UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
AND THE
UNITED STATES ARMY

IN THE MATTER OF:	)	
The Formerly Used Defense Site Known as the West Virginia Ordnance Works Mason County, West Virginia and Impacted Environs	)	INTER-AGENCY AGREEMENT UNDER CERCLA SECTION 120
	)	Administrative Docket Number: III-FCA-CERC-003

Based on the information available to the U.S. Environmental Protection Agency and the U. S. Department of Army (Parties) on the effective date of this Inter-Agency Agreement (Agreement), and without trial or adjudication of any issues of fact or law, the Parties agree as follows:

I. PURPOSE

1.1 The general purposes of this Agreement are to:

(a) Ensure that the environmental impacts to the groundwater caused by past Army activities at the Site formerly known as the West Virginia Ordnance Works are remediated by actions necessary to protect the public health, welfare and the environment;

(b) Establish a procedural framework and schedule for implementing and monitoring appropriate response actions at the Site in accordance with the Second Operable Unit Record of Decision (ROD) for the Site, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the National Contingency Plan, Superfund guidance and policy and other applicable or relevant and appropriate federal and state laws and regulations; and

(c) Facilitate cooperation, exchange of information, and participation of the Parties in such actions.

1.2 Specifically, the purposes of this Agreement are to:

(a) Implement the selected response action(s), as set forth in the Second Operable Unit Record of Decision, in

accordance with CERCLA, and meet the requirements of CERCLA Section 120(e) (2), 42 U.S.C. Section 9620(e) (2), for an interagency agreement between the Parties;

(b) Assure compliance, through this Agreement, with other applicable or relevant and appropriate federal and state hazardous waste laws and regulations for matters covered herein;

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

(d) Provide the State of West Virginia, through its Department of Natural Resources, an opportunity to participate in the implementation of the remedial actions required by the ROD for the Second Operable Unit by receiving all primary and secondary documents generated in accord with this Agreement, by having the opportunity to provide comments thereon, and by identifying any potential State Applicable or Relevant and Appropriate Requirements (ARARs) as cleanup standards in accordance with Section 121(d)(2)(A)(ii) of CERCLA, 42 U.S.C. Section 9621(d)(2)(A)(ii).

II. DEFINITIONS

2.1 The terms used in this Agreement shall have the same definitions as the terms defined in CERCLA Section 101, 42 U.S.C. Section 9601. Additionally, the following terms used in this Agreement are defined as follows:

(a) "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 federal holiday shall be due on the following business day;

(b) "Agreement" shall mean this document and shall include all attachments to this document referred to herein. All such attachments shall be appended to and made an integral and enforceable part of this document;

(c) "WVOW" shall mean the property owned by the State of West Virginia, political subdivisions thereof, and various private owners prior to the signing of the Record of Decision (ROD) for the Second Operable Unit and formerly referred to as the West Virginia Ordnance Works, located in Mason County, West Virginia, including all areas identified in Attachment 1 (FACILITY MAP);

(d) "WVDNR" shall mean the State of West Virginia, acting by and though the West Virginia Department of Natural Resources;

(e) "Site" shall include WVOW and any other areas

contaminated by the migration of a hazardous substance, pollutant or contaminant from WVOW;

(f) "Submittal" shall mean every document, report, schedule, deliverable, work plan or other item to be submitted by one Party to another Party pursuant to this Agreement;

(g) "U.S. Army" or "Army" shall mean the United States Department of the Army;

(h) "U.S. EPA" or "EPA" shall mean the United States Environmental Protection Agency; and

(i) "Operable Unit" shall mean a discrete part of the entire response action that minimizes a release, threat of release, or pathway of exposure to contaminants.

III. JURISDICTION

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

(a) The U.S. Environmental Protection Agency (EPA), Region III enters into those portions of this Agreement that relate to the remedial design/remedial action (RD/RA) pursuant to Section 120(e)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. No. 99-499 (hereinafter jointly referred to as CERCLA), 42 U.S.C. Section 9620(e)(2), and Executive Order 12580; and

(b) The Army enters into those portions of this Agreement that relate to remedial design/remedial action pursuant to CERCLA Section 120(e)(2), 42 U.S.C. Section 9620(e)(2), Executive Order 12580 and the Defense Environmental Restoration Program (DERP); 10 U.S.C. Section 2701 et seq.

IV. FINDINGS

4.1 For purposes of this Agreement, the following constitutes a summary of the facts determined solely by U.S. EPA upon which participation in this Agreement is based. None of the findings related herein shall be considered admissions by any Party.

The West Virginia Ordnance Works Site covers approximately 8,323 acres, with approximately one-third of the area currently occupied by the Clinton F. McClintic State Wildlife Station which is 2,788 acres in size. The Wildlife Station is operated by WVDNR. At the time the ROD for the First Operable Unit was signed, over 99 percent of all the area comprising the Site was owned and/or operated by the State of West Virginia, political subdivisions thereof and private parties. Subsequent to the signing of the ROD for the Second Operable Unit, the Army, in

order to assist in remediation required under that document, acquired, pursuant to Section 104(j) of CERCLA, 42 U.S.C. Section 9604(j), some sixty acres of the Site.

From 1942 to 1945, General Chemical Defense Corporation of New York under contract with the Federal Government produced trinitrotoluene (TNT) explosive at the Site which became known as West Virginia Ordnance Works. TNT was shipped to various Government installations to be loaded into munitions or for other uses. No loading of munitions or testing of ordnance was conducted at the WVOW Site. Production of this material during World War II resulted in release into the soils in the industrial area, process facilities, and industrial wastewater disposal facilities of this TNT and associated by-products.

At the close of operations in 1945, WVOW was placed in stand-by status. Later in 1945, the plant was declared surplus and the facilities salvaged and/or disposed of. Most of the industrial portion of the Site was deeded to the State of West Virginia, with the stipulation that the Site be used for wildlife management. Furthermore, if the land was ever used for other purposes, or in the event of national emergency, ownership of the land would revert to the Federal Government. Portions of the Site are currently open for public hunting and fishing. Other portions of the Site were declared excess by the Government and are now owned by Mason County or by private owners.

In May 1981, a WVDNR official observed a seepage of red water adjacent to Pond 13, located on the McClintic Wildlife Station. WVDNR and EPA investigated this incident. The shallow groundwater discharging to Pond 13 was found to contain nitroaromatics. Based on these and other studies by WVDNR and EPA in 1981 and 1982, WVOW was added to the National Priorities List under CERCLA.

