S. EPA and MPCA shall each designate one individual and an alternate to serve on the Dispute Resolution Committee (DRC). The individuals designated to serve on the DRC shall be those designated in Subpart E of this Part or their delegate authorized to participate in the DRC on behalf of such designated individual for the purposes of dispute resolution under this Agreement. The DRC will serve as a forum for resolution of disputes for which agreement has not been reached pursuant to Subparts A, B or C of this Part. If all designated members of the DRC do not unanimously agree on a resolution of the dispute within thirty (30) days, any Party may, by written notice to the Parties, refer the matter to the Administrator of U.S. EPA for a final resolution of the dispute. Notwithstanding this Part, the State of Minnesota retains all rights described in Parts XXXI and XXXVII of this Agreement. In the event that the matter is not referred to the Administrator of U.S. EPA within the thirty (30) day period, the position of the U.S. EPA designated member of the DRC shall be final with respect to resolution of the dispute.

E. The U.S. EPA designated member of the DRC is the Waste Management Division Director of Region V. The MPCA designated member is the MPCA Executive Director. The Army designated member is the Deputy for Environmental, Safety and Occupational Health. Notice of any delegation of authority from a Party's

designated member on the DRC shall be provided to all other Parties pursuant to the procedures of Part XX.

F. The pendency of any dispute under this Part shall not affect the Army'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 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 work plan schedule. The determination of elements of work, submittals or actions affected by the dispute shall be determined by U.S. EPA and not subject to dispute under this Part.

G. Within fourteen (14) days of resolution of any dispute, the Army shall incorporate the resolution and final determination into the appropriate plan, schedule or procedures and proceed to implement this Agreement according to the amended plan, schedule or procedures.

H. Resolution of a dispute pursuant to this Part of the Agreement constitutes a final resolution of any dispute arising under this Agreement. The U.S. EPA Administrator shall provide the Army and the MPCA with a written final decision resolving any dispute presented to the U.S. EPA Administrator for resolution pursuant to this Part of this Agreement. The Army shall abide by all terms and conditions of any final resolution of dispute

obtained pursuant to this Part of this Agreement.

XVI.

Additional Work Or Modification To Work

A. In the event that the U.S. EPA or MPCA Director determine that additional work, or modification to work, including remedial investigatory work and/or engineering evaluation, is necessary to accomplish the objectives of this Agreement, notification of such additional work or modification to work shall be provided to the Army. The Army agrees, subject to the dispute resolution procedures set forth in Part XV, to implement any such work.

B. Any additional work or modification to work determined to be necessary by the Army shall be proposed by the Army and will be subject to the Consistency Test in accordance with Part XIV of this Agreement prior to initiating any work or modification to work.

C. Any additional work or modification to work approved pursuant to Subpart A or B shall be completed in accordance with the standards, specifications, and schedule determined or approved by U.S. EPA and the MPCA Director. If any additional work or modification to work will adversely affect work scheduled or will require significant revisions to an approved Work Plan, the U.S. EPA and the MPCA Project Managers shall be notified immediately of the situation followed by a written explanation within five (5) business days of the initial notification.

XVII.

Permits

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

When the Army proposes a response action (including a Work Plan pursuant to this Agreement) to be conducted entirely on TCAAP, which in the absence of § 121(e)(1) of CERCLA/SARA and the NCP would require a federal or state permit, the Army shall include in the Submittal:

(1) Identification of each permit which would otherwise be required;

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

(3) Explanation of how the response action proposed will meet the standards, requirements, criteria or limitations identified in (2) immediately above.

Upon request of the Army, U.S. EPA and the MPCA will provide their position with respect to (2) and (3) above in a timely manner.

B. Subpart A above is not intended to relieve the Army

from the requirement(s) of obtaining a permit whenever it proposes a response action involving the shipment or movement off the TCAAP of a hazardous substance.

C. The Army shall notify the MPCA Director and U.S. EPA in writing of any permits required for off TCAAP activities as soon as it becomes aware of the requirement. Upon request, the Army shall provide the MPCA Director and U.S. EPA copies of all such permit applications and other documents related to the permit process.

D. If a permit which is necessary for implementation of this Agreement is not issued, or is issued or renewed in a manner which is materially inconsistent with the requirements of this Agreement, the Army agrees it shall notify the MPCA Director and U.S. EPA of its intention to propose modifications to this Agreement to obtain conformance with the permit (or lack thereof). Notification by the Army of its intention to propose modifications shall be submitted within seven (7) calendar days of receipt by the Army of notification that: (1) a permit will not be issued; (2) a permit has been issued or reissued; or (3) a final determination with respect to any appeal related to the issuance of a permit has been entered. Within thirty (30) days from the date it submits its notice of intention to propose modifications, the Army shall submit to the MPCA Director and U.S. EPA its proposed modifications to this Agreement with an explanation of its reasons in support thereof.

E. The MPCA Director and the U.S. EPA shall subject the Army's proposed modifications to this Agreement to the Consistency Test in accordance with Part XIV of this Agreement. If the Army submits proposed modifications prior to a final determination of any appeal taken on a permit needed to implement this Agreement, the MPCA Director and the U.S. EPA may elect to delay review of the proposed modifications until after such final determination is entered. If the MPCA Director and the U.S. EPA elect to delay review, the Army shall continue implementation of this Agreement as provided in Subpart F of this Part.

F. During any appeal of any permit required to implement this Agreement or during review of any of the Army's proposed modifications as provided in Subpart D above, the Army shall continue to implement those portions of this Agreement which can be reasonably implemented pending final resolution of the permit issue(s).

