

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9
AND THE
STATE OF CALIFORNIA
AND THE
UNITED STATES ARMY

| | |
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| _____) | |
| IN THE MATTER OF:) | Federal Facility |
|) | Agreement Under |
| The United States) | |
| Department of the Army) | CERCLA Section 120 |
|) | |
| Fort Ord, Headquarters,) | Administrative |
| Seventh Infantry) | Docket Number: 90-14 |
| Division (Light)) | |
|) | |
| _____) | |

EFFECTIVE DATE: 19 NOV 1990

TABLE OF CONTENTS

| | | |
|-----|--|----|
| 1. | Jurisdiction..... | 1 |
| 2. | Parties..... | 2 |
| 3. | Definitions..... | 2 |
| 4. | Purposes..... | 4 |
| 5. | Determinations..... | 5 |
| 6. | Work to be Performed..... | 6 |
| 7. | Consultation: Review and Comment Process for Draft and Final Documents..... | 7 |
| 8. | Deadlines..... | 13 |
| 9. | Extensions..... | 14 |
| 10. | Force Majeure..... | 15 |
| 11. | Emergencies and Removals..... | 16 |
| 12. | Dispute Resolution..... | 18 |
| 13. | Enforceability..... | 21 |
| 14. | Stipulated Penalties..... | 22 |
| 15. | Funding..... | 24 |
| 16. | Exemptions..... | 25 |
| 17. | Statutory Compliance/RCRA-CERCLA Integration..... | 25 |
| 18. | Project Managers..... | 26 |
| 19. | Permits..... | 28 |
| 20. | Quality Assurance..... | 29 |
| 21. | Notification..... | 29 |
| 22. | Data and Document Availability..... | 30 |
| 23. | Release of Records..... | 30 |
| 24. | Preservation of Records..... | 31 |
| 25. | Access to Federal Facility..... | 32 |
| 26. | Public Participation and Community Relations..... | 34 |
| 27. | Five Year Review..... | 34 |
| 28. | Transfer of Real Property..... | 35 |
| 29. | Amendment or Modification of Agreement..... | 35 |
| 30. | Termination of the Agreement..... | 36 |
| 31. | Covenant Not To Sue and Reservation of Rights..... | 36 |
| 32. | Other Claims..... | 36 |
| 33. | Recovery of EPA Expenses..... | 37 |
| 34. | State Support Services..... | 37 |
| 35. | State Participation Contingency..... | 41 |
| 36. | Effective Date and Public Comment..... | 41 |
| 37. | Base Closure..... | 42 |
| 38. | Appendices and Attachments..... | 42 |

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

1. JURISDICTION

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

(a) The U.S. Environmental Protection Agency (EPA), enters into those portions of this Agreement that relate to the remedial investigation/feasibility study (RI/FS) pursuant to section 120(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9620(e)(1), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499 (hereinafter jointly referred to as CERCLA), and the Resource Conservation and Recovery Act (RCRA) sections 6001, 3008(h), 3004(u) and (v), 42 U.S.C. §§ 6961, 6928(h), 6924(u) and (v), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) (hereinafter jointly referred to as RCRA), and Executive Order 12580;

(b) EPA enters into those portions of this Agreement that relate to remedial actions pursuant to CERCLA section 120(e)(2), 42 U.S.C. § 9620(e)(2), RCRA sections 6001, 3008(h), 3004(u) and (v), 42 U.S.C. §§ 6961, 6928(h), 6924(u) and (v), and Executive Order 12580;

(c) The United States Army (Army) enters into those portions of this Agreement that relate to the RI/FS pursuant to CERCLA section 120(e)(1), 42 U.S.C. § 9620(e)(1), RCRA sections 6001, 3008(h) and 3004(u) & (v), 42 U.S.C. §§ 6961, 6928(h), 6924(u) & (v), Executive Order 12580, and the Defense Environmental Restoration Program (DERP), 10 U.S.C. §§ 2701 et. seq.;

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

(e) The Department of Health Services (DHS) and the California Regional Water Quality Control Board, Central Coast Region (RWQCB) enter into this agreement pursuant to CERCLA sections 120(f) and 121, 42 U.S.C. §§ 9620(f) and 9621, and the California Health and Safety Code, section 102, and Division 20, chapters 6.5 and 6.8 and Division 7 of the California Water Code, and the Clean Water Act, 33 U.S.C. §§ 1251 et seq.

2. PARTIES

2.1 The Parties to this Agreement are EPA, the Army, DHS and RWQCB. The terms of the Agreement shall apply to and be binding upon EPA, DHS, RWQCB and the Army.

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

2.3 Each Party shall be responsible for ensuring that its contractors comply with the terms and conditions of this Agreement. Failure of a Party to provide proper direction to its contractors and any resultant noncompliance with this Agreement by a contractor shall not be considered a Force Majeure event or other good cause for extensions under Section 9 (Extensions), unless the Parties so agree or unless established pursuant to Section 12 (Dispute Resolution). The Army will notify EPA, DHS and RWQCB of the identity and assigned tasks of each of its contractors performing work under this Agreement upon their selection.

3. DEFINITIONS

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

(a) "Agreement" shall refer to this document and shall include all Appendices to this document to the extent they are consistent with the original Agreement as executed or modified. All such Appendices shall be made an integral and enforceable part of this document. Copies of Appendices shall be available as part of the administrative record, as provided in Subsection 26.3.

(b) "The Army" shall mean the U.S. Army, its employees, members, agents, and authorized representatives. "The Army" shall also include 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.

(c) "ARARs" shall mean federal and State applicable or relevant and appropriate requirements, standards, criteria, or limitations, identified pursuant to section 121 of CERCLA, 42 U.S.C. § 9621.

Fort Ord Federal Facility Agreement

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

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

(f) "DHS" shall mean the California Department of Health Services, its successors and assigns, and its duly authorized representatives.

(g) "EPA" shall mean the United States Environmental Protection Agency, its employees and authorized representatives.

(h) "Federal Facility" shall include the Fort Ord Military Reservation.

(i) "Meeting," in regard to Project Managers, shall mean an in-person discussion at a single location or a conference telephone call of all Project Managers. A conference call will suffice for an in-person meeting at the concurrence of the Project Managers.

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

(k) "Operation and maintenance" shall mean activities required to maintain the effectiveness of response actions.

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

(m) "RWQCB" shall mean the California Regional Water Quality Control Board, Central Coast Region, its successors and assigns, and its duly authorized representatives.

(n) "Remedy" or "Remedial Action" or "RA" shall have the same meaning as provided in section 101(24) of CERCLA, 42 U.S.C. § 9601(24), and the NCP, and may consist of Operable Units.

(o) "Site" shall include the "federal facility" of Fort Ord as defined above and the "facility" as defined in CERCLA. For the purposes of obtaining permits, the terms "on-site" and "off-site" shall have the same meaning as provided in the NCP.

(p) "State" shall mean DHS and RWQCB collectively, unless otherwise specified.

4. PURPOSES

4.1 The general purposes of this Agreement are to:

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

(b) Establish a procedural framework and schedule for developing, implementing and monitoring appropriate response actions at the Site in accordance with CERCLA, the NCP, Superfund guidance and policy, RCRA, RCRA guidance and policy, and applicable State law; and

(c) Facilitate cooperation, exchange of information and participation of the Parties in such action; and

(d) Ensure the adequate assessment of potential injury to natural resources, the prompt notification, cooperation and coordination with the Federal and State Natural Resources Trustees necessary to guarantee the implementation of response actions achieving appropriate cleanup levels.

4.2 Specifically, the purposes of this Agreement are to:

(a) Identify operable unit (OU) alternatives which are appropriate at the Site prior to the implementation of final remedial action(s) for the Site. OU alternatives shall be identified and proposed to the Parties as early as possible prior to formal proposal of OUs to EPA, DHS and RWQCB pursuant to CERCLA and applicable State law. This process is designed to promote cooperation among Parties in identifying OU alternatives prior to the final selection of Operable Units;

(b) Establish requirements for the performance of a Remedial Investigation ("RI") to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release and threatened release of hazardous substances, pollutants, or contaminants at the Site and to establish requirements for the performance of a Feasibility Study

Fort Ord Federal Facility Agreement

("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 and applicable State law;

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

(d) Implement the selected remedial actions(s) in accordance with CERCLA and applicable State law;

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

(f) Coordinate response actions at the Site with the mission and support activities at Fort Ord;

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

(h) Provide for State involvement in the initiation, development, selection and enforcement of remedial actions to be undertaken at Fort Ord, including the review of all applicable data as it becomes available and the development of studies, reports, and action plans; and to identify and integrate State ARARs into the remedial action process; and to

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

5. DETERMINATIONS

5.1 This Agreement is based upon the placement of Fort Ord, Monterey, California, on the National Priorities List by the Environmental Protection Agency on February 21, 1990, 55 Federal Register at page 6154.