In May 1984, EPA concurred with the Army's announced undertaking of response actions at WVOW. In October of that year, Environmental Science and Engineering, under contract to the Army, began work on a Remedial Investigation and Feasibility Study (RI/FS). In January, 1986, EPA and the Department of the Army decided that the RI/FS should be conducted in two phases or operable units. The first operable unit addressed the TNT Manufacturing Area, the Burning Grounds, and the Industrial Sewer Lines Areas, while the second operable unit concerned the Red Water Reservoir, the Yellow Water/Acids, and Pond 13 Areas. The Phase I RI/FS was completed in November, 1986. The remedial action for the first phase Operable Unit was published in a Record of Decision in March 1987.

That Record of Decision required:

-In situ flaming of reactive TNT residue on the surface of the Burning Grounds Area followed by the installation of a two foot soil cover over areas with greater than 50 parts per million (ppm) total nitroaromatics;

-Installation of a two foot soil cover over areas in the TNT Manufacturing Area with greater than 50 ppm total nitroaromatics;

-Disposal of asbestos from the Burning Grounds Area at an approved off-site facility;

-Excavation of TNT-contaminated sewerlines, burning of the residue, and backfilling of trenches from which the sewerlines were removed. All contaminated soil exceeding 50 ppm total nitroaromatics at the surface was to be covered to achieve a 10 to the minus six cancer risk level; and

-Performance of a wetlands assessment prior to construction activities.

An Interagency Agreement between EPA and the Army for the Army's implementation of the above-described activities was signed in September, 1987.

The ROD for the Second Operable Unit addressed remediation at three distinct areas (the Red Water Reservoir, the Yellow Water/Acids, and Pond 13 Areas). In August 1987 the Phase II Remedial Investigation and Endangerment Assessment were completed. In September 1988 the Record of Decision for the Second Operable Unit was approved and signed by U.S. EPA.

That Record of Decision required:

A. Acids Area/Yellow Water Reservoir

-Purchase of the industrial park encompassing the area of contamination, placing a two-foot clay cover over the contaminated area, incorporating the area into the existing wildlife preserve.

-Extracting and treating the groundwater until the groundwater meets the drinking water criteria for nitroaromatics.

-Discharges from the groundwater treatment system will achieve the National Pollutant Discharge Elimination System (NPDES) requirements for surface water criteria and will be monitored to assure compliance.

-The clay cover will be periodically inspected and maintained in a stable condition.

B. Red Water Reservoir

-Relocation of Ponds 1 and 2.

-Extracting and treating the groundwater until the groundwater meets the drinking water criteria for nitroaromatics.

-Effluent from the treatment system will meet NPDES requirements and will be monitored to maintain compliance.

-Existing ponds 1 and 2 will be filled with clean fill (soil and clay cover).

C. Pond 13/Wet Well Area

-Install a two-foot thick clay cover over the Wet Well Area.

-Extracting and treating the groundwater until the groundwater meets the drinking water criteria for nitroaromatics.

-Effluent from the treatment system will meet the NPDES criteria and will be monitored to maintain compliance.

-Soil cover will be be periodically inspected and maintained in a stable condition.

V. U.S. EPA DETERMINATIONS

5.1 For the purposes of this Agreement only, the following constitutes a summary of the determinations made solely by U.S. EPA and upon which participation in this Agreement is based. None of the determinations related herein shall be considered admissions by any Party for any purpose.

(a) WVOW constitutes a "facility" within the meaning of CERCLA Section 101(9), 42 U.S.C. Section 9601(9).

(b) The U. S. Army is a "person" within the meaning of CERCLA Sections 101(21) and 107, 42 U.S.C. Sections 9601(21) and 9607.

(c) There have been, and there continue to be, "releases" and "threatened releases" of "hazardous substances" into the environment at or from the Site, within the meaning of CERCLA Sections 101(14) and (22), 104, 106, and 107, 42 U.S.C. Sections 9601(14) and (22), 9604, 9606, and 9607.

(d) The actions provided for in this Agreement are consistent with the NCP.

(e) The actions provided for in this Agreement are necessary to protect the public health or welfare or the environment.

(f) This Agreement provides for the expeditious completion of all necessary remedial actions.

VI. CONSULTATION WITH EPA AND WVDNR

Review and Comment Process for Draft and Final Documents

6.1 Applicability: The provisions of this Section establish the procedures that shall be used by the Parties and WVDNR to provide each other with appropriate notice, review, comment, and response to comments regarding 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, the Army will normally be responsible for issuing primary and secondary documents to EPA. The Army will also provide copies of these documents to the WVDNR. As of the effective date of this Agreement, all draft and final reports for any deliverable document identified herein shall be prepared, distributed and subject to dispute in accordance with Paragraphs 6.2 through 6.9, below. The designation of a document as "draft" or "final" is solely for purposes of consultation with EPA and WVDNR in accordance with this Section. Such designation does not affect the obligation of the Parties to issue documents, which may be referred to herein as "final", to the public for review and comment as appropriate and as required by law.

6.2 General process for document review:

(a) "Primary documents" include, but are not limited to, those reports that are major, discrete portions of RD/RA activities. Primary documents are initially issued by the Army in draft, subject to review and comment by EPA and WVDNR. Following receipt of comments on a particular draft primary document, the Army will respond to the comments received from EPA and issue a draft final primary document subject to dispute resolution, if invoked by EPA. The draft final primary document will become the final primary document thirty (30) days after issuance of a draft final document, 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 the Army, in draft, subject to review and comment by U.S. EPA and WVDNR. Although the Army will respond to comments received from EPA, the draft secondary documents may be finalized in the context of the corresponding primary documents. A secondary document may be disputed by EPA at the time the corresponding draft final primary document is issued.

6.3 Primary documents:

(a) The Army shall complete and transmit draft reports for the following primary documents to EPA and WVDNR for review and comment in accordance with the provisions of this Section:

(1) Remedial Design/Remedial Action Work Plan,

including Sampling and Analysis Plan and Quality Assurance Project Plan;

(2) Community Relations Plan;

(3) Health and Safety Plan;

(4) Remedial Action Report; and

(5) Operation and Maintenance Plan.

(b) Only the draft final reports for the primary documents identified above shall be subject to dispute resolution by EPA. The Army shall complete and transmit draft primary documents to EPA in accordance with the timetable and deadlines established in Section XV (Deadlines) of this Agreement.

6.4 Secondary documents:

(a) The Army shall complete and transmit draft reports for the following secondary documents to EPA and WVDNR for review and comment in accordance with the provisions of this Section:

(1) Sampling and Data results;

(2) Conceptual Design Document;

(3) 30/60 % Remedial Design/Remedial Action Plan; and

(4) 90 % Remedial Design/Remedial Action Plan.

(b) Although EPA and WVDNR may comment on the draft reports for the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by Paragraph 6.2, above. Target dates shall be established by the Parties for the completion and transmission of draft secondary reports to EPA.