G. Except as otherwise provided in this Agreement the Army shall comply with applicable state and federal hazardous waste management requirements at the TCAAP facility.

XVIII.

Creation of Danger

In the event the MPCA Director or the U.S. EPA determines that activities conducted pursuant to this Agreement, or any other circumstances or activities, are creating a danger to the health or welfare of the people on the Site or in the surrounding area or to the environment, the MPCA Director or the U.S. EPA

may order the Army to stop further implementation of this Agreement for such period of time as needed to abate the danger.

XIX.

Reporting

The Army agrees it shall submit to the MPCA Director and the U.S. EPA monthly written progress reports which describe the actions which the Army has taken during the previous month to implement the requirements of this Agreement. Progress reports shall also describe the activities scheduled to be taken during the upcoming month. Progress reports shall be submitted by the tenth (10) day of each month following the effective date of this Agreement. The progress reports shall include a detailed statement of the manner and extent to which the requirements and time schedules set out in the Attachments to this Agreement are being met. In addition, the Progress Reports shall identify any anticipated delays in meeting time schedules, the reason(s) for the delay and actions taken to prevent or mitigate the delay.

XX.

Notification

A. Unless otherwise specified, any report or Submittal provided pursuant to a schedule or deadline identified in or developed under this Agreement shall be sent by certified mail,

return receipt requested and addressed or hand delivered to:

TCAAP Project Manager
Division of Solid and Hazardous Waste
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, Minnesota 55155

and

U.S. Environmental Protection Agency, Region V
Attn: TCAAP Project Manager (MN Unit), 5HE-12
230 South Dearborn Street
Chicago, Illinois 60604

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

TCAAP Remedial Project Manager
Twin Cities Army Ammunition Plant
New Brighton, Minnesota 55112

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

B. U.S. EPA shall provide the Secretary of the Army and the MPCA Director with a forty-five (45) day advance notice of the U.S. EPA Administrator's intention to delegate the authority to resolve disputes or to select appropriate remedial actions pursuant to this Agreement.

XXI.

Project Managers

The U.S. EPA, MPCA and the Army shall each designate a Project Manager and Alternate (hereinafter jointly referred to as Project Manager) for the purpose of overseeing the implementation of this Agreement. Within ten (10) days of the effective date of this Agreement, the Army shall notify the MPCA Director

and the U.S. EPA of the name and address of its Project Manager. Any Party may change its designated Project Manager by notifying the other Parties, in writing, within five days of the change. To the maximum extent possible, communications between the Parties concerning the terms and conditions of this Agreement shall be directed through the Project Managers as set forth in Part XX of this Agreement. Each Project Manager shall be responsible for assuring that all communications from the other Project Managers are appropriately disseminated and processed by the entities which the Project Managers represent.

Subject to the limitations set forth in Part XXIV, Subpart A, the MPCA and U.S. EPA Project Managers shall have the authority to: (1) take samples, request split samples of Army samples and ensure that work is performed properly and pursuant to U.S. EPA protocols as well as pursuant to the Attachments and plans incorporated into this Agreement; (2) observe all activities performed pursuant to this Agreement, take photographs and make such other reports on the progress of the work as the Project Manager deems appropriate; (3) review records, files and documents relevant to this Agreement; and (4) recommend and request minor field modifications to the work to be performed pursuant to this Agreement, or in techniques, procedures or design utilized in carrying out this Agreement, which are necessary to the completion of the project.

The Army Project Manager may also recommend and request minor field modifications to the work to be performed pursuant

to this Agreement, or in techniques, procedures or design utilized in carrying out this Agreement, which are necessary to the completion of the project.

Any field modifications proposed under this Part by any Party must be approved orally by all three (3) Project Managers to be effective. If agreement cannot be reached on the proposed additional work or modification to work, dispute resolution as set forth in Part XV may be used in addition to this Part. Within five (5) business days following a modification made pursuant to this Part, the Project Manager who requested the modification shall prepare a memorandum detailing the modification and the reasons therefore and shall provide or mail a copy of the memorandum to the other Project Managers.

The Project Manager for the Army shall be physically present on TCAAP or reasonably available to supervise work performed at TCAAP during implementation of the work performed pursuant to this Agreement and shall make himself available to U.S. EPA and MPCA Project Managers for the pendency of this Agreement. The absence of the U.S. EPA or MPCA Project Managers from the Site shall not be cause for work stoppage.

XXII.

Sampling and Data/Document Availability

The Parties shall make available to each other quality assured results of sampling, tests or other data generated by any Party, or on their behalf, with respect to the implementation

of this Agreement within forty-five (45) days of their collection or performance. If quality assurance is not completed within forty-five (45) days, raw data or results shall be submitted within the forty-five (45) day period and quality assured data or results shall be submitted as soon as they become available.

At the request of either the MPCA or U.S. EPA Project Manager, the Army shall allow split or duplicate samples to be taken by the MPCA or U.S. EPA during sample collection conducted during the implementation of this Agreement. The Army's Project Manager shall endeavor to notify the U.S. EPA and MPCA Project Managers not less than ten (10) business days in advance of any sample collection. If it is not possible to provide ten (10) business days prior notification, the Army shall notify the MPCA and/or U.S. EPA Project Managers as soon as possible after becoming aware that samples will be collected.

XXIII.

Retention of Records

Each Party to this Agreement shall preserve for a minimum of ten (10) years after termination of this Agreement all of its records and documents in its possession or in the possession of its divisions, employees, agents, accountants, contractors or attorneys which relate in any way to the presence of hazardous substances, pollutants and contaminants at the Site or to the implementation of this Agreement, despite any document retention policy to the contrary. After this ten (10) year period, the Army shall notify the U.S. EPA and MPCA at least forty-five (45) days

prior to destruction or disposal of any such documents or records. Upon request by the U.S. EPA or MPCA the Army shall make available such records or documents to the U.S. EPA or MPCA.