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

Fort Ord Federal Facility Agreement

5.3 Fort Ord is a federal facility under the jurisdiction of the Secretary of Defense within the meaning of CERCLA section 120, 42 U.S.C. § 9620, and the Superfund Amendments and Reauthorization Act of 1986 (SARA) section 211, 10 U.S.C. § 2701 et seq., and is subject to the Defense Environmental Restoration Program (DERP).

5.4 The Army is the authorized delegate of the President under E.O. 12580 for receipt of notification by the State of its ARARs as required by CERCLA section 121(d)(2)(A)(ii), 42 U.S.C. § 9621(d)(2)(A)(ii).

5.5 The authority of the Army to exercise the delegated removal authority of the President pursuant to CERCLA section 104, 42 U.S.C. § 9604 is not altered by this Agreement.

5.6 Appendix A to this Agreement shows those primary documents for which deadlines have been agreed upon before or on the effective date of this Agreement.

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

5.8 There are areas within the boundaries of the federal facility where hazardous substances have been deposited, stored, placed, or otherwise come to be located in accordance with CERCLA sections 101(9) and (14), 42 U.S.C. § 9601(9) and (14).

5.9 There have been releases of hazardous substances, pollutants or contaminants at or from the federal facility into the environment as defined in CERCLA section 101(22), 42 U.S.C. § 9601(22).

5.10 With respect to these releases, the Army is an owner/operator and/or generator subject to the provisions of CERCLA section 107, 42 U.S.C. § 9607, and within the meaning of California Health and Safety Code section 25323.5(a).

5.11 Included as Attachment A-2 to this Agreement is a map showing source(s) of suspected contamination and the areal extent of known contamination, based on information available at the time of the signing of this Agreement.

6. WORK TO BE PERFORMED

6.1 The Parties agree to perform the tasks, obligations and responsibilities described in this Section in accordance with CERCLA and CERCLA guidance and policy; the NCP; pertinent provisions of RCRA and RCRA guidance and policy; Executive Order

12580; applicable State laws and regulations; and all terms and conditions of this Agreement including documents prepared and incorporated in accordance with Section 7 (Consultation) and Appendix B.

6.2 The Army agrees to undertake, seek adequate funding for, fully implement and report on the following tasks, with participation of the Parties as set forth in this Agreement:

- (a) Remedial Investigations of the Site;
- (b) Federal and State Natural Resource Trustee Notification and Coordination;
- (c) Feasibility Studies for the Site;
- (d) All response actions, including Operable Units, for the Site;
- (e) Operation and maintenance of response actions at the Site.

6.3 The Parties agree to:

- (a) Make their best efforts to expedite the initiation of response actions for the Site, particularly for Operable Units;
- (b) Carry out all activities under this Agreement so as to protect the public health, welfare and the environment.

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

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

7.1 Applicability: The provisions of this Section establish the procedures that shall be used by the Parties to provide each other with appropriate technical support, notice, review, comment, and response to comments regarding RI/FS and RD/RA documents, specified herein as either primary or secondary documents. In accordance with CERCLA section 120, 42 U.S.C. § 9620, and 10 U.S.C. § 2705, the Army will normally be responsible for issuing primary and secondary documents to EPA, DHS and RWQCB. As of the effective date of this Agreement, all draft, draft final and final deliverable documents identified herein shall be prepared, distributed and subject to dispute in accordance with subsections 7.2 through 7.10 below. The designation of a document as "draft"

or "final" is solely for purposes of consultation with EPA, DHS and RWQCB 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.

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

(a) Primary documents include those reports that are major, discrete, portions of RI/FS and/or RD/RA activities. Primary documents are initially issued by the Army in draft subject to review and comment by EPA, DHS and RWQCB. Following receipt of comments on a particular draft primary document, the Army will respond to the comments received and issue a draft final primary document subject to dispute resolution. The draft final primary document will become the final primary document either thirty (30) days after the 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 EPA, DHS and RWQCB. Although the Army will respond to comments received, the draft secondary documents may be finalized in the context of the corresponding primary documents. A secondary document may be disputed at the time the corresponding draft final primary document is issued.

7.3 Primary Documents:

(a) The Army shall complete and transmit drafts of the primary documents identified in Appendix B to EPA, DHS and RWQCB, for review and comment in accordance with the provisions of this Section.

(b) Only draft final primary documents shall be subject to dispute resolution. The Army shall complete and transmit draft primary documents in accordance with the timetable and deadlines established in Section 8 (Deadlines) and Appendix A of this Agreement.

(c) Primary documents may include target dates for subtasks established as provided in Subsections 7.4(b) and 18.3. The purpose of target dates is to assist the Army in meeting deadlines, but target dates do not become enforceable by their inclusion in the primary documents and are not subject to Section 8 (Deadlines), Section 9 (Extensions) or Section 13 (Enforceability).

7.4 Secondary Documents:

(a) The Army shall complete and transmit drafts of the secondary documents identified in Appendix B to EPA, DHS and RWQCB for review and comment.

(b) Although EPA, DHS and RWQCB may comment on the drafts for the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by Subsection 7.2 hereof. Target dates for the completion and transmission of draft secondary documents may be established by the Project Managers. The Project Managers also may agree upon additional secondary documents that are within the scope of the listed primary documents.

7.5 Meetings of the Project Managers. (See also Subsection 18.3). The Project Managers shall meet in person approximately every ninety (90) days, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the Site, including progress on the primary and secondary documents. However, progress meetings may be held more frequently as needed upon request by any Project Manager. Prior to preparing any draft document specified in subsections 7.3 and 7.4 above, the Project Managers shall meet in an effort to reach a common understanding with respect to the contents of the draft document.

7.6 Identification and Determination of Potential ARARs:

(a) For those primary documents or secondary documents for which ARAR determinations are appropriate, prior to the issuance of a draft document, the Project Managers shall meet to identify and propose all potential ARARs pertinent to the document being addressed, including any permitting requirements which may be a source of ARARs. For the particular document being addressed, DHS, with the assistance of RWQCB, shall identify potential State ARARs as required by CERCLA section 121(d)(2)(A)(ii), 42 U.S.C. § 9621(d)(2)(A)(ii), which are pertinent to those activities for which all California State and local agencies are responsible. Draft ARAR determinations shall be prepared by the Army in accordance with CERCLA section 121(d)(2), 42 U.S.C. § 9621(d)(2), the NCP and pertinent guidance issued by EPA.

(b) DHS, with the assistance of RWQCB, will contact those State and local governmental agencies which are a source of potential ARARs. The proposed ARARs obtained from the identified agencies will be submitted to the Army. Where additional communications beyond the State's initial contact are required to obtain ARARs, the Parties shall coordinate efforts.

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

7.7 Review and Comment on Draft Documents:

(a) The Army shall complete and transmit each draft primary document to EPA, DHS and RWQCB on or before the corresponding deadline established for the issuance of the document. The Army shall complete and transmit the draft secondary documents in accordance with the target dates established for the issuance of such documents.

(b) Unless the Parties mutually agree to another time period, all draft documents shall be subject to a sixty (60) day period for review and comment. Review of any document by EPA, DHS and RWQCB may concern all aspects of it (including completeness) and should include, but is not limited to, technical evaluation of any aspect to the document, and consistency with CERCLA, the NCP, applicable California law, and any pertinent guidance or policy issued by EPA, DHS or RWQCB. At the request of any Project Manager, and to expedite the review process, the Army shall make an oral presentation of the document to the Parties at the next scheduled meeting of the Project Managers following transmittal of the draft document or within fourteen (14) days following the request, whichever is sooner. Comments by EPA, DHS and RWQCB shall be provided with adequate specificity so that the Army may respond to the comment and, if appropriate, make changes to the draft document. Comments shall refer to any pertinent sources of authority or references upon which the comments are based and, upon request of the Army, EPA, DHS or RWQCB, as appropriate, shall provide a copy of the cited authority or reference. EPA, DHS or RWQCB may extend the sixty (60) day comment period for an additional thirty (30) days by written notice to the Army prior to the end of the sixty (60) day period. On or before the close of the comment period, EPA, DHS and RWQCB shall transmit their written comments to the Army. In appropriate circumstances, this time period may be further extended in accordance with Section 9 (Extensions).

(c) Representatives of the Army shall make themselves readily available to EPA, DHS and RWQCB during the comment period for purposes of informally responding to questions and comments

on draft documents. Oral comments made during such discussions need not be the subject of a written response by the Army on the close of the comment period.