6.5 Meetings of the Project Managers on Development of Reports: The Project Managers shall meet approximately every 30 days, except as otherwise agreed to by the Parties, to review and discuss the progress of work being performed on the primary and secondary documents. Prior to preparing any draft report specified in Paragraphs 6.3 and 6.4, above, the Project Managers shall meet to discuss the report results in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft report.

6.6 Review and comment on draft reports:

(a) The Army shall complete and transmit each draft primary report to EPA on or before the corresponding deadline established for the issuance of that report. The Army shall complete and transmit to EPA by certified mail the draft

secondary documents in accordance with the target dates established for the issuance of such reports pursuant to Section XV (Deadlines) of this Agreement.

(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 the EPA or WVDNR may concern all aspects of the report (including completeness) and should include, but not be limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP and any pertinent requirements. Comments shall be provided with adequate specificity so that the Army may respond to the comments, and if appropriate, make changes to the draft report. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and upon request of the Army, the EPA or WVDNR shall provide a copy of the cited authority or reference. In cases of complex or unusually lengthy reports, EPA may extend the thirty (30) day comment period for an additional twenty (20) days by written notice to the Army prior to the end of the thirty (30) day period. In appropriate circumstances, this time period may be further extended in accordance with Section XVI (Extensions) of this Agreement. WVDNR may request a similar extension from the Army in the same manner. On or before the close of the comment period, the EPA and WVDNR shall transmit by certified mail their written comments to the Army.

(c) Representatives of the Army shall make themselves readily available to EPA and WVDNR 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 the Army on the close of the comment period.

(d) Following the close of the comment period for a draft report, the Army shall give full consideration to all written comments on the draft report submitted during the comment period. Within thirty (30) days of the close of the comment period on a draft secondary report, the Army shall transmit by certified mail to EPA its written response to comments received from EPA within the comment period. Within thirty (30) days of the close of the comment period on a draft primary report, the Army shall transmit by certified mail to EPA a draft final primary report, which shall include the Army's response to all written comments received from EPA within the comment period. While the resulting draft final report shall be the responsibility of the Army, it shall be the product of consensus to the maximum extent possible.

(e) The Army 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 prior to the end of the thirty (30) day period. In appropriate circumstances, this time period may be further extended in accordance with Section XVI

(Extensions) of this Agreement.

6.7 Availability of Dispute Resolution for draft final primary documents:

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

(b) When dispute resolution is invoked on a draft final primary report, work may be stopped in accordance with the procedures set forth in Section XIV (Dispute Resolution) of this Agreement.

6.8 Finalization of reports: The draft final primary report shall serve as the final primary report if no party invokes dispute resolution regarding the document or, if invoked, at completion of the dispute resolution process, should the Army's position be sustained. If the Army's determination is not sustained in the dispute resolution process, the Army 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. In appropriate circumstances, the time period for this revision period may be extended in accordance with Section XVI (Extensions) of this Agreement.

6.9 Subsequent modifications of final reports: Following finalization of any primary report pursuant to Paragraph 6.8, above, EPA or the Army 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), below.

(a) EPA or the Army 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. The Party may seek such a modification by submitting a concise written request to the Project Manager of the other Party. 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, EPA or the Army may invoke dispute resolution to determine if such modification shall be conducted. Modification of a report shall be required only upon a showing that:

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

(2) The requested modification could be of significant assistance in evaluating impacts on the public health or welfare, 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 ability to request the performance of additional work which was not contemplated by this Agreement. The Army's obligation to perform such work must be established by either a modification of a report or document or by amendment to this Agreement.

VII. PROJECT MANAGERS AND COMMITTEES

Project Managers

7.1 On or before the effective date of this Agreement, the Army and EPA shall each designate a Project Manager. The Project Managers shall be responsible, on a daily basis, for assuring proper implementation of all work performed under the terms of this Agreement. In addition to the formal notice provisions set forth in Section XI (Notice) of this Agreement, communications between the Army and EPA on all documents, including reports, comments, and other correspondence concerning the activities performed pursuant to this Agreement, shall, to the maximum extent practicable, be directed through the Project Managers.

7.2 The Army and EPA may change their respective Project Managers. Such change shall be accomplished by notifying the other Party, in writing, within five (5) days of the change.

7.3 The Project Managers shall confer informally approximately once each month. Although the Army has ultimate responsibility for meeting its respective deadlines or schedules, the Project Managers shall endeavor to assist in this effort by scheduling meetings to address documents, reviewing reports, overseeing the performance of all environmental monitoring at the Site, reviewing RD/RA progress, attempting to resolve disputes informally, and making necessary and appropriate adjustments to deadlines or schedules.

7.4 The authority of the Project Managers, or their designated representatives, shall include but is not limited to:

(a) Taking samples and ensuring the type, quantity and location of the samples taken by the Army are in accordance with the terms of any final work plan;

(b) Observing, taking photographs and making such other report on the progress of the work as any Project Manager deems appropriate subject to the limitations set forth in Section IX (Access) of this Agreement; and

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

7.5 Each Project Manager shall be responsible for assuring

that all communications received from the other Project Manager are appropriately disseminated to and processed by the Party that each Project Manager represents.

Dispute Resolution Committee (DRC)

7.6 The Dispute Resolution Committee (DRC) will serve as the forum for resolution of disputes that are not informally resolved at the Project Manager level. The members of this committee shall be the Hazardous Waste Management Division Director of EPA Region III and the Army's Deputy/Technical Director, U.S. Army Toxic and Hazardous Materials Agency (USATHAMA). The designee of the Army to the DRC shall serve as the chairman of the DRC.

Senior Executive Committee (SEC)

7.7 The Senior Executive Committee (SEC) will serve as the appellate forum for resolution of disputes that are not resolved at the DRC level. The membership of this committee shall include the Regional Administrator of EPA Region III and the Assistant Secretary of the Army (for Installations and Logistics), Deputy for Environment, Safety and Occupational Health (DESOH,ASA(I&L)).

VIII. QUALITY ASSURANCE

8.1 The Army shall use quality assurance, quality control, and chain of custody procedures throughout all field investigation, sample collection and laboratory analysis activities. The Army shall develop an operable unit or element specific Quality Assurance Project Plan (QAPP), as necessary, for review and comment by EPA. The QAPP shall be prepared in accordance with applicable EPA guidance. The QAPP shall be submitted as a component of the Remedial Design/Remedial Action Work Plan and reviewed as a part of that primary document pursuant to Paragraph 6.2 (General process for document review) of this Agreement.

8.2 In order to demonstrate quality assurance and maintain quality control regarding all samples collected pursuant to this Agreement, the Army shall submit all protocols to be used for sampling and analysis to EPA for review and comment. The Army shall also ensure that any laboratory used for analysis is a participant in a quality assurance/quality control program that is consistent with EPA guidance.