XXIV.

Access

A. Without limitation on any authority conferred on U.S. EPA or MPCA by statute or regulation, the U.S. EPA, MPCA and/or their authorized representatives, shall have authority to enter the Site at all reasonable times for the purposes of, among other things: (1) inspecting records, operating logs, contracts and other documents relevant to implementation of this Agreement; (2) reviewing the progress of the Army, its response action contractors or lessees in implementing this Agreement; (3) conducting such tests as the MPCA and the U.S. EPA Project Managers deem necessary; and (4) verifying the data submitted to the U.S. EPA and MPCA by the Army. The Army shall honor all reasonable requests for such access by the U.S. EPA and MPCA conditioned only upon presentation of proper credentials. However, such access shall be obtained in conformance with Army security regulations and in a manner minimizing interference with any military operations at TCAAP.

B. To the extent that access is required to areas of the Site presently owned by or leased to parties other than the Army, the Army agrees to exercise its authorities to obtain access pursuant to Section 104(e) of CERCLA/SARA from the present owners and/or lessees within thirty (30) calendar days after the effective

date of this Agreement or, where appropriate, within thirty (30) days after the relevant Submittals which require access pass the Consistancy Test pursuant to Part XIV. The Army shall use its best efforts to obtain access agreements which shall provide reasonable access to U.S. EPA and MPCA and/or its authorized representatives. With respect to non-Army property upon which monitoring wells, pumping wells, treatment facilities or other response actions are to be located, the access agreements shall also provide that no conveyance of title, easement, or other interest in the property shall be consummated without provisions for the continued operation of such wells, treatment facilities, or other response actions on the property. The access agreements shall also provide that the owners of TCAAP or of any property where monitoring wells, pumping wells, treatment facilities or other response actions are located shall notify the Army, the MPCA Director, and the U.S. EPA 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 of the monitoring wells, treatment facilities, or other response actions installed pursuant to this Agreement.

C. In the event that Site access is not obtained within the thirty (30) day time period set forth in Subpart B above, within fifteen (15) days after the expiration of the thirty (30) day period the Army shall notify the MPCA Director and U.S. EPA regarding the lack of, and efforts to obtain, such access agreements. Within fifteen (15) days of any such notice, the Army shall submit appropriate modification(s) in response

to such inability to obtain access.

D. The Army may request the assistance of U.S. EPA and MPCA where access problems arise.

XXV.

Five Year Review

Consistent with Section 121(c) of CERCLA/SARA, and in accordance with this Agreement, the Army agrees that U.S. EPA and the MPCA will review the remedial action no less often than each five 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. If upon such review it is the judgement of U.S. EPA and the MPCA that additional action or modification of the remedial action is appropriate in accordance with Section 104 or 106 of CERCLA/SARA, the U.S. EPA and the MPCA shall require the Army to implement such additional or modified action.

Any dispute by the Army of the determination by U.S. EPA and the MPCA under this Part shall be resolved under Part XV of this Agreement. If the State disagrees with U.S. EPA on whether additional or modified action is appropriate under this Part, the dispute shall be resolved under Part XV of this Agreement.

XXVI.

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 wastes, pollutants, or contaminants found at, taken to, or taken from TCAAP.

The U.S. EPA and MPCA shall not be held as a party to any contract entered into by the Army to implement the requirements of this Agreement.

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

XXVII.

Other Applicable Laws

All actions required to be taken pursuant to this Agreement shall be undertaken in accordance with the requirements of all applicable state and federal laws and regulations to the extent required by CERCLA/SARA.

XXVIII.

Confidential Information

The Army may assert a confidentiality claim covering all or part of the information requested by this Agreement. Analytical data shall not be claimed as confidential by the Army. Information determined to be confidential by U.S. EPA pursuant

to 40 CFR Part 2 shall be afforded the protection specified therein and such information shall be treated by the MPCA Director as "non-public data" pursuant to Minn. Stat. ch. 13. The Army hereby waives any and all claims to confidentiality under Minnesota law for any information determined by U.S. EPA not to be confidential pursuant to 40 CFR Part 2. If no claim of confidentiality accompanies the information when it is submitted to the U.S. EPA or the MPCA Director, the information may be made available to the public without further notice to the Army.

XXIX.

Recovery of Expenses

A. U.S. EPA shall submit to the Army an accounting of all Superfund response costs (including Superfund overhead) incurred by U.S. EPA prior to the effective date of this Agreement, including relevant cost summaries in support of such accounting, which relate to the Site. All such response costs incurred and set forth in the accounting shall be costs of a response action not inconsistent with the NCP.

B. Except as allowed pursuant to Subpart C below, within ninety (90) days of receipt of the accounting submitted pursuant to Subpart A, the Army shall reimburse U.S. EPA for the cost of the response actions in the amount set forth in the accounting. Payment to U.S. EPA shall be made by check payable to the order of: "U.S. EPA Hazardous Substance Superfund". Such payment shall specifically reference the TCAAP and the U.S. EPA Docket

Number for this Agreement and be forwarded to: U.S. Environmental Protection Agency, Superfund Accounting, P.O. Box 371003M, Pittsburgh, Pennsylvania 15251, Attn: Superfund Collection Office. Notification of payment to U.S. EPA shall be made in writing at the time of payment to the U.S. EPA Project Manager and to the accounts receivable accountant, Financial Management Branch (5MF), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois, 60604.