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

(e) Following the close of the comment period for a draft document, the Army shall give full consideration to all written comments provided on the draft document. Within fifteen (15) days following the close of the comment period on a draft secondary document or draft primary document the Parties shall hold a meeting to discuss all comments received. On a draft secondary document the Army shall, within sixty (60) days of the close of the comment period, transmit to EPA, DHS and RWQCB its written response to the comments received. On a draft primary document the Army shall, within sixty (60) days of the close of the comment period, transmit to EPA, DHS and RWQCB a draft final primary document, which shall include the Army's response to all written comments received within the comment period. While the resulting draft final document shall be the responsibility of the Army, it shall be the product of consensus to the maximum extent possible.

(f) The Army may extend the sixty (60) day period for either responding to comments on a draft document or for issuing the draft final primary document for an additional thirty (30) days by providing written notice to EPA, DHS and RWQCB. In appropriate circumstances, this time period may be further extended in accordance with Section 9 (Extensions).

7.8 Availability of Dispute Resolution for Draft Final Primary Documents:

(a) Dispute resolution shall be available to the Parties for draft final primary documents as set forth in Section 12 (Dispute Resolution).

(b) When dispute resolution is invoked on a draft final primary document, work may be stopped in accordance with the procedures set forth in Subsection 12.9 regarding dispute resolution.

7.9 Finalization of Documents: The draft final primary document shall serve as the final primary document if no party invokes dispute resolution regarding the document or, if invoked, at 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 sixty (60) days, a revision of the draft final document which conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Section 9 (Extensions).

7.10 Subsequent Modification of Final Documents: Following finalization of any primary document other than the Community Relations Plan pursuant to Subsection 7.9 above, any Party may seek to modify the document including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in subparagraphs (a) and (b) below.

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

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

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

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

(c) Nothing in this Section shall alter EPA's, DHS' or RWQCB's ability to request the performance of additional work which was not contemplated by this Agreement. The Army's obligation to perform such work under this Agreement must be established by either a modification of a document or by amendments to this Agreement.

8. DEADLINES

8.1 All deadlines agreed upon before the effective date of this Agreement shall be identified in Appendix A to this Agreement. To the extent that deadlines have already been mutually agreed upon by the Parties prior to the execution of this Agreement, they will satisfy the requirements of this Section and remain in effect, shall be published in accordance with Subsection 8.2, and shall be incorporated into the appropriate work plans.

8.2 Within twenty-one (21) days of the effective date of this Agreement, the Army shall propose deadlines for completion of the remaining draft primary documents identified in Appendix B of this Agreement for those operable units identified as of the effective date of this Agreement and for the final remedy. Within fifteen (15) days of receipt, EPA, DHS and RWQCB shall review and provide comments to the Army regarding the proposed deadlines. Within fifteen (15) days following receipt of the 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. All agreed-upon deadlines shall be incorporated into the appropriate work plans. 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 12 (Dispute Resolution). The final deadlines established pursuant to this Subsection shall be published by EPA, in conjunction with the State.

8.3 Within twenty-one (21) days of issuance of the Record of Decision for any operable unit or for the final remedy, the Army shall propose deadlines for completion of the following draft primary documents:

(a) Remedial Designs

(b) Remedial Action Work Plans (to include operation and maintenance plans, and schedules for RA)

These deadlines shall be proposed, finalized and published using the same procedures set forth in Subsection 8.2 above.

8.4 For any operable units not identified as of the effective date of this Agreement, the Army shall propose deadlines for all primary documents listed in Appendix B within twenty-one (21) days of agreement on the proposed operable unit by all Parties. These deadlines shall be proposed, finalized and published using the same procedures set forth in Subsection 8.2 above.

8.5 The deadlines set forth in this Section, or to be established as set forth in this Section, may be extended pursuant to Section 9 (Extensions). The Parties recognize that one possible basis for extension of the deadlines for completion of the Remedial Investigation and Feasibility Study Reports is the identification of significant new Site conditions during the performance of the remedial investigation.

9. EXTENSIONS

9.1 Timetables, deadlines and schedules shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension. Any request for extension by a Party shall be submitted to the other Parties in writing and shall specify:

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

(b) The length of the extension sought;

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

(d) The extent to which any related timetable and deadline or schedule would be affected if the extension were granted.

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

(a) An event of Force Majeure as defined in Section 10 (Force Majeure) of this Agreement;

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

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

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

(e) A delay caused by public comment periods or hearings required under State law in connection with the State's performance of this Agreement;

(f) Any work stoppage within the scope of Section 11 (Emergencies and Removals); or

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

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

9.4 Within seven (7) days of receipt of a request for an extension of a timetable, deadline or schedule, each receiving Party shall advise the requesting Party orally of the receiving Party's position on the request. Such oral notice shall be followed up in writing within fourteen (14) days. Any failure by a receiving Party to respond orally within the seven (7) day period shall be deemed to constitute concurrence with the request for extension. If a receiving Party does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

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

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

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

10. FORCE MAJEURE

10.1 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; insurrec-

tion; 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 which have been diligently sought. In order for Force Majeure based on insufficient funding to apply to the Army, the Army shall have made timely request for such funds as part of the budgetary process as set forth in Section 15 (Funding). 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.

11. EMERGENCIES AND REMOVALS

11.1 Discovery and Notification: If any Party discovers or becomes aware of an emergency or other situation that may present an endangerment to public health, welfare or the environment at or near the Site, which is related to or may affect the work performed under this Agreement, that Party shall immediately orally notify all other Parties, followed by written notification within seven (7) days. If the emergency arises from activities conducted pursuant to this Agreement, the Army shall then take immediate action to notify the appropriate State and local agencies and affected members of the public.

11.2 Work Stoppage: In the event any Party determines that activities conducted pursuant to this Agreement will cause or otherwise be threatened by a situation described in Subsection 11.1, the Party may propose the termination of such activities. If the Parties mutually agree, the activities shall be stopped for such period of time as required to abate the danger. In the absence of mutual agreement, the activities shall be stopped in accordance with the proposal, and the matter shall be immediately referred to the EPA Hazardous Waste Management Division Director for a work stoppage determination in accordance with Section 12.9.

11.3 Removal Actions:

(a) The provisions of this Section shall apply to all removal actions as defined in CERCLA section 101(23), 42 U.S.C. § 9601(23) and Health and Safety Code section 25323, including all modifications to, or extensions of, the ongoing removal actions, and all new removal actions proposed or commenced following the effective date of this Agreement.

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

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

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

(e) All reviews conducted by EPA, DHS and RWQCB pursuant to 10 U.S.C. § 2705(b)(2) will be expedited so as not to unduly jeopardize fiscal resources of the Army for funding the removal actions.

(f) If a Party determines that there may be an endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance, pollutant or contaminant at or from the Site, including but not limited to discovery of contamination of a drinking water well at concentrations that exceed any State or federal drinking water action level or standards, the Party may request that the Army take such response actions as may be necessary to abate such danger or threat and to protect the public health or welfare or the environment. Such actions might include provision of alternative drinking water supplies or other response actions listed in CERCLA section 101(23) or (24), 42 U.S.C. § 9601(23) or (24), or such other relief as the public interest may require.

11.4 Notice and Opportunity to Comment:

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

(b) For emergency response actions, the Army shall provide EPA, DHS and RWQCB with notice in accordance with Subsection 11.1. Except in the case of extreme emergencies, such oral notification shall include adequate information concerning the Site background, threat to the public health and welfare or the environment (including the need for response), proposed actions and costs (including a comparison of possible alternatives, means of transportation of any hazardous substances off-site, and proposed manner of disposal), expected change in the situation should no action be taken or should action be delayed (including associated environmental impacts), any important policy issues, and the Army On-Scene Coordinator recommendations. Within forty-five (45) days of completion of the emergency action, the Army will furnish EPA, DHS and RWQCB with an Action Memorandum addressing the information provided in the oral notification, and any other information required pursuant to CERCLA and the NCP, and in accordance with pertinent EPA guidance, for such actions.

(c) For other removal actions, the Army will provide EPA, DHS and RWQCB with any information required by CERCLA, the NCP, and in accordance with pertinent EPA guidance, such as the Action Memorandum, the Engineering Evaluation/Cost Analysis (in the case of non-time-critical removals) and, to the extent it is not otherwise included, all information required to be provided in accordance with paragraph (b) of this Subsection. Such information shall be furnished at least forty-five (45) days before the response action is to begin.

(d) All activities related to ongoing removal actions shall be reported by the Army in the progress reports as described in Section 18 (Project Managers).