8.3 The Army shall also ensure that appropriate EPA personnel or their authorized representatives will be allowed access to any laboratory used by the Army in implementing this Agreement. Such access shall be for the purpose of validating sample analyses, protocols and procedures required by the Quality Assurance Project Plan.

IX. ACCESS

9.1 All Parties with access to WVOW pursuant to this Section shall comply with all applicable health and safety plans.

9.2 To the extent that activities pursuant to this Agreement must be carried out on other than Army property, the Army shall use its best efforts to obtain access agreements from the property owners within thirty (30) days following the execution of this Agreement or the approval of a pertinent work plan, whichever occurs later. These agreements shall provide reasonable access for the Army and EPA and their representatives for purposes consistent with the provisions of this Agreement. Such purposes shall include, but not be limited to: inspecting records, operating logs or contracts related to the investigative and response work at WVOW; reviewing the progress of the Army in carrying out the terms of this Agreement; conducting such tests the Project Managers deem necessary; and verifying the data submitted to EPA and WVDNR. In the event that the Army is unable to obtain such access agreements, the Army shall so notify EPA within seven (7) working days.

X. DATA AND DOCUMENT AVAILABILITY

10.1 The Army shall make all sampling results, test results or other data, documents, or reports generated through the implementation of this Agreement available to EPA. EPA will similarly make available to the Army the results of sampling, tests or other data or documents generated by EPA.

10.2 At the request of EPA, the Army shall allow, to the extent practicable, split or duplicate samples to be taken by EPA, or their authorized representatives, of any samples collected by the Army pursuant to the implementation of this Agreement. The Army shall notify EPA not less than fourteen (14) days in advance of any scheduled sample collection activity.

XI. NOTICE TO THE PARTIES

11.1 The Parties and WVDNR shall transmit primary and secondary documents, comments thereon under Section VI of this Agreement, and all notices required herein by certified mail, return receipt requested. Time limitations shall commence upon receipt. The date of transmittal of documents shall be the date on which they are mailed.

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

(a) For the Army: Commander, U. S. Army
Toxic and Hazardous Materials Agency
ATTN: CETHA-IR-A (Ms. Botluk)
Aberdeen Proving Ground, MD 21010-5401

(b) For the EPA: U.S. EPA Region III
Attn:WVOW Project Manager (3HW13)
841 Chestnut Building
Philadelphia, PA 19107

(c) For WVDNR: Department of Natural Resources
Attn: Pamela Hayes
WVOW Project Manager
1260 Greenbriar Street
Charleston, WV 25311

XII. PERMITS

12.1 The parties recognize that under Section 121(d) and (e)(1) of CERCLA/SARA, 42 U.S.C. Section 9621(d) and (e)(1), and the NCP, portions of the response actions called for by this Agreement and conducted entirely on the Site 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.

12.2 Paragraph 12.1, above, is not intended to relieve the Army from any requirement(s) for obtaining a permit or other authorization for response actions involving the shipment or movement off the Site of a hazardous substance.

12.25 Paragraph 12.1, above, and Paragraph 12.3, below, are not intended to relieve WVDNR of its responsibility to identify potential State Applicable, Relevant and Appropriate Requirements (ARARs) to the President in accordance with Section 121 (d)(2)(A)(ii) of CERCLA, 42 U.S.C. Section 9621(d)(2)(A)(ii).

12.3 The Army shall notify U.S. EPA in writing of any permits or other authorization if required for off-site activities as soon as it becomes aware of the requirement. Upon request, the Army shall provide U.S. EPA copies of all such permit applications and other documents related to the permit or authorization process.

12.4 If a permit or other authorization which is necessary for implementation of this Agreement is not issued, or is issued or renewed in a manner which is materially inconsistent with the requirements of this Agreement, the Army agrees to notify U.S. EPA of its intention to propose modifications to the appropriate primary documents in accord with the procedure agreed to in Paragraph 6.9 of 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) days of receipt by the Army of notification that: (1) a permit will not be issued; (2) a permit has been issued or reissued in a manner materially inconsistent with this Agreement; 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 U.S. EPA its proposed modifications with an explanation of its reasons in support thereof.

12.5 U.S. EPA shall subject the Army's proposed modifications to review in accordance with Paragraph 6.9 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 U.S. EPA may elect to delay review of the proposed modifications until after such final determination is entered. If the U.S. EPA elects to delay review, the Army shall continue implementation of this Agreement as provided in Paragraph 12.6 of this Section.

12.6 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 Paragraph 12.5, 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).

12.7 Except as otherwise provided in CERCLA and as agreed upon by the Parties pursuant to this Agreement, the Army shall comply with state and federal ARARs at the Site.

XIII. EMERGENCY RESPONSE ACTIONS

13.1 Notwithstanding any other provision of this Agreement, the Army and EPA retain their respective rights, consistent with Executive Order 12580, to conduct such emergency actions as may be necessary to abate imminent and substantial endangerments to human health or the environment from the release or threat of release of hazardous substances, pollutants or contaminants at or from WVOW.

13.2 A Party conducting an emergency response action shall provide the other Party with oral notice as soon as possible after determining that an emergency action is necessary. In addition, within seven days of such determination, the responding Party shall provide, as required, written notice to the other Party explaining why such action is or was necessary. Promptly thereafter, the responding Party shall provide the other Party with the written bases (factual, technical and scientific) for such action and any available documents supporting such action. Upon completion of an emergency action, the responding Party shall notify the other Party in writing that the emergency action has been implemented. Such notice shall state whether, and to

what extent, the emergency action varied from the description of the action in the written notice provided pursuant to the second sentence of this Paragraph.

XIV. DISPUTE RESOLUTION

14.1 Notwithstanding any other provision of this Agreement, including those concerning the participation of WVDNR through review and comment on primary and secondary documents, only the Parties to this Agreement are entitled to invoke and participate in dispute resolution under this Section. If a dispute arises under this Agreement between the Parties, i.e., the U.S. Environmental Protection Agency and the U.S. Army, the procedures of this Section shall apply unless specifically made inapplicable elsewhere in this Agreement. 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.

14.2 Within thirty (30) days after: (1) the issuance of a draft final primary document pursuant to Section VI (Consultation) of this Agreement or (2) any action which leads to or generates a dispute, the disputing Party shall submit to the 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 technical, legal or factual information the disputing Party is relying upon to support its position.

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

14.4 The DRC will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (SES or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The EPA representative on the DRC is the Waste Management Division Director of EPA's Region III. The Army's designated member is the Deputy/Technical Director USATHAMA. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Section XI (Notice to the Parties) of this Agreement.

14.5 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. 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.