C. In the event that the Army disputes that the accounting submitted pursuant to Subpart A includes only those response costs: (1) incurred prior to the effective date of this Agreement, (2) which relate to the Site, and, (3) which are not inconsistent with the NCP, the Army may dispute the accounting pursuant to Part XV of this Agreement.

D. The MPCA shall submit to the Army an accounting of all Superfund response costs (including Superfund overhead) incurred by MPCA prior to the effective date of this Agreement, including relevant cost summaries in support of such accounting, which relate to the Site. All such response costs incurred and set forth in the accounting shall be costs of a response action not inconsistent with the NCP.

E. Except as allowed pursuant to Subpart F below, within ninety (90) days of receipt of the accounting submitted pursuant to Subpart D, the Army shall reimburse MPCA for the cost of response actions in the amount set forth in the accounting. Payment to MPCA shall be made by check payable to the Environmental Response Compensation and Compliance Fund of the State

of Minnesota. Such payment shall specifically reference the TCAAP and be forwarded to the Director of Fiscal Services, Minnesota Pollution Control Agency, 520 Lafayette Road, St. Paul Minnesota 55155. Notification of payment to MPCA shall be made in writing at the time of payment to the MPCA Project Manager.

F. In the event that the Army disputes that the accounting submitted pursuant to Subpart D includes only those response costs: (1) incurred prior to the effective date of this Agreement, (2) which relate to the Site, and (3) which are not inconsistent with the NCP, the Army may challenge the amount to be paid to MPCA in federal district court.

G. Within sixty (60) days of the effective date of this Agreement, U.S. EPA and MPCA shall provide the Army with written estimates of their costs necessary to oversee this Agreement from the effective date of the Agreement through September 30, 1988. Thereafter, on or before August 1, 1988, and annually thereafter, U.S. EPA and MPCA shall provide the Army with an estimate of their oversight costs expected to be incurred in the subsequent federal fiscal year.

H. Following the effective date of this Agreement, after the end of each federal fiscal year, U.S. EPA and MPCA shall submit to the Army separate accountings including both costs incurred in performing oversight of this Agreement and costs of response actions related to the Site. Such oversight costs shall include the costs associated with: (1) reviewing Submittals and work performed pursuant to this Agreement, (2) fulfilling

their respective obligations under this Agreement, (3) arranging for or contracting with a qualified person to assist in overseeing and reviewing the Submittals and work performed pursuant to this Agreement.

I. Except as allowed pursuant to Subpart J, within ninety (90) days of receipt of the accountings provided pursuant to Subpart H, the Army shall reimburse U.S. EPA and MPCA in the amounts set forth in the accountings submitted pursuant to Subpart H. Payment shall be made by the Army in the same manner as set forth in Subparts B and E.

J. In the event that the Army disputes the amounts set forth in the accountings provided pursuant to Subpart H, the Army may dispute the amount to be paid to U.S. EPA pursuant to Part XV of this Agreement and the Army reserves its right to dispute the amount to be paid to MPCA in federal district court.

K. The Army agrees to reimburse U.S. EPA for the cost of an Endangerment Assessment to be performed for the Site. Upon completion of the Endangerment Assessment, U.S. EPA will forward a request for payment to the Army for the cost of the Endangerment Assessment.

L. Except as allowed pursuant to Subpart M, within ninety (90) days of receipt of the request for payment pursuant to Subpart K, the Army shall reimburse U.S. EPA for cost of the Endangerment Assessment. Payment shall be made by the Army in the same manner as set forth in Subpart B.

M. In the event that the Army disputes the cost of the Endangerment Assessment, the Army may dispute the amount to be paid to U.S. EPA pursuant to Part XV of this Agreement.

N. In the event of a dispute with respect to an amount to be reimbursed to U.S. EPA or MPCA pursuant to this Part, the Army shall bear the burden of showing that a response cost is not related to the site or is inconsistent with the NCP.

XXX.

Amendment of Agreement

This Agreement may be amended by a written agreement between the Army, the MPCA and U.S. EPA.

XXXI.

Covenant Not to Sue And Reservation of Rights

In consideration for the Army's compliance with this Agreement, and based on the information known to the Parties on the effective date of this Agreement, the State and the U.S. EPA agree that compliance with this Agreement shall stand in lieu of any administrative, legal and equitable remedies against the Army available to them regarding the currently known release or threatened release of hazardous substances including hazardous wastes, pollutants or contaminants at the Site which are the subject of the RI/FS and which will be addressed by the remedial action provided for under this Agreement; except that nothing in this Agreement shall preclude the State or U.S. EPA from exercising any administrative, legal and equitable remedies available to them to require

additional response actions by the Army in the event that: (1) conditions previously unknown or undetected by U.S. EPA or MPCA arise or are discovered at the Site; or (2) U.S. EPA or MPCA receive additional information not previously available concerning the premises which they employed in reaching this Agreement, and the implementation of the requirements of this Agreement are no longer protective of public health and the environment. The MPCA agrees to exercise its corrective action authority for any release or threatened release of a hazardous waste which is directly addressed by this Agreement only where conditions (1) or (2) exist and only in the following manner:

If the State in an action in federal district court can establish by a preponderance of the evidence that the remedial action selected by the Administrator and implemented by the Army is not protective of public health and the environment, and that further response action consistent with the State's corrective action requirements is necessary to protect public health and the environment, such further response action will be performed, unless the Administrator of U.S. EPA has determined within 45 days of notice from the State to U.S. EPA and the Army that the remedy is protective of public health and the environment and that no further response action is required or that only a portion of the response action sought by the State should be implemented. If the Administrator has made a determination as specified above, further response action consistent with the State's corrective action authority shall be performed if the

State can establish through an action in federal district court that the Administrator's decision does not provide adequate protection for public health or the environment. The Parties reserve their right to argue the appropriate standard of review of the U.S. EPA Administrator's decision.