11.5 Any dispute among the Parties as to whether a proposed response action is: (a) properly considered a removal action, as defined by CERCLA section 101(23), 42 U.S.C. § 9601(23); (b) consistent with the final remedial action; or (c) whether the Army will take a removal action requested by any Party pursuant to Subsection 11.3(f) above; shall be resolved pursuant to Section 12 (Dispute Resolution). Such dispute may be brought directly to the DRC or the SEC at any Party's request.

12. DISPUTE RESOLUTION

12.1 Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Section shall apply. EPA, the Army, and collectively the Parties representing the State as a single unit, may invoke this dispute resolution procedure. All Parties to this Agreement shall make reasonable efforts to informally resolve

disputes at the Project Manager or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this Section shall be implemented to resolve a dispute.

12.2 Within thirty (30) days after: (a) the issuance of a draft final primary document pursuant to Section 7 (Consultation), or (b) any action which leads to or generates a dispute, the disputing Party shall submit to the Dispute Resolution Committee (DRC) a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute and the technical, legal or factual information the disputing Party is relying upon to support its position.

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

12.4 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. Senior Executive Service (SES) or equivalent or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The EPA representative on the DRC is the Deputy Director, Superfund Programs, of EPA's Region 9. The Army's designated member is the Fort Ord Garrison Commander. The DHS representative is the Chief of the Site Mitigation Unit, Region 2. The RWQCB representative is the RWQCB Assistant Executive Officer. 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 21 (Notification).

12.5 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.

12.6 The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The EPA representative on the SEC is the Regional Administrator of

EPA Region 9. The Army's representative on the SEC is the Deputy Assistant Secretary of the Army for Environment, Safety, and Occupational Health. The DHS representative on the SEC is the DHS Chief Deputy Director. The RWQCB representative on the SEC is the RWQCB Executive Officer. 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 or the State 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 the Army or the State elects not to elevate the dispute to the Administrator within the designated fourteen (14) day escalation period, the Army and the State shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.

12.7 Upon escalation of a dispute to the Administrator of EPA pursuant to Subsection 12.6 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, the DHS Chief Deputy Director, and the RWQCB Executive Officer, to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the Army and the State 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.

12.8 Wherever in this Section unanimity of decision is required for resolving disputes, DHS and RWQCB, as agencies of the State of California, shall have one vote between them regardless of the fact that they may have more than one representative representing them at the particular stage of dispute resolution. It shall be their responsibility to determine who shall cast their vote on their behalf.

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

12.10 When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Hazardous Waste Management Division Director for EPA Region 9 requests, in writing, that work related to the dispute be stopped because, in EPA's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. The State may request the EPA Hazardous Waste Management Division Director to order work stopped for the reasons set out above. To the extent possible, the Party seeking a work stoppage shall consult with the other Parties prior to initiating a work stoppage request. After work stoppage, if a Party believes that the work stoppage is inappropriate or may have potential significant adverse impacts, the Party may meet with the other Parties to discuss the work stoppage. Following this meeting, and further considerations of this issue, the EPA Hazardous Waste Management Division Director will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the EPA Hazardous Waste Management Division Director may immediately be subject to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the Party requesting dispute resolution.

12.11 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.

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

13. ENFORCEABILITY

13.1 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. § 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. §§ 9659(c) and 9609;

(b) All timetables or deadlines associated with the RI/FS shall be enforceable by any person pursuant to CERCLA section 310, 42 U.S.C. § 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. §§ 9659(c) and 9609;

(c) All terms and conditions of this Agreement which relate to remedial actions, including corresponding timetables, deadlines or schedules, and all work associated with remedial actions, shall be enforceable by any person pursuant to CERCLA section 310(c), 42 U.S.C. § 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. §§ 9659(c) and 9609; and

(d) Any final resolution of a dispute pursuant to Section 12 (Dispute Resolution) of this Agreement which establishes a term, condition, timetable, deadline or schedule shall be enforceable by any person pursuant to CERCLA section 310(c), 42 U.S.C. § 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. §§ 9659(c) and 9609.

13.2 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. § 9613(h).

13.3 Nothing in this Agreement shall be construed as a restriction or waiver of any rights the EPA or the State may have under CERCLA, including but not limited to any rights under sections 113 and 310, 42 U.S.C. §§ 9613 and 9659. The Army does not waive any rights it may have under CERCLA section 120, 42 U.S.C. § 9620, SARA section 211 and Executive Order 12580.

13.4 The Parties agree to exhaust their rights under Section 12 (Dispute Resolution) prior to exercising any rights to judicial review that they may have.

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

14. STIPULATED PENALTIES

14.1 In the event that the Army fails to submit a primary document listed in Appendix B to EPA, DHS and RWQCB 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 an operable unit or final remedial action, EPA may assess a stipulated penalty

against the Army. DHS or RWQCB may also recommend to EPA that a stipulated penalty be assessed. A stipulated penalty may be assessed in an amount not to exceed \$5,000 for the first week (or part thereof), and \$10,000 for each additional week (or part thereof) for which a failure set forth in this Subsection occurs.

14.2 Upon determining that the Army has failed in a manner set forth in Subsection 14.1, 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 process, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.

14.3 The annual reports required by CERCLA section 120(e)(5), 42 U.S.C. § 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 federal facility responsible for the failure;

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

(c) A statement of any administrative or other corrective action taken at the relevant federal facility, or a statement of why such measures were determined to be inappropriate;

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

(e) The total dollar amount of the stipulated penalty assessed for the particular failure.

14.4 Stipulated penalties assessed pursuant to this Section shall be payable to the Hazardous Substances Response Trust Fund only in the manner and to the extent expressly provided for in acts authorizing funds for, and appropriations to, the DOD. EPA, DHS and RWQCB shall, to the extent allowed by law, divide equally any stipulated penalties paid on behalf of Fort Ord with fifty percent (50%) allocated to EPA and fifty percent (50%) allocated to the State agencies. The Army's signature of this Agreement does not constitute endorsement of the division of stipulated penalty payments between EPA and the State.

14.5 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. § 9609.

14.6 This Section shall not affect the Army's ability to obtain an extension of a timetable, deadline or schedule pursuant to Section 9 (Extensions).

14.7 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.

15. FUNDING

15.1 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 DOD budgetary process to fulfill its obligations under this Agreement.

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

15.3 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. § 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.

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

15.5 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 ap-

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.

16. EXEMPTIONS

16.1 The obligation of the Army to comply with the provisions of this Agreement may be relieved by:

(a) A Presidential order of exemption issued pursuant to the provisions of CERCLA section 120(j)(1), 42 U.S.C. § 9620(j)(1), or RCRA section 6001, 42 U.S.C. § 6961; or

(b) The order of an appropriate court.

16.2 The State agencies reserve any statutory right they may have to challenge any Presidential Order relieving the Army of its obligations to comply with this Agreement.

17. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

17.1 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 achieve compliance with CERCLA, 42 U.S.C. §§ 9601 et seq.; to satisfy the corrective action requirements of RCRA section 3004(u) and (v), 42 U.S.C. § 6924(u) and (v), for a RCRA permit, and RCRA section 3008(h), 42 U.S.C. § 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. § 9621.

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

17.3 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 recognize that ongoing activities outside the scope of this Agreement at Fort Ord 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, the issuing party shall reference and incorporate in a permit condition any appropriate provision, including appropriate schedules (and the provision for extension of such schedules), of this Agreement into such permit. The Parties intend that any judicial review of any permit condition which references this Agreement shall, to the extent authorized by law, only be reviewed under the provisions of CERCLA.

18. PROJECT MANAGERS

18.1 On or before the effective date of this Agreement, EPA, the Army, DHS and RWQCB shall each designate a Project Manager and an alternate (each hereinafter referred to as Project Manager), for the purpose of overseeing the implementation of this Agreement. The Project Managers shall be responsible on a daily basis for assuring proper implementation of the RI/FS and the RD/RA in accordance with the terms of the Agreement. In addition to the formal notice provisions set forth in Section 21 (Notification), to the maximum extent possible, communications among the Army, EPA, DHS and RWQCB on all documents, including reports, comments, and other correspondence concerning the activities performed pursuant to this Agreement, shall be directed through the Project Managers.

18.2 The Army, EPA, DHS and RWQCB may change their respective Project Managers. The other Parties shall be notified orally within five (5) days of the change. Written confirmation shall follow within seven (7) days of the notification.