14.6 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's Region III. The Army's representative on the SEC is the Army's DESOH,ASA(I&L). The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision. If unanimous resolution of the dispute is not reached within twenty-one (21) days, EPA's Regional Administrator shall issue a written position on the dispute. The Army may, within fourteen (14) days of the Regional Administrator's issuance of EPA's position, issue a written notice elevating the dispute to the Administrator of EPA for resolution in accordance with all applicable laws and procedures. In the event that the Army elects not to elevate the dispute to the Administrator within the designated fourteen (14) day escalation period, the Army shall be deemed to have agreed with Regional Administrator's written position with respect to the dispute.

14.7 Upon escalation of a dispute to the Administrator of EPA pursuant to Paragraph 14.6, 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 Army's Secretariat Representative to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the Army 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.

14.8 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 not to exceed the actual time taken to resolve any dispute in accordance with the procedures specified herein if the Parties agree that the performance of such work would be affected by the dispute. All elements of the work required by this Agreement which are not affected by the dispute shall continue and be completed in accordance with the applicable schedule.

14.9 When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Hazardous Waste Division Director for EPA's Region III requests, in writing, that work related to the dispute be stopped because, in EPA's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a

substantial adverse effect on the remedy selection or implementation process. To the extent possible, EPA shall consult with the Army prior to initiation of a work stoppage request. After stoppage of work, if the Army believes that the work stoppage is inappropriate or may have potential significant adverse impacts, the Parties may meet to discuss the work stoppage. Following this meeting, and after further consideration of the issues, the EPA Hazardous Waste Management Division Director will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the the Division Director may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the Army.

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

14.11 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 the Agreement.

XV. DEADLINES

15.1 Within twenty-one (21) days of receipt of notice of the effective date of this Agreement, the Army shall propose deadlines for the completion and transmittal to EPA of the following Draft Primary Documents:

(a) Remedial Design/Remedial Action Work Plan, including Sampling and Analysis Plan and Quality Assurance Project Plan;

(b) Community Relations Plan;

(c) Health and Safety Plan;

(d) Remedial Action Report; and

(e) Operation and Maintenance Plan.

15.2 Within fifteen (15) days of receipt, EPA shall review and provide comments to the Army regarding the proposed deadlines. Within fifteen (15) days following receipt of comments, the Army shall, as appropriate, make revisions and reissue the proposal. The Parties shall meet as necessary to discuss and finalize the proposed deadlines. If the Parties fail to agree within thirty (30) days on the proposed deadlines, the matter shall immediately be submitted for dispute resolution pursuant to Section XIV (Dispute Resolution) of this Agreement.

The finalized deadlines shall be incorporated into the appropriate Work Plans and shall be published by EPA.

15.3 The deadlines set forth in this Section, or to be established as set forth in this Section, may be extended pursuant to Section XVI (Extensions) of this Agreement.

XVI. EXTENSIONS

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

(a) The timetable and deadline or the schedule that is sought to be extended;

(b) The length of the extension sought;

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

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

16.2 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; and

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

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

16.4 Within seven (7) days of receipt of a request for an extension of a timetable and deadline or a schedule, the other Party shall each advise the requesting Party, in writing, of its position on the request. Any failure by the other Party to respond within the seven (7) day period shall be deemed to constitute concurrence in the request for extension. If a Party

does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

16.5 If there is agreement between the Parties that the requested extension is warranted, the Army shall extend the affected timetable and deadline or schedule accordingly. If there is no agreement between 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.

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

16.7 A timely and good faith request for an extension shall toll any assessment of stipulated penalties or application for judicial enforcement of the affected 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 and 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.

XVII. FORCE MAJEURE

17.1 A force majeure shall mean any event arising from causes beyond the control of a Party that causes a delay in or prevents the performance of any obligation under this Agreement, including, but not limited to, acts of God; fire; war; insurrection; civil disturbance; explosion; unanticipated breakage or accident to machinery, equipment or lines of pipe, despite reasonably diligent maintenance; adverse weather conditions that could not be reasonably anticipated; unusual delay in transportation; restraint by court order or order of public authority; inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority other than the Army; delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; and insufficient availability of appropriated funds, if the Army shall have made timely request for such funds as part of the budgetary process, as set forth in Section XXVII (Funding) of this Agreement. A force majeure shall also include any strike or other labor dispute, whether or not within the control of the Parties affected thereby. Force majeure shall not include

increased costs or expenses of response actions, whether or not anticipated at the time such response actions were initiated.

XVIII. WORK TO BE PERFORMED

18.1 Prior to the initiation of a Remedial Action for WVOW, the Army shall submit to EPA a Work Plan detailing the procedures to be followed and a schedule for completion of those procedures. All Work Plans submitted shall be subject to review as primary documents pursuant to Section VI (Consultation With EPA) of this Agreement.

It is the intent of the Parties to this Agreement that work done and data generated prior to the effective date of this Agreement be retained and utilized, to the maximum extent feasible, without violating applicable or relevant and appropriate laws, regulations, or guidelines and without risking significant technical errors.

REMEDIAL DESIGNS AND REMEDIAL ACTIONS (RD/RA)

18.2 Formulation of schedules:

(a) The Army shall propose deadlines for the Remedial Design and Remedial Action Work Plan to the EPA in accordance with Paragraph 15.1, above; and

(b) The Remedial Action Work Plan shall contain a schedule for the completion of the Remedial Action.

Design of Remedial Action

18.3 The Army command responsible for design of a remedial action identified in the ROD shall designate a Remedial Project Manager who shall be responsible for development of the Conceptual Design Document, the 30/60% Remedial Design/Remedial Action Plan (at approximately thirty (30) to sixty (60) percent completion of the design work), the 90% Remedial Design/ Remedial Action Plan (at approximately ninety (90) percent completion of the design work), and the Final Design Plan (at approximately ninety-five (95) percent completion of the design work) for the remedial action.

18.4 With the exception of the Final Design Plan, the documents listed in Paragraph 18.3 shall be secondary documents as described in Section VI (Consultation with EPA and WVDNR) of this Agreement and shall be submitted by the Army to the EPA Project Manager and WVDNR for review and comment.

Implementation of Remedial Actions

18.5 At the monthly conferences, the Project Managers shall report on their progress in implementing remedial actions. During such meetings, it shall be the responsibility of each Party to raise any objections it may have with respect to the manner in which a remedial action is being implemented. In raising such an objection, a Party shall indicate whether, and to what extent, it believes the activity is not being implemented in accordance with the applicable ROD, the final design document, or this Agreement. The Army shall be available to respond to such objections.