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

Notwithstanding this Part, or any other Part or this Agreement, the State may obtain judicial review of any final decision of the U.S. EPA on selection of an interim or final remedial action, and may invoke its authority under CERCLA/SARA §§121(e)(2) and 121(f).

XXXII.

Stipulated Penalties

A. At the discretion of U.S. EPA or MPCA, the Army shall be liable for payment into the Hazardous Substances Superfund administered by the U.S. EPA of the sums set forth below as stipulated penalties if the Army fails to provide a Submittal or comply with a timetable or deadline, including remedial action start dates, in accordance with the requirements of this Agreement. Stipulated penalties shall accrue for each week or part therof that the Army fails to provide a Submittal or comply with a timetable or deadline, including remedial action start dates, in accordance with the requirements of this Agreement. The due dates and schedule may be extended pursuant to Part XXXIII of this Agreement. Such penalties shall be due and payable

within thirty (30) days of receipt of notification from the U.S. EPA or MPCA Director assessing the penalties. In the event that MPCA alone assesses stipulated penalties, the Army reserves its right to challenge in federal district court the factual basis for the determination that a penalty is due. These stipulated penalties shall accrue in the amount of $5000.00 for the first week or part thereof, and $10,000.00 for each additional week or part thereof for which a due date or schedule has been missed. But in no event shall the Army be liable for a penalty in excess of the amount authorized by CERCLA/SARA.

B. The stipulated penalties set forth in Subpart A of this Part shall not preclude U.S. EPA or the MPCA from electing to pursue any other remedy or sanction otherwise available due to the Army's failure to specifically comply with any of the terms, schedules or due dates of this Agreement, including a suit to enforce the terms of this Agreement. Except as provided by law, said stipulated penalties shall not preclude U.S. EPA or the MPCA from seeking statutory penalties up to the amount authorized by law in the event of the Army's failure to comply with any terms, schedules or due dates of this Agreement.

XXXIII.

Extension of Schedules

Extensions of schedules shall be granted if requests for extensions are submitted in a timely fashion and good cause exists as described in Part XV, Subpart F, or if other good cause exists for granting the extension. Extensions shall also be granted

where the Army demonstrates that the reason the extension is needed is due to a delay directly attributable to any changes in permit terms or conditions or refusal to issue a permit needed to implement the requirements of this Agreement. Any Army request for extension shall first be made orally, and confirmed in writing within three (3) days of the oral request. The written request shall specify the reason(s) why the extension is needed. Extensions shall only be granted for such period of time as the MPCA Director and the U.S. EPA determine is reasonable under the circumstances. A requested extension shall not be effective until approved by the MPCA Director and the U.S. EPA.

No stipulated penalties shall accrue pursuant to Part XXXII when U.S. EPA and MPCA disagree with one another as to an extension under this Part.

XXXIV.

Conveyance of Title

No conveyance of title, easement, or other interest in the Army property on which any containment system, treatment system, monitoring system or other response action(s) is installed or implemented pursuant to this Agreement shall be consummated by the Army without provision for continued maintenance of any such system or other response action(s). At least thirty (30) days prior to any conveyance, the Army shall notify U.S. EPA and the MPCA Director of the provisions made for the continued operation and maintenance of any response action(s) or system installed or implemented pursuant to this Agreement.

XXXV.

Public Participation

A. The Parties agree that this Agreement and any subsequent proposed remedial action alternative(s) and subsequent plan(s) for remedial action at the Site arising out of this Agreement shall comply with the administrative record and public participation requirements of CERCLA/SARA, including Section 117 of SARA, the NCP, U.S. EPA guidances on public participation and administrative records.

B. The Army shall develop and implement a Community Relations Plan (CRP) which responds to the need for an interactive relationship with all interested community elements, both on TCAAP and off, regarding activities and elements of work undertaken by the Army. The Army agrees to develop and implement the CRP in a manner consistent with Section 117 of SARA, the NCP, U.S. EPA guidelines set forth in U.S. EPA's Community Relations Handbook, and any modifications thereto.

The CRP is subject to the Consistency Test set forth in Part XIV of this Agreement.

C. The public participation requirements of this Agreement shall be implemented so as to meet the public participation requirements applicable to RCRA permits under 40 CFR Part 124 and Section 7004 of RCRA.

D. Any Party issuing a formal press release to the media regarding any of the work required by this Agreement shall

advise the other Parties of such press release and the contents thereof, at least forty-eight (48) hours before the issuance of such press release and of any subsequent changes prior to release.

E. The Army agrees it shall establish and maintain an administrative record at or near TCAAP in accordance with Section 113(k) of CERCLA/SARA. The administrative record shall be established and maintained in accordance with current and future U.S. EPA policy and guidelines. A copy of each document placed in the administrative record will be provided to the U.S. EPA and MPCA. The administrative record developed by the U.S. Army shall be updated and supplied to U.S. EPA and MPCA on at least a quarterly basis. An index of documents in the administrative record will accompany each update of the administrative record.

F. The Army agrees it shall follow the public participation requirements of CERCLA/SARA Section 113(k) and comply with any guidance and/or regulations promulgated by U.S. EPA with respect to such Section.

XXXVI.