18.3 The Project Managers shall meet to discuss progress as described in Subsection 7.5. Although the Army has ultimate responsibility for meeting its respective deadlines or schedules, the Project Managers shall assist in this effort by consolidating the review of primary and secondary documents whenever possible, and by scheduling progress meetings to review reports, evaluate the performance of environmental monitoring at the Site, review RI/FS or RD/RA progress, discuss target dates for elements of the RI/FS to be conducted in the following one hundred and eighty (180) days, resolve disputes, and adjust deadlines or schedules. At least one week prior to each scheduled progress meeting, the Army will provide to the other Parties a draft agenda and summary of the status of the work subject to this Agreement. Unless the

Project Managers agree otherwise, the minutes of each progress meeting, with the meeting agenda and all documents discussed during the meeting (which were not previously provided) as attachments, shall constitute a progress report, which will be sent to all Project Managers by the Army within ten (10) business days after the meeting ends. If an extended period occurs between Project Manager progress meetings, the Project Managers may agree that the Army shall prepare an interim progress report and provide it to the other Parties. The report shall include the information that would normally be discussed in a progress meeting of the Project Managers. Other meetings shall be held more frequently upon request by any Project Manager.

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

(a) Taking samples and ensuring that sampling and other field work is performed in accordance with the terms of any final work plan and QAPP;

(b) Observing, and taking photographs and making such other reports on the progress of the work as the Project Managers deem appropriate, subject to the limitations set forth in Section 25 (Access to Federal Facility) hereof;

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

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

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

18.5 The EPA-designated Project Manager shall have the authority to direct the Army to halt, conduct, or perform any tasks required by this Agreement and any response action portions thereof when the EPA Project Manager determines that conditions may present an immediate risk to public health or welfare or the environment. If EPA makes such an oral request, it shall follow up such request in writing within seven (7) days.

18.6 Any minor field modification proposed by any Party pursuant to this Section must be approved orally by all Parties' Project Managers to be effective. The Army Project Manager will make a contemporaneous record of such modification and approval in a written log, and a copy of the log entry will be provided as

part of the next progress report. Even after approval of the proposed modification, no Project Manager will require implementation by a government contractor without approval of the appropriate Government Contracting Officer.

18.7 The Project Manager for the Army shall be responsible for day-to-day field activities at the Site. The Army Project Manager or other designated employee of Fort Ord shall be present at the Site or reasonably available to supervise work during all hours of work performed at the Site pursuant to this Agreement. For all times that the Army Project Manager is not present and such work is being performed, the Army Project Manager shall inform the Chief, Plans Division, Directorate of Engineering and Housing at Fort Ord of the name and telephone number of the designated Army or Army contractor employee responsible for supervising the work.

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

19. PERMITS

19.1 The Parties recognize that under sections 121(d) and 121(e)(1) of CERCLA, 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-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.

19.2 This Section is not intended to relieve the Army from any and all regulatory requirements, including obtaining a permit, whenever it proposes a response action involving either the movement of hazardous substances, pollutants, or contaminants off-site, or the conduct of a response action off-site.

19.3 The Army shall notify EPA, DHS and RWQCB in writing of any permit required for off-site activities as soon as it becomes aware of the requirement. The Army agrees to obtain any permits necessary for the performance of any work under this Agreement. Upon request, the Army shall provide EPA, DHS and RWQCB copies of all such permit applications and other documents related to the permit process. Copies of permits obtained in implementing this Agreement shall be appended to the appropriate submittal or

progress report. Upon request by the Army Project Manager, the Project Managers of EPA, DHS and RWQCB will assist Fort Ord to the extent feasible in obtaining any required permit.

20. QUALITY ASSURANCE

20.1 In order to provide quality assurance and maintain quality control regarding all field work and sample collection performed pursuant to this Agreement, the Army agrees to designate a Quality Assurance Officer (QAO) who will ensure and document that all work is performed in accordance with approved work plans, sampling plans and QAPPs. The QAO shall maintain for inspection a log of quality assurance field activities and the Army Project Manager shall provide a copy to the Parties upon request.

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

21. NOTIFICATION

21.1 All Parties shall transmit primary and secondary documents, and comments thereon, and all notices required herein by next day mail, hand delivery, or facsimile. Time limitations shall commence upon receipt. Receiving parties shall orally notify the transmitting party upon receipt.

21.2 Notice to the individual Parties pursuant to this Agreement shall be sent to the addresses specified by the Parties. Initially these shall be as follows:

Vance Fong, Remedial Project Manager, Fort Ord
U.S. Environmental Protection Agency, Region 9
Hazardous Waste Management Division, H-7-3
1235 Mission Street
San Francisco, CA 94103;

and

Howard Hatayama, Regional Administrator
California Department of Health Services
Toxic Substances Control Program
Region 2,
700 Heinz Ave., Bldg. F, Second Floor
Berkeley, CA 94710;
ATTN. Lynn Nakashima, Project Manager

and

William R. Leonard
California Regional Water Quality Control Board
Central Coast Region
1102-A Laurel Lane
San Luis Obispo, CA 93401
ATTN. David Eisen

and

HQ 7th Inf. Div. (L) and Fort Ord
Chief, Environmental Branch Plans Div.
ATTN. NPL Project Officer
AFZW-DE-PD
Fort Ord, CA 93941-5777

21.3 All routine correspondence may be sent via first class mail to the above addressees.

22. DATA AND DOCUMENT AVAILABILITY

22.1 Upon request by any party, each Party shall make the requested sampling results, test results or other data or documents generated through the implementation of this Agreement available to the other Parties. All requested quality assured data shall be supplied within sixty (60) days of its collection. If the quality assurance procedure is not completed within sixty (60) days, data or results without quality assurance shall be submitted within the sixty (60) day period and the requested quality assured data or results shall be submitted as soon as they become available.

22.2 The sampling Party's Project Manager shall notify the other Parties' Project Managers not less than ten (10) days in advance of any sample collection. If it is not possible to provide ten (10) days prior notification, the sampling Party's Project Manager shall notify the other Project Managers as soon as possible after becoming aware that samples will be collected. Each Party shall allow, to the extent practicable, split or duplicate samples to be taken by the other Parties or their authorized representatives.

23. RELEASE OF RECORDS

23.1 The Parties may request of one another access to or a copy of any record or document relating to this Agreement or the IRP. If the Party that is the subject of the request (the originating Party) has the record or document, that Party shall provide access to or a copy of the record or document; provided, however, that no access to or copies of records or documents need be provided if they are subject to claims of attorney-client

privilege, attorney work product, deliberative process, enforcement confidentiality, or properly classified for national security under law or executive order.

23.2 Records or documents identified by the originating Party as confidential pursuant to other non-disclosure provisions of the Freedom of Information Act, 5 U.S.C. § 552, or the California Public Records Act, section 6250, et seq. of the California Government Code, shall be released to the requesting Party, provided the requesting Party states in writing that it will not release the record or document to the public without prior approval of the originating Party or after opportunity to consult and, if necessary, contest any preliminary decision to release a document, in accordance with applicable statutes and regulations. Records or documents which are provided to the requesting Party and which are not identified as confidential may be made available to the public without further notice to the originating Party.

23.3 The Parties will not assert one of the above exemptions, including any available under the Freedom of Information Act or California Public Records Act, even if available, if no governmental interest would be jeopardized by access or release as determined solely by that Party.

23.4 Subject to section 120(j)(2) of CERCLA, 42 U.S.C. § 9620(j)(2), any documents required to be provided by Section 7 (Consultation), and analytical data showing test results will always be releasable and no exemption shall be asserted by any Party.

23.5 This Section does not change any requirement regarding press releases in Section 26 (Public Participation and Community Relations).

23.6 A determination not to release a document for one of the reasons specified above shall not be subject to Section 12 (Dispute Resolution). Any Party objecting to another Party's determination may pursue the objection through the determining Party's appeal procedures.

24. PRESERVATION OF RECORDS

24.1 Despite any document retention policy to the contrary, the Parties shall preserve, during the pendency of this Agreement and for a minimum of ten (10) years after its termination, all records and documents contained in the Administrative Record and any additional records and documents retained in the ordinary course of business which relate to the actions carried out pursuant to this Agreement. After this ten (10) year period, each

Party shall notify the other Parties at least forty-five (45) days prior to 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 withholding is authorized and determined appropriate by law.

25. ACCESS TO FEDERAL FACILITY

25.1 Without limitations on any authority conferred on EPA, DHS or RWQCB by statute or regulation, EPA, DHS or RWQCB or their authorized representatives, shall be allowed to enter Fort Ord at reasonable times for purposes consistent with the provisions of the Agreement, subject to any statutory and regulatory requirements necessary to protect national security or mission essential activities. Such access shall include, but not be limited to, reviewing the progress of the Army in carrying out the terms of this Agreement; ascertaining that the work performed pursuant to this Agreement is in accordance with approved work plans, sampling plans and QAPPs; and conducting such tests as EPA, DHS, RWQCB, or the Project Managers deem necessary.