18.6 The Project Managers shall attempt to resolve, informally, any dispute with respect to the manner in which a remedial action is being implemented or whether extension of the implementation schedule should be granted. Any Party may invoke dispute resolution to resolve a disagreement with respect to the implementation of a remedial action that cannot be resolved at the Project Manager level. It shall be each Party's responsibility to communicate any concerns it has regarding implementation of a remedial action promptly upon becoming aware of those concerns.

Operation and Maintenance

18.7 The Army will itself, or in a separate agreement with the State of West Virginia, ensure that long-term operation and maintenance of the remedy will be maintained.

Extensions of Schedules

18.8 Design and implementation schedules may be extended for good cause in accordance with the provisions of Section XVI (Extensions) of this Agreement.

EPA Certification

18.9 When the Army determines that any interim, final or supplemental remedial action for which it is responsible under this Agreement has been completed in accordance with the requirements of this Agreement, it shall so advise EPA, in writing, and shall request certification by EPA that the remedial action has been completed in accordance with the requirements of this Agreement. Within ninety (90) days of the receipt of a request for certification by EPA shall advise the Army in writing that:

(a) the remedial action has been completed in accordance with this Agreement; or

(b) the remedial action has not been completed and deny the Army's request for certification, stating in full the basis for its denial.

18.10 If EPA denies the Army's request for certification that a remedial action has been completed in accordance with this Agreement, the Army may invoke dispute resolution to review EPA's determination. If a denial of certification is upheld in dispute resolution, EPA shall describe the additional work needed to bring the remedial action into compliance with the requirements of this Agreement. After performing such additional work, the Army shall resubmit a request for certification to EPA. EPA shall then grant or deny certification pursuant to the process set forth in this Paragraph and the previous Paragraph.

XIX. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

19.1 The Parties intend to integrate the Army's CERCLA response obligations and RCRA corrective action obligations, which relate to the release(s) of hazardous substances, hazardous wastes, pollutants or contaminants covered by this Agreement, into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will be deemed to achieve compliance with CERCLA, 42 U.S.C. Section 9601 et seq.; to satisfy the corrective action requirements of RCRA Sections 3004(u) and (v), 42 U.S.C. Sections 6924(u) and (v) (for a RCRA permit) and RCRA Section 3008(h), 42 U.S.C. Section 6928(h) (for interim status facilities); and 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.

19.2 Based upon the foregoing, the Parties intend that any remedial action selected, implemented, and completed under this Agreement shall be deemed by the Parties to be protective of human health and the environment, such that remediation of releases covered by this Agreement shall obviate the need for further corrective action under RCRA (i.e., no further corrective action shall be required). The Parties agree that with respect to releases of hazardous waste covered by this Agreement, RCRA shall be considered an applicable or relevant and appropriate requirement pursuant to CERCLA Section 121, 42 U.S.C. Section 9621.

19.3 The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties further recognize that ongoing hazardous waste management activities at WVOW may require the issuance of permits under federal and state laws. This Agreement does not affect the requirements, if any, to obtain such permits. However, if a permit is issued to the Army for ongoing hazardous waste management activities at the Site, EPA shall reference and incorporate any appropriate provisions, including appropriate schedules (and the provision for extension of such schedules), of this Agreement into such permit. The Parties intend that the judicial review of any permit conditions which reference this

Agreement shall, to the extent authorized by law, only be reviewed under the provisions of CERCLA.

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

XX. PERIODIC REVIEW

20.1 Subject to Paragraph 20.2, below, the Army shall conduct a periodic review of any final and supplemental response action taken at the Site to determine whether and to what extent any additional remedial action is necessary. The periodic review shall be conducted in accordance with CERCLA Section 121(c), 42 U.S.C. Section 9621(c), and any pertinent, published regulation or guidance issued by EPA that is not inconsistent with CERCLA and the NCP. Upon completion, the Army shall provide the assessment report to the EPA and the WVDNR.

20.2 The periodic review for each Operable Unit shall be conducted not less often than every five (5) years after initiation of the final response action for that Operable Unit, as long as hazardous substances, pollutants or contaminants remain within the area covered by that Operable Unit.

20.3 The assessment and selection of any additional response action determined necessary in the course of a periodic review shall be in accordance with Section XXI (Assessment and Selection of Supplemental Response Action) of this Agreement. Except for emergency response actions, which shall be governed by Section XIII (Emergency Response Actions) of this Agreement, such response action shall be implemented as a supplemental response action in accordance with Section XXI of this Agreement.

XXI. ASSESSMENT AND SELECTION OF SUPPLEMENTAL RESPONSE ACTION

21.1 A supplemental response action shall be undertaken only when:

(a) EPA determines that, as a result of the release or threat of release of a hazardous substance, pollutant or contaminant at or from the Site, an additional response action is necessary and appropriate to assure the protection of human health and the environment; and

(b) Either of the following conditions is met for any determination made pursuant to Subparagraph 21.1(a), above:

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

the ROD; or

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

21.2 If, after finalization of the ROD, any Party concludes that a supplemental response action is necessary, based on the criteria set forth in Paragraph 21.1, above, such Party may promptly notify the other Party of its conclusion in writing. The Project Managers shall confer and attempt to reach consensus on the need for such an action within forty-five (45) days of the receipt of such notice. If, within that forty-five (45) day period, the Project Managers have failed to reach consensus, any Party may notify the other Party in writing that it intends to invoke dispute resolution. If the Project Managers are still unable to reach consensus within fourteen (14) days of the issuance of such notice, the question of the need for the supplemental response action shall be resolved through dispute resolution.

21.3 If the Project Managers agree or if it is determined through dispute resolution that a supplemental response action is needed based on the criteria set forth in Paragraph 21.1, the Army shall prepare a draft supplemental response action plan that shall include supplemental RI/FS deadlines. Supplemental RI/FS deadlines may be extended pursuant to Section XVI (Extensions) of this Agreement. The Army shall provide the draft supplemental response action plan to EPA and WVDNR. EPA and WVDNR shall have 30 days in which to comment. The Army shall respond to comments from EPA within 30 days after close of the comment period. Any Party may then invoke dispute resolution to resolve a dispute with respect to the supplemental response action plan. After any disputes between the Parties with respect to the supplemental response action plan have been resolved, the Army shall supplement the administrative record with the supplemental RI/FS deadlines.

21.4 After any dispute(s) with respect to a supplemental response action plan have been resolved, the Army shall conduct a supplemental RI/FS in accordance with the supplemental response action plan, and EPA shall issue a supplemental ROD. The provisions in Section VI (Consultation) and Section XVIII (Work to be Performed) of this Agreement shall govern the planning and selection of the supplemental response actions to the same extent they govern the planning and selection of final response actions, unless it is the consensus of the Parties that a particular provision does not apply. The supplemental ROD shall include the design schedule that shall govern completion of the design work for the supplemental response action.