Public Comment

A. Within fifteen (15) days of the date of the acceptance of this Agreement, U.S. EPA shall announce the availability of

this Agreement to the public for review and comment. U.S. EPA shall accept comments from the public for a period of thirty (30) days after such announcement. At the end of the comment period, U.S. EPA and MPCA shall review all such comments and shall either:

(1) Determine that the Agreement should be made effective in its present form, in which case the Army shall be so notified in writing, and the Agreement shall become effective on the date said notice is issued; or

(2) Determine that modification of the Agreement is necessary, in which case the Army will be forwarded a revised Agreement which includes all required changes to the Agreement.

B. In the event of significant revision or public comment, notice procedures of Sections 117 and 211 of SARA shall be followed and a responsiveness summary shall be published by the U.S. EPA.

C. In the event that modification of the Agreement is determined by U.S. EPA to be necessary pursuant to Subpart A(2) above, within twenty (20) days of receipt of the revised Agreement the Army and MPCA reserve the right to withdraw from the Agreement. If neither the Army or MPCA provide U.S. EPA with written notice of withdrawal from the Agreement within such twenty (20) day period, the Agreement, as modified, shall automatically become effective on the twenty-first (21) day, and U.S. EPA shall issue a notice to the Parties to that effect.

D. All plans and activities related to Community Relations and Public Participation undertaken by the Army shall be subject to the Consistency Test set forth in Part XIV of this Agreement. In the case of dispute, Part XV of this Agreement may be invoked.

XXXVII.

Enforceability

The parties agree: (1) that all timetables and deadlines associated with development and completion of the RI/FS shall be enforceable by any person under Section 310 of CERCLA/SARA and that violations of such timetables and deadlines will be subject to civil penalties under Sections 310(c) and 109 of CERCLA/SARA; and (2) that all conditions of this Agreement associated with interim remedial actions and final remedial actions shall be enforceable by any person under Section 310 of CERCLA/SARA and that violation of such conditions will be subject to civil penalties under Sections 310(c) and 109 of CERCLA/SARA; and (3) that any final resolution of a dispute pursuant to Part XV of this Agreement which establishes terms and conditions (including any timetables and deadlines established pursuant to the dispute resolution procedures set forth in Part XV of this Agreement) shall be enforceable by any person under Section 310 of CERCLA/SARA and any violation of such terms and conditions (including any timetables and deadlines established pursuant to such final resolution) will be subject to civil penalties under Sections 310(c) and 109 of CERCLA/SARA.

Nothing in this Agreement shall be construed as authorizing

any person to seek judicial review of any action of the Army, the State of Minnesota or U.S. EPA where review is barred by any provision of CERCLA/SARA, including Section 113(h) of CERCLA/SARA.

The Parties agree that all Parties, including the State of Minnesota, shall have the right to enforce the terms of this Agreement.

In the event that U.S. EPA or MPCA elect to assess stipulated penalties pursuant to Part XXXII of this Agreement for failure of the Army to provide a Submittal or comply with a timetable or deadline in accordance with the requirements of this Agreement, such stipulated penalties shall constitute diligent prosecution as contemplated by Section 310 of CERCLA/SARA.

XXXVIII.

Termination

The provisions of this Agreement shall be deemed satisfied and terminated upon receipt by the Army of written notice from U.S. EPA and the MPCA Director that the Army has demonstrated, to the satisfaction of the U.S. EPA and MPCA Director, that all the terms of this Agreement have been completed.

XXXIX.

Effective Date

This Agreement is effective upon issuance of a notice to the Parties by U.S. EPA following implementation of Part XXXVI, Subparts A through C, of this Agreement.

XL.

Funding

The Army agrees to advise U.S. EPA and MPCA of its efforts to obtain the funding necessary to implement this Agreement under Section 120(e)(5)(B) of CERCLA/SARA. Nothing in this Agreement shall be construed to require the Army to obligate funds in any fiscal year for work under this Agreement in contravention of the Anti-Deficiency Act, 31 U.S.C. §1341.

In the event that the Army is unable to obtain timely funding for performance of the off TCAAP FS in 1988, U.S. EPA and MPCA reserve the right to perform and complete the off TCAAP FS.

In the event that the Army is unable to obtain timely funding to perform response actions under this Agreement, the State reserves the authority to perform response actions to the extent authorized by law.

IT IS SO AGREED:

By: _____ 6 Aug 1987
John W. Shannon
Assistant Secretary
U.S. Department of Army
(Installations & Logistics)
Date

By: _____ 6 August 1987
Susan J. Crawford
General Counsel
U.S. Department of Army
Date