25.2 The Army shall honor all reasonable requests for access by the EPA, DHS or RWQCB, conditioned upon presentation of proper credentials including, if appropriate, proper evidence of required safety training. The Army Project Manager will provide briefing information, coordinate access and escort to restricted or controlled-access areas, arrange for base passes and coordinate any other access requests which arise.

25.3 EPA, DHS and RWQCB shall provide reasonable notice to the Army Project Manager to request any necessary escorts. EPA, DHS and RWQCB shall not use any camera, sound recording or other recording device at Fort Ord without the permission of the Army Project Manager. The Army shall not unreasonably withhold such permission.

25.4 The access by EPA, DHS and RWQCB, granted in Subsection 25.1 of this Section, shall be subject to those regulations necessary to protect national security or mission essential activities. Such regulations shall not be applied so as to unreasonably hinder EPA, DHS or RWQCB from carrying out their responsibilities and authority pursuant to this Agreement. In the event that access requested by either EPA, DHS or RWQCB is denied by the Army, the Army shall provide an explanation within forty-eight (48) hours of the reason for the denial, including reference to the applicable regulations, and, upon request, a copy of such regulations. The Army shall expeditiously make alternative arrangements for accommodating the requested access. The Parties agree that this Agreement is subject to CERCLA sec-

tion 120(j), 42 U.S.C. § 9620(j), regarding the issuance of Site Specific Presidential Orders as may be necessary to protect national security.

25.5 If EPA, DHS or RWQCB requests access in order to observe a sampling event or other work being conducted pursuant to this Agreement, and access is denied or limited, the Army agrees to reschedule or postpone such sampling or work if EPA, DHS or RWQCB so requests, until such mutually agreeable time when the requested access is allowed. The Army shall not restrict the access rights of the EPA, DHS or RWQCB to any greater extent than the Army restricts the access rights of its contractors performing work pursuant to this Agreement.

25.6 All Parties with access to Fort Ord pursuant to this Section shall comply with all applicable health and safety plans.

25.7 To the extent the activities pursuant to this Agreement must be carried out on other than Army's property, the Army shall use its best efforts, including its authority, to the extent such authority is delegated to the Army, under CERCLA section 104, 42 U.S.C. § 9604, to obtain access agreements from the owners which shall provide reasonable access for the Army, EPA, DHS and RWQCB and their representatives. The Army may request the assistance of the State agencies in obtaining such access, and upon such request, the State agencies will use their best efforts to obtain the required access. In the event that the Army is unable to obtain such access agreements, the Army shall promptly notify EPA, DHS and RWQCB.

25.8 With respect to non-Army property on which monitoring wells, pumping wells, or other response actions are to be located, the Army shall use its best efforts to ensure that any access agreements shall provide for the continued right of entry for all Parties for the performance of such remedial activities. In addition, any access agreement shall provide that no conveyance of title, easement, or other interest in the property shall be consummated without the continued right of entry.

25.9 Nothing in this Section shall be construed to limit EPA's, DHS's and RWQCB's full right of access as provided in section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and California Health and Safety Code section 25185, except as that right may be limited by section 120(j)(2) of CERCLA, 42 U.S.C. § 9620(j)(2), Executive Order 12580, or other applicable national security regulations or federal law.

26. PUBLIC PARTICIPATION AND COMMUNITY RELATIONS

26.1 The Parties agree that any proposed removal actions and remedial action alternative(s) and 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 sections 113(k) and 117, 42 U.S.C. §§ 9613(k) and 9617, relevant community relations provisions in the NCP, EPA guidances, and, to the extent they may apply, State statutes and regulations. DHS agrees to inform the Army of all State requirements which it believes pertain to public participation. The provisions of this Section shall be carried out in a manner consistent with, and shall fulfill the intent of, Section 17 (Statutory Compliance - RCRA/CERCLA Integration).

26.2 The Army shall develop and implement a CRP addressing the environmental activities and elements of work undertaken by the Army.

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

26.4 Except in case of an emergency, any Party issuing a press release with reference to 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 prior to issuance.

27. FIVE YEAR REVIEW

27.1 Consistent with section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and in accordance with this Agreement, if the selected remedial action results in any hazardous substances, pollutants or contaminants remaining at the Site, the Parties shall review the remedial action program at least every five (5) years after the initiation of the final remedial action to assure that human health and the environment are being protected by the remedial action being implemented.

27.2 If, upon such review, any of the Parties proposes additional work or modification of work, such proposal shall be handled under Subsection 7.10 of this Agreement.

27.3 To synchronize the five-year reviews for all operable units and final remedial actions, the following procedure will be used: Review of operable units will be conducted every five years counting from the initiation of the first operable unit, until initiation of the final remedial action for the Site. At that time a separate review for all operable units shall be conducted. Review of the final remedial action (including all operable units) shall be conducted every five years thereafter.

28. TRANSFER OF REAL PROPERTY

28.1 No change in the ownership of the Fort Ord Army Base shall in any way alter the responsibilities of the Parties under this Agreement. The Army shall not transfer any real property comprising the federal facility except in compliance with section 120(h) of CERCLA, 42 U.S.C. § 9620(h). Prior to any sale of any portion of the land comprising the federal facility which includes an area within which any release of hazardous substance has come to be located, or any property which is necessary for proceeding with the remedial action, the Army shall give written notice of that condition to the buyer of the land. At least thirty (30) days prior to any conveyance subject to section 120(h) of CERCLA, 42 U.S.C. § 9620(h), the Army shall notify all Parties of the transfer of any real property subject to this Agreement and the provisions made for any additional remedial actions, if required.

28.2 Until six (6) months following the effective date of the final regulations implementing CERCLA section 120(h)(2), 42 U.S.C. § 9620(h)(2), the Army agrees to comply with the most recent version of the regulations as proposed and all other substantive and procedural provisions of CERCLA section 120(h), 42 U.S.C. § 9620(h), and Subsection 28.1 of this Section.

29. AMENDMENT OR MODIFICATION OF AGREEMENT

29.1 This Agreement can be amended or modified solely upon written consent of all Parties. Such amendments or modifications may be proposed by any Party and shall be effective the third business day following the day the last Party to sign the amendment or modification sends its notification of signing to the other Parties. The Parties may agree to a different effective date.

30. TERMINATION OF THE AGREEMENT

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

30.2 This provision shall not affect the requirements for periodic review at maximum five (5) year intervals of the efficacy of the remedial actions.

31. COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

31.1 In consideration for the Army's compliance with this Agreement, and based on the information known to the Parties or reasonably available on the effective date of this Agreement, EPA, the Army, DHS and RWQCB 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 releases or threatened releases of hazardous substances including hazardous wastes, pollutants or contaminants at the Site which are the subject of any RI/FS conducted pursuant to this Agreement and which have been or will be adequately addressed by the remedial actions provided for under this Agreement.

31.2 Notwithstanding this Section, or any other Section of this Agreement, DHS and RWQCB shall retain any statutory right they may have to obtain judicial review of any final decision of the EPA on selection of remedial action pursuant to any authority DHS and RWQCB may have under CERCLA, including sections 121(e)(2), 121(f), 310 and 113, 42 U.S.C. §§ 9621(e)(2), 9621(f), 9659 and 9613.

32. OTHER CLAIMS

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

from the federal facility. Unless specifically agreed to in writing by the Parties, EPA, DHS and RWQCB shall not be held as a party to any contract entered into by the Army to implement the requirements of this Agreement.

32.2 This agreement shall not restrict EPA, DHS or RWQCB from taking any legal or response action for any matter not part of the subject matter of this Agreement.

33. RECOVERY OF EPA EXPENSES

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

34. STATE SUPPORT SERVICES

34.1 The Army agrees to request funding and reimburse the State, subject to the conditions and limitations set forth in this Section, and subject to Section 15 (Funding), for all reasonable costs it incurs in providing services in direct support of the Army's environmental restoration activities pursuant to this Agreement at the Site.

34.2 Reimbursable expenses shall consist only of actual expenditures required to be made and actually made by the State in providing the following assistance to Fort Ord:

(a) Timely technical review and substantive comment on reports or studies which the Army prepares in support of its response actions and submits to the State;

(b) Identification and explanation of unique State requirements applicable to military installations in performing response actions, especially State applicable or relevant and appropriate requirements (ARARs);

(c) Field visits to ensure investigations and cleanup activities are implemented in accordance with appropriate State requirements, or in accordance with agreed upon conditions between the State and the Army that are established in the framework of this Agreement;

(d) Support and assistance to the Army in the conduct of public participation activities in accordance with federal and State requirements for public involvement;

(e) Participation in the review and comment functions of Army Technical Review Committees; and

(f) Any other services specified in this Agreement.

34.3 In the event that DHS or RWQCB contracts for services to be provided at Fort Ord that are the same type performed within DHS, RWQCB, or other State agency, the reimbursable costs for that service shall be limited to the amount that DHS, RWQCB or the State agency would have expended if it had performed the service in-house.