21.5 Following issuance of the supplemental response action ROD, the supplemental response action shall be implemented

pursuant to that ROD.

XXII. ENFORCEABILITY

22.1 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, 42 U.S.C. Section 9659, and any violation of such standard, regulation, condition, requirement or order will be subject to civil penalties under CERCLA Sections 310(c) and 109, 42 U.S.C. Sections 9659(c) and 9609;

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

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

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

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

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

XXIII. STIPULATED PENALTIES

23.1 In the event that the Army fails to submit a primary document (i.e., Scope of Work, Remedial Design, Remedial Action Work Plan) to EPA 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 final remedial action, EPA may assess a stipulated penalty against the Army. A stipulated penalty may be assessed, in an amount not to exceed $5,000 for the first week (or part thereof) and $10,000 for each additional week (or part thereof), for which a failure set forth in this Paragraph occurs.

23.2 Upon determining that the Army has failed in a manner set forth in Paragraph 23.1, EPA shall so notify the Army in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the Army shall have fifteen (15) days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. The Army shall not be liable for the stipulated penalty assessed by EPA if the failure is determined, through the dispute resolution procedures, 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 that stipulated penalty.

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

(a) The facility responsible for the failure;

(b) A statement of the facts and circumstances giving rise to the failure;

(c) A statement of any administrative or other corrective action taken at the relevant 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 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.

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

23.5 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.

23.6 This Section shall not affect the Army's ability to obtain an extension of a timetable, deadline or schedule pursuant to Section XVI of this Agreement.

23.7 Nothing in this Agreement shall be construed to render

any officer or employee of the Army personally liable for the payment of any stipulated penalty assessed pursuant to this Section.

XXIV. OTHER CLAIMS

24.1 Subject to Section XIX (Statutory Compliance) of this Agreement, nothing in this Agreement shall restrict EPA from taking any action under CERCLA, RCRA, or any other federal or state laws or regulations for any matter not specifically part of the work performed pursuant to this Agreement.

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

XXV. RESERVATION OF RIGHTS

25.1 The Army and EPA, after exhausting their remedies under this Agreement, reserve any and all rights they may have under CERCLA, or any other federal or state law or regulation, where those rights are not inconsistent with the provisions of this Agreement.

XXVI. TERMINATION AND SATISFACTION

26.1 The provisions of this Agreement shall be deemed satisfied upon agreement by the Parties that the Army has completed its obligations under the terms of this Agreement. Following EPA Certification of the remedial actions at the Site pursuant to Paragraphs 18.9 and 18.10, any Party may propose in writing the termination of this Agreement upon a showing that the objectives of this Agreement have been satisfied. A Party opposing termination of this Agreement shall serve its objection upon the proposing Party within thirty (30) days of receipt of the proposal. Without prejudice to the Army's obligation for periodic review under Section XX of this Agreement, no Party shall unreasonably withhold or delay termination of this Agreement. The following Sections shall survive the termination of this Agreement:

(a) Section XX (Periodic Review);

(b) Section XXI (Assessment and Selection of Supplemental Response Action); and

(c) Section XXX (Preservation of Records).

Other Sections of this Agreement including, but not limited to, Section XIV (Dispute Resolution), Section XXII (Enforceability), and Section XXIII (Stipulated Penalties), shall survive for the limited purposes of effecting the Periodic Review, Supplemental Response, and Preservation of Records requirements of this Agreement.

XXVII. FUNDING

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

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

27.3 Any requirement for the payment or obligation of funds, including stipulated penalties, by the Army, established by the terms of this Agreement, shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted.

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

27.5 Funds authorized and appropriated annually by Congress under the "Environmental Restoration, Defense" appropriation in the Department of Defense Appropriation Act and allocated by the Deputy Assistant Secretary of Defense (Environment) to the Army will be the source of funds for activities required by this Agreement, consistent with Section 211 of SARA, 10 U.S.C. Chapter 160. However, should the Environmental Restoration, Defense appropriation be inadequate in any year to meet the total Army CERCLA implementation requirements, the DOD shall employ and the Army 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.

XXVIII. COMMUNITY RELATIONS

28.1 The Parties shall coordinate any statements to the press with respect to this Agreement or any aspect of the processes set forth in this Agreement. Except in case of an emergency requiring the release of necessary information, any Party issuing a press release, with reference to any of the work required by this Agreement, to any publication shall advise the other Party of such press release and the contents thereof, at least 48 hours prior to issuance.

28.2 The Parties agree to comply with all relevant EPA policy and guidance on community relations programs which are in accordance with CERCLA and consistent with the NCP.

28.3 The Army shall implement the Community Relations Plan (CRP) as it relates to the Second Operable Unit ROD within sixty (60) days after it is approved pursuant to Section VI of this Agreement. The CRP responds to the need for an interactive relationship with all interested community elements, both on WVOW and off, regarding environmental activities conducted pursuant to this Agreement by the Army. The CRP shall comply with CERCLA and relevant EPA guidance documents. The CRP shall be a Primary Document.

XXIX. PUBLIC COMMENT

29.1 Within fifteen (15) days of the date of the signing and acceptance of this Agreement by all Parties, EPA shall announce the availability of this Agreement to the public for review and comment. EPA shall accept comments from the public for a period of thirty (30) days after such announcement. Promptly upon the completion of the comment period, EPA shall transmit to the Army and WVDNR copies of all comments received within the comment period.

The Parties shall review all such comments and shall either determine that:

(a) The Agreement should be made effective in its present form; or

(b) Modification of the Agreement is necessary.

29.2 Any Party may submit a written request for modification to the other Party within 20 days after the end of the comment period if it believes that modifications should be made to the Agreement as a result of the public comments received. Within the 20 days after the end of the comment period, any Party may submit to the other Party a written request for an extension to the 20-day period if it believes that more time is needed to review and assess any public comments received. Any such request for an extension shall specify the length of the extension sought.

29.3 If no Party requests modification of the Agreement based on public comments received, the EPA will issue a statement that, based on the public comments received, no modifications to the signed Agreement are necessary. The EPA will issue such a statement either on the 21st day after the end of the comment period or, if an extension is requested pursuant to the provisions of Paragraph 29.2, on the day following the expiration of the extension period.

29.4 If any Party requests modification in writing within the period determined by the provisions of Paragraph 29.2, the Parties shall meet to discuss and reach a decision as to proposed modifications. If the Parties mutually agree in writing as to which modifications are appropriate and to the wording thereof, the modification shall become effective on the day of such written agreement. If the Parties do not mutually agree on proposed modifications within 15 days after the period determined by the provisions of Paragraph 29.2, the Parties shall submit their written notices of position directly to the Dispute Resolution Committee, and the dispute resolution procedure of Section XIV shall apply. If dispute resolution is utilized, each modification shall become effective the day all disputes as to it are resolved. Following the completion of the dispute resolution procedures, any Party may withdraw from the Agreement based upon the proposed modifications.