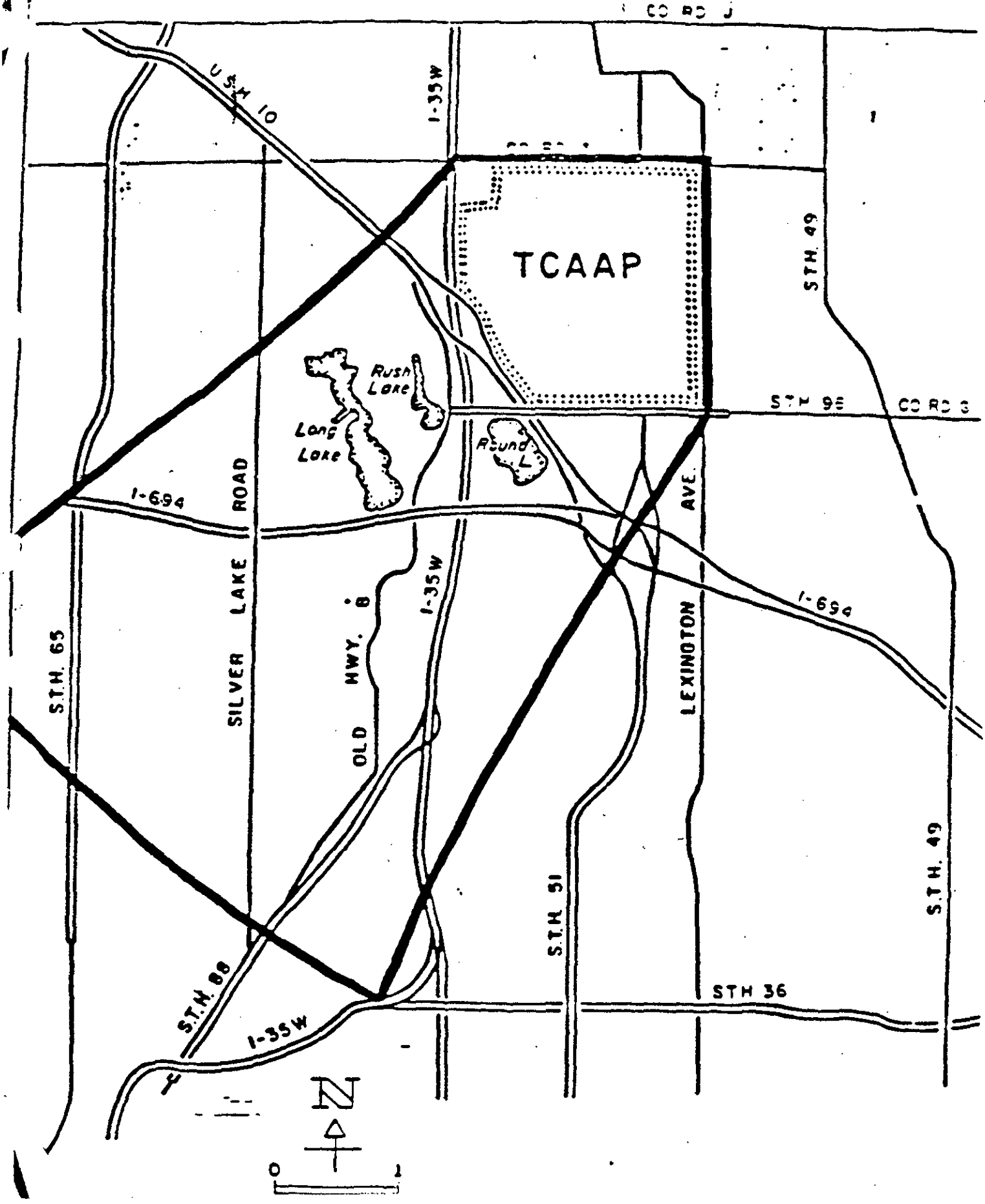
By: _____ 7/30/87
for Thomas J. Kalitowski
Executive Director
Minnesota Pollution Control
Agency
Date

By: _____ 7/31/87.
Hubert H. Humphrey, III
Attorney General
State of Minnesota
Date

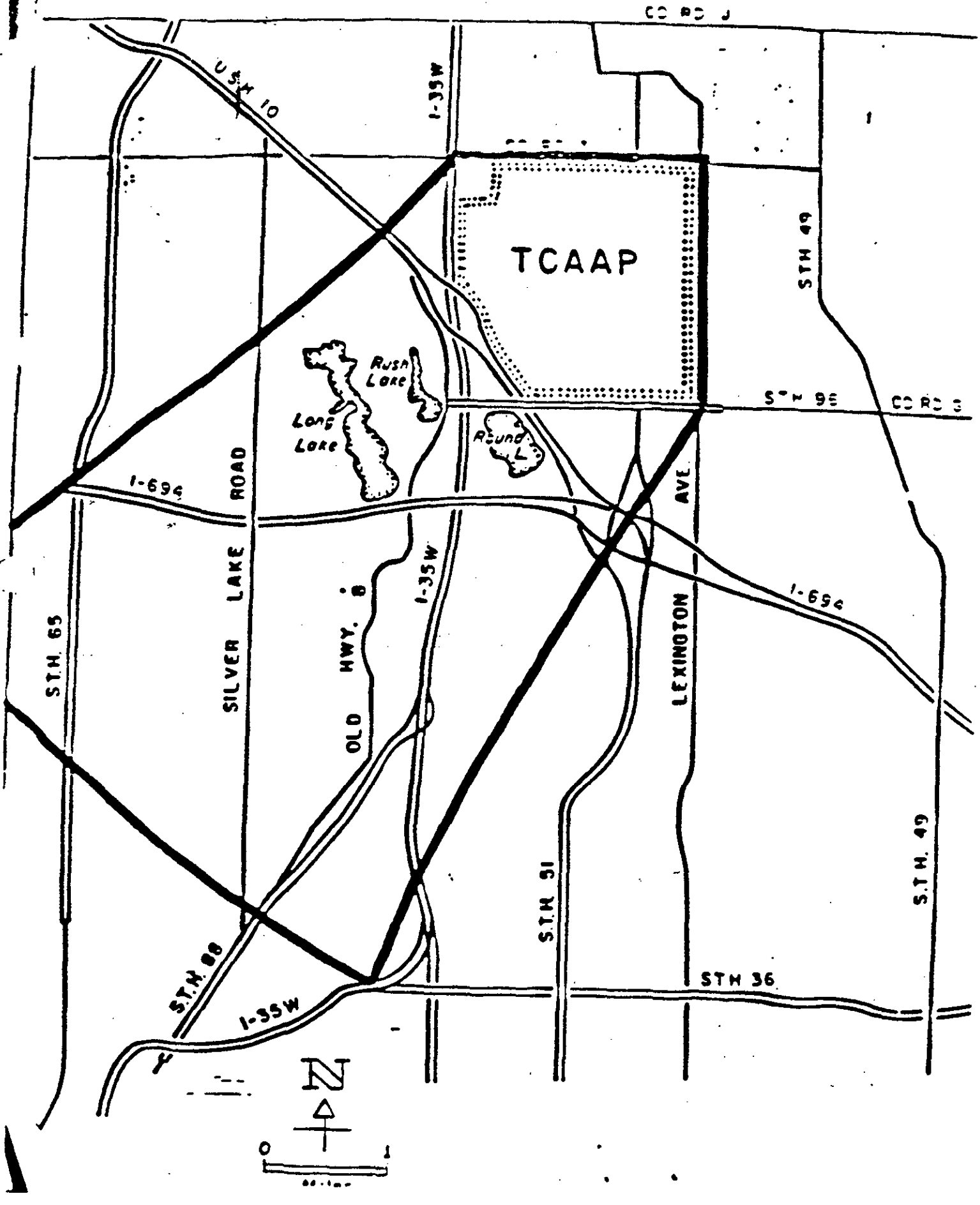
By: _____ 7/24/87
J. Winston Porter
Assistant Administrator
U.S. Environmental Protection
Agency
Date