34.4 Within one hundred and twenty (120) days after the end of each quarter of the federal fiscal year, the State shall submit to the Army an accounting of all State costs actually incurred during that quarter in providing direct support services under this Section. Such accounting shall be accompanied by cost summaries and be supported by documentation which meets federal auditing requirements. The summaries will set forth employee-hours and other expenses by major type of support service. All costs submitted must be for work directly related to implementation of this Agreement and not inconsistent with either the National Contingency Plan (NCP) or the requirements described in OMB Circulars A-87 (Cost Principles for State and Local Governments) and A-128 (Audits for State and Local Cooperative Agreements with State and Local Governments) and Standard Forms 424 and 270. The Army has the right to audit cost reports used by the State to develop the cost summaries. Before the beginning of each fiscal year, the State shall supply a budget estimate of what it plans to do in the next year in the same level of detail as the billing documents.

34.5 Within ninety (90) days of receipt of the accounting provided pursuant to Subsection 34.4 above, the Army shall reimburse the State in the amount set forth in the accounting except for any portion of the accounting in dispute pursuant to Subsections 34.6 or 34.7.

34.6 In the event the Army contends that any of the costs set forth in the accounting provided pursuant to Subsection 34.4 above are not properly payable, the matter shall be resolved through a bilateral dispute resolution process set forth at Subsection 34.10 below.

34.7 The Army shall not be responsible for reimbursing the State for any costs actually incurred in the implementation of this Agreement in excess of one percent (1%) of the Army total lifetime DERA eligible project costs incurred through completion of the final remedial action(s) at Fort Ord. This total reimbursement limit is currently estimated to be a sum of sixty mil-

lion dollars (\$60,000,000) over the life of the Agreement. Total reimbursable costs payable during any federal fiscal year following the effective date of this Agreement shall not exceed twenty-five percent (25%) of the total lifetime reimbursable costs. Circumstances could arise whereby fluctuations in the Army estimates or actual final costs through the completion of the final remedial action creates a situation where the State receives reimbursement in excess of one percent of these costs. Under these circumstances, the State remains entitled to payment for services rendered prior to the completion of a new estimate if the services are within the ceiling applicable under the previous estimate.

(a) Funding of support services must be constrained so as to avoid unnecessary diversion of the limited Defense Environmental Restoration Account funds available for the overall cleanup, and

(b) Support services should not be disproportionate to overall project costs and budget.

34.8 Either the Army or the State may request, on the basis of significant upward or downward revisions in the Army's estimate of its total lifetime costs through construction used in Subsection 34.7 above, a renegotiation of the cap. Failing an agreement, either the Army or the State may initiate dispute resolution in accordance with Subsection 34.10 below.

34.9 The State agrees to seek reimbursement for its expenses solely through the mechanisms established in this Section, and reimbursement provided under this Section shall be in settlement of any claims for State response costs relative to the Army's environmental restoration activities at the Site.

34.10 Section 12 (Dispute Resolution) notwithstanding, this Subsection shall govern any dispute between the Army and the State regarding the application of this Section or any matter controlled by this Section including, but not limited to, allowability of expenses and limits on reimbursement. While it is the intent of the Army and the State that these procedures shall govern resolution of disputes concerning State reimbursement, informal dispute resolution is encouraged.

(a) The Army and State Project Managers shall be the initial points of contact for coordination of dispute resolution under this Subsection.

(b) If the Army and State Project Managers are unable to resolve a dispute within fifteen business days, the matter shall be referred to the Fort Ord Garrison Commander or his designated representative, the Chief of the Site Mitigation Unit, DHS Region 2, and the Assistant Executive Officer of RWQCB.

(c) If the Garrison Commander, the Chief of the Site Mitigation Unit and the Assistant Executive Officer are unable to resolve the dispute within ten (10) working days, the matter shall be elevated to the Chief Deputy Director, DHS, the Executive Officer, RWQCB, and the Deputy Assistant Secretary of the Army for Environment, Safety, and Occupational Health.

(d) In the event the Chief Deputy Director, the Executive Officer, and the Deputy Assistant Secretary of the Army are unable to resolve a dispute, the State retains any legal and equitable remedies it may have to recover its expenses. In addition, should a resolution not be reached, DHS or RWQCB may withdraw from this Agreement by giving sixty (60) days notice to the other Parties. Such withdrawal by either of the State agencies shall terminate that agency's rights and obligations under this agreement; provided, however, that any written approvals or written concurrences by either of the State agencies under or pursuant to this Agreement prior to its withdrawal shall continue to have full force and effect as if the withdrawing State agency were still a party to this Agreement.

34.11 Nothing herein shall be construed to limit the ability of the Army to contract with the State for technical services that could otherwise be provided by a private contractor including, but not limited to:

(a) Identification, investigation, and cleanup of any contamination beyond the boundaries of Fort Ord;

(b) Laboratory analysis; or

(c) Data collection for field studies.

34.12 Nothing in this Agreement shall be construed to constitute a waiver of any claims by the State for any expenses incurred prior to the effective date of this Agreement. Costs for any services performed prior to the effective date of this Agreement shall not be reimbursable pursuant to this Agreement.

34.13 The Army and the State agree that the terms and conditions of this Section shall become null and void when the State enters into a Defense/State Memorandum of Agreement (DSMOA) with the Department of Defense (DOD) which addresses State reimbursement.

35. STATE PARTICIPATION CONTINGENCY

35.1 If either or both of the the State agencies fail to sign this Agreement within thirty (30) days of notification of the signature by both EPA and the Army, this Agreement will be interpreted as if the non-signing agency(ies) were not a Party and any reference to such agency(ies) in this Agreement will have no effect. In addition, all other provisions of this Agreement notwithstanding, if either or both of the State agencies does not sign this Agreement within the said thirty (30) days, the Army shall only have to comply with any State requirements, conditions, or standards, including those specifically listed in this Agreement, which the Army would otherwise have to comply with absent this Agreement.

35.2 In the event that DHS or RWQCB does not sign this Agreement:

(a) The Army agrees to transmit all primary and secondary documents to appropriate State and local agencies at the same time such documents are transmitted to EPA; and

(b) EPA intends to consult with the appropriate State agencies with respect to the above documents and during implementation of this Agreement.

36. EFFECTIVE DATE AND PUBLIC COMMENT

36.1 The provisions of this Section shall be carried out in a manner consistent with, and shall fulfill the intent of Section 17 (Statutory Compliance - RCRA/CERCLA Integration).

36.2 Within fifteen (15) days of the date of the execution of this Agreement, the Army shall announce the availability of this Agreement to the public for a forty-five (45) day period of review and comment, including publication in at least two major local newspapers of general circulation. Comments received shall be transmitted promptly to the other Parties after the end of the comment period. The Parties shall review such comments and shall either:

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

(b) If the determination in Subsection 36.2(a) is not made, the Parties shall meet to discuss and agree upon any proposed changes. If the Parties do not mutually agree on all

needed changes within fifteen (15) days from the close of the public comment period, or within such other time period mutually agreed upon by the Parties, the Parties shall submit their written notices of position, concerning those provisions still in dispute, directly to the Dispute Resolution Committee, and the procedures of Section 12 (Dispute Resolution) shall be applied to the disputed provisions. Upon resolution of any proposed changes, the Agreement, as modified, shall be re-executed by the Parties, with EPA signing last, and shall become effective on the date that it is signed by EPA.

36.3 Any response action underway upon the effective date of this Agreement shall be subject to oversight by the Parties.

37. BASE CLOSURE

37.1 Closure of the Federal Facility will not effect the Army's obligation to comply with the terms of this Agreement and to specifically ensure the following:

(a) Continuing rights of access for EPA, DHS and RWQCB in accordance with the terms and conditions of Section 25 (Access to Federal Facility);

(b) Availability of a Project Manager to fulfill the terms and conditions of the Agreement;

(c) Designation of alternate DRC members as appropriate for the purposes of implementing Section 12 (Dispute Resolution); and

(d) Adequate resolution of any other problems identified by the Project Managers regarding the effect of base closure on the implementation of this Agreement.

37.2 Base closure will not constitute a Force Majeure under Section 10 (Force Majeure), nor will it constitute good cause for extensions under Section 9 (Extensions), unless mutually agreed by the Parties.

38. APPENDICES AND ATTACHMENTS

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

(a) Deadlines previously established;

(b) Site-specific outline of key elements to be included in draft or draft final RI/FS Workplan;

(c) The list of all final primary and secondary documents which will be created in accordance with Section 7 (Consultation);

(d) All deadlines which will be established in accordance with Section 8 (Deadlines) and which may be extended in accordance with Section 9 (Extensions); and

(e) All final primary documents and all completed secondary documents agreed upon by the Parties prior to the effective date of this Agreement.