29.5 In the event of significant modification by mutual consent or through dispute resolution, notice procedures of Section 117 of CERCLA, 42 U.S.C. 9617, and Section 211 of SARA, 10 U.S.C. Chapter 160, shall be followed and a responsiveness summary shall be published by the U.S. EPA.

29.6 The Army agrees that it shall for the period during which the Army is responsible for its maintenance establish and maintain an Administrative Record at or near WVOW in accordance with CERCLA Sections 113(k) and 117(d), 42 U.S.C. Sections 9613(k) and 9617(d). A copy of each document placed in the Administrative Record will be provided to the EPA. The Administrative Record developed by the Army shall be periodically updated and supplied to the EPA.

XXX. PRESERVATION OF RECORDS

30.1 Despite any document retention policy to the contrary, the Parties shall preserve, during the pendency of this Agreement, and for a minimum of seven (7) years after its termination, all records and documents in their possession which relate to the actions carried out pursuant to this Agreement. After this seven (7) year period, each Party shall notify the other Party at least thirty (30) days prior to destruction of any such documents. Upon request by any Party, the requested Party shall make available such records or copies of any such records, unless a withholding of such records is authorized and determined

appropriate by law.

XXXI. PROGRESS REPORTS

31.1 The Army shall submit to the EPA Project Manager and shall also provide to WVDNR 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 to EPA by the tenth (10th) 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 this Agreement and approved Work Plans, are being met. In addition, the progress reports shall identify any anticipated delays in meeting time schedules, the reason(s) for the delay(s) and actions taken to prevent or mitigate the delay(s).

XXXII. MODIFICATION AND EFFECTIVE DATE

32.1 Any Party may submit a written request for modification to the other Party. This Agreement may be modified solely upon written consent of all Parties as to the appropriateness of modification and the wording of any proposed modification. Proposals for modification, other than those based on initial public comment and addressed in Section XXIX of this Agreement do not create any right to withdraw from this Agreement. Any modification shall be effective on the date on which signed by all Parties.

IT IS SO AGREED:

By: Lewis D. Walker — 6/27/89
Date

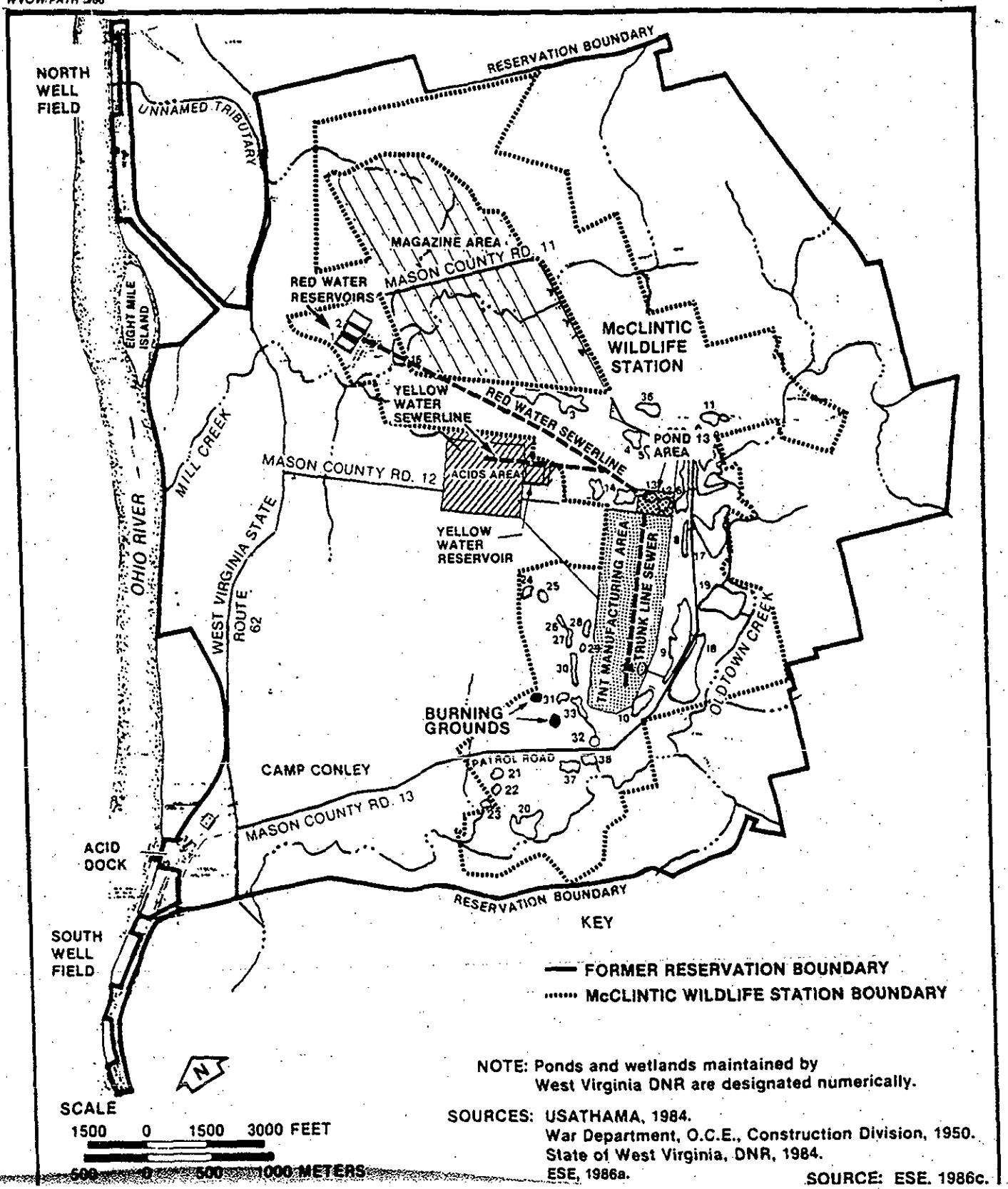
Lewis D. Walker
Deputy Assistant Secretary of the Army
Environmental Safety and Occupational Health
Office of the Assistant Secretary of the Army (I & L)

By: for Robert L. Duprey — 7/9/89
Date

Jonathan Z. Cannon
Acting Assistant Administrator
U.S. Environmental Protection Agency

By: Edwin B. Erickson — 7/18/89
Date

Edwin B. Erickson
Regional Administrator
U.S. Environmental Protection Agency
Region III



ATTACHMENT 1: (FACILITY MAP)