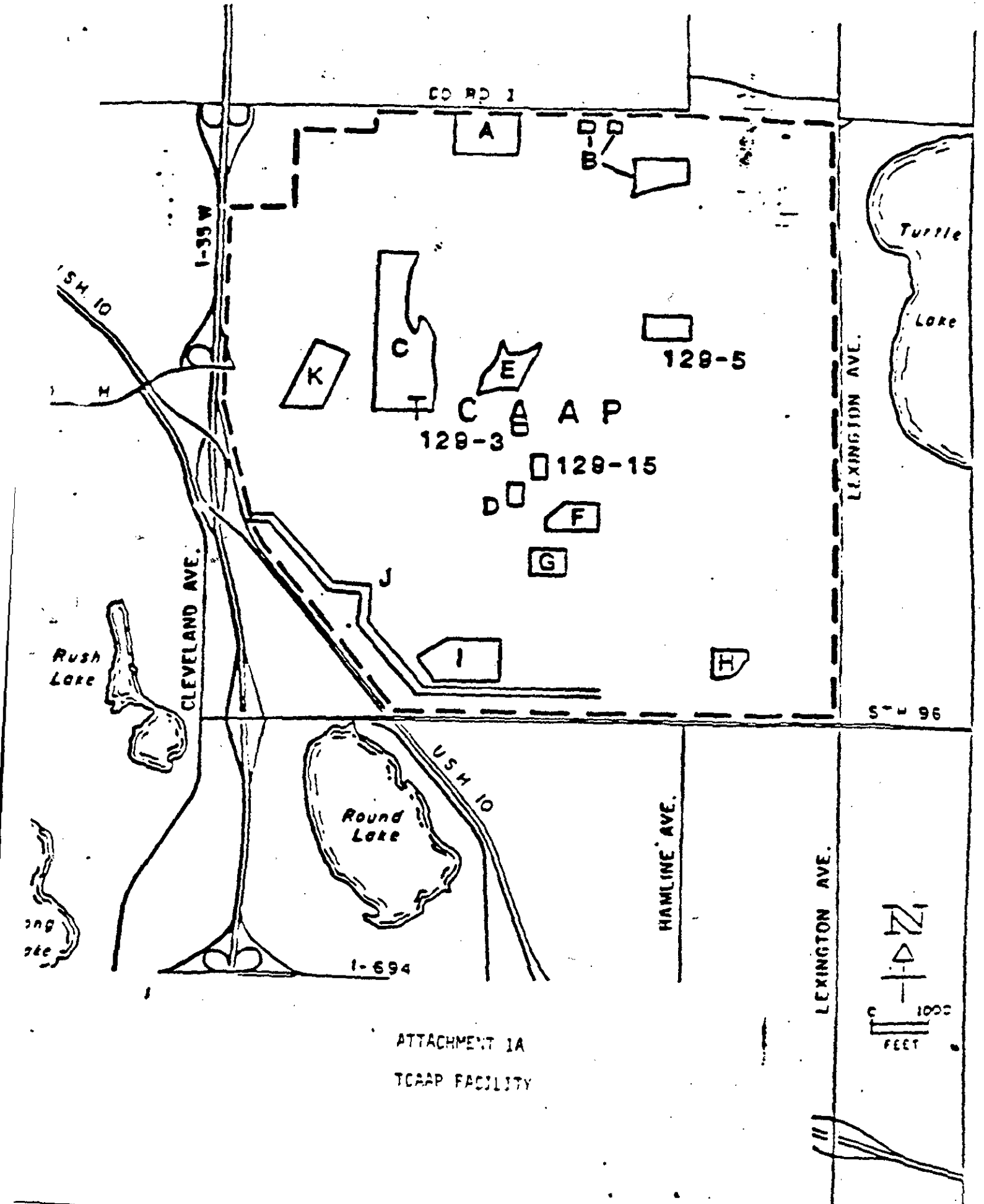
By: _____ 12 August 1987
Valdas V. Adamkus
Regional Administrator
U.S. Environmental Protection
Agency
Date

ATTACHMENT 1 - APPROXIMATE EXTENT OF TCAAP/NB/A AREA SITE



ATTACHMENT 1 - APPROXIMATE EXTENT OF TCAAP/NB/A AREA SITE





ATTACHMENT 1A

TCAAP FACILITY