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

(a) Map(s) of federal facility (see also Subsection 5.11);

(b) Chemicals of Concern;

(c) Statement of Facts;

(d) List of final primary documents and documents under review; and

(e) Installation Restoration Program Activities.

Fort Ord Federal Facility Agreement

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

UNITED STATES DEPARTMENT OF THE ARMY

6/21/90
DATE

Lewis D. Walker
LEWIS D. WALKER
Deputy for Environmental Safety
and Occupational Health
Office of the Assistant
Secretary of the Army

FORT ORD

13 June 1990
DATE

Jerry A. White
JERRY A. WHITE
Major General, USA
Commanding

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

7.23.90
DATE

Daniel W. McGovern
DANIEL W. MCGOVERN
Regional Administrator
U.S. Environmental Protection Agency
Region 9

STATE OF CALIFORNIA
DEPARTMENT OF HEALTH SERVICES

6/27/90
DATE

Howard K. Hatayama
HOWARD K. HATAYAMA
Regional Administrator, Region 2
Toxic Substances Control Program
California Department of Health Services

CALIFORNIA REGIONAL WATER QUALITY
CONTROL BOARD, CENTRAL COAST REGION

6/29/90
DATE

William R. Leonard
WILLIAM R. LEONARD
Executive Officer
California Regional Water Quality
Control Board, Central Coast Region

**Appendix A
Timetable and Deadlines for Some of the Future Submittals**

This Appendix contains deadlines and estimated dates for those primary documents which have been agreed upon by all Parties before or on the effective date of this Agreement. Deadlines of the remaining primary documents identified in Appendix B shall be proposed by the Army pursuant to Section 3, Deadlines, of this Agreement.

| <u>Submittals:</u> | <u>Deadlines</u> | <u>Tentative Deadlines</u> |
|---|-------------------|----------------------------|
| <u>BASE-WIDE RI/FS/RD/RA</u> | | |
| Draft Final Site Investigation Report for the site investigation at the 707th Maintenance Facility, the 14th Engineers Motor Pool, the Cannibalization Area, and the Fire Drill Burn Pit Areas. | February 01, 1990 | |
| Draft Base-Wide RI/FS/RD/RA Work Plan | | November 30, 1990 |
| Draft Final Base-Wide RI/FS/RD/RA Work Plan | | March 31, 1991 |
| Base-Wide RI Report | | June 30, 1992 |
| Draft Final Base-Wide RI Report | | October 31, 1992 |
| Initial Screening of Remedial Alternatives | | September 30, 1991 |
| <u>OPERABLE UNIT #1 (OU1)</u> for the Fritzsche Airfield Area) | | |
| Draft Proposed Plan for OU1 | | September 30, 1990 |
| <u>OPERABLE UNIT #2 (OU2)</u> for the Landfill area) | | |
| Draft Final Quality Assurance Project Plan and Field Sampling Plan For Landfill Remedial Investigation | May 15, 1990 | |
| Draft Operable Unit RI/FS Reports for OU2 | | April 30, 1991 |
| Draft Final Operable Unit RI/FS Reports for OU2 | | August 31, 1991 |

**Appendix B
List of Primary and Secondary Submittals**

The Army agrees to conduct RI/FS and RD/RA pursuant to Sections 6, "WORK TO BE PERFORMED", and the Appendix C of this Agreement, "RI/FS/RD/RA WORK PLAN OUTLINE" and submit the following primary and secondary documents for each remedial action. Operable Unit remedial action #1 (OU1), the Fritzsche Airfield Ground Water and Soil Treatment Area, and Operable Unit remedial action #2 (OU2), the Landfill Area, are identified by the Parties at this time. The Army may propose schedules for additional operable unit remedial actions.

Primary Submittals:

Community Relations Plan

Natural Resource Trustee Notification (to both Federal and State Trustees. The Parties agreed that this submittal will not be subject to the review and comment process of Section 7, "Consultation".

Base-Wide RI/FS/RD/RA Work Plan

Quality Assurance Project/Sample Plans for OU2

Base-Wide Quality Assurance Project Plan

Operable Unit RI/FS Reports for OU2

Base-Wide RI Report

Base-Wide FS Report (includes Public Health Evaluation and Environmental Assessment)

Proposed Plans for OU1 and OU2 (will be accompanied by the Operable Units RI/FS Reports for public comment)

Proposed Plan for Overall Site Final Action (will be accompanied by the Operable Units RI/FS Reports for public comment)

Record of Decision (ROD) Documents for OU1 and OU2 (must be concurred by Regional Administrator of EPA, Region IX)
These documents must include responsiveness summaries and schedules for draft remedial designs, completion of constructions, draft remedial action operations plans, and commencements of the operable unit remedial actions.

Record of Decision Document for Base-Wide Final Action (must be concurred by Regional Administrator of EPA, Region IX)
This document must include a responsiveness summary and a schedule for draft remedial design, completion of construction, draft remedial action operations plan, and commencement of the final remedial action.

Remedial Design/Remedial Action Work Plan(s) (for Base-wide only)

Primary Remedial Design Documents (for Base-wide and each OU)

Final Remedial Design Documents (for Base-wide and each OU)

Construction QA/QC Plan(s) (for Base-wide and each OU)

Contingency Plan(s)

Final Closeout Report (for the final remedial action)

Secondary Submittals:

Site Characterization Summaries and Updates

Progress Reports Progress reports are generally submitted quarterly by the Army to the other Parties unless otherwise requested by any other party to be submitted monthly due to busy field activities during certain month(s). Any data and/or data interpretation generated in a certain quarter shall be part of the Progress Report submitted for that quarter. The first Progress Report is due on the last day of the quarter (month) following the effective date of the Agreement. All Quarterly Reports must include but not limited to items (a) through (d) below; Monthly Reports must include, at the minimum, items (b) and (c) below:

- a. validated and/or non-validated sampling/monitoring results and progress of interpretation of sampling/monitoring results, if any;
- b. a summary of work performed last quarter (month), a description of work performed this quarter (month), and a discussion of work to be performed next quarter (month) or a flowchart containing future work elements and estimated time frames for commencement and completion of such elements; and
- c. Issues/difficulties encountered in this quarter (month) and proposed response.
- d. Minutes generated for last quarter meetings

Initial Screening of Remedial Alternatives

Detail Analysis of Alternatives (for both operable unit and final remedial actions)

Treatability Study Reports

Risk Assessment Reports (include Public Health Evaluation and Environmental Assessment Reports for operable unit actions as well as final remedial action)

Well closure reports

Landfill Closure Reports

Post Screening Investigation Work Plans (for operable unit and final remedial actions)

ARARs Assessment Reports

Appendix C RI/FS/RD/RA Work Plan Outline

The Army shall address in its RI/FS/RD/RA Work Plan, but not necessary be limited to, the following tasks. Any Party may request modification of any task of this Appendix in writing and shall specify:

1. The reason(s) for requesting the modification,
2. A clear description of the requested modification, and
3. Timetable and deadlines affected by the requested modification.

This Appendix may be modified upon written agreement between the Project Managers of EPA, DODHS, RWQCB, and The Army.

RI/FS

1.0 MANAGEMENT PLAN OBJECTIVES

- 1.1 Determine the nature and full extent of contaminants in groundwater, surface water, soil, and air,
- 1.2 Characterize the geographical, geological, and hydrogeological condition of the Site,
- 1.3 Identify all existing and potential sources of contamination and migration pathways,
- 1.4 Identify Federal and state applicable or relevant and appropriate requirements (ARARs)
- 1.5 Develop data quality objectives based on site-specific condition, ARARs, and public health and environmental protective criteria
- 1.6 Conduct a base wide Public Health and Environmental Evaluation based on reliable RI/FS information and data, and
- 1.7 Identify and evaluate remedial alternatives in accordance with EPA RI/FS guidance.

2.0 REMEDIAL INVESTIGATION

2.0(A) Description of Current Situation

- 2.1 Site Description
- 2.2(A) Site History
- 2.2(B) Site Demographic Information and Potential Public Health and Environmental Impacts
- 2.3 Results of Previous Investigation
 - 2.3.1 Ground Water Release Characterization
 - 2.3.2 Surface Water Release Characterization
 - 2.3.3 Subsoil Release Characterization
 - 2.3.4 Air Release Characterization
 - 2.3.5 Geological Study Results
 - 2.3.6 Hydrological Study Results
 - 2.3.7 Natural Resources Damage Survey Results

2.0(B) Actual Remedial Investigation

- 2.4 The Army shall provide the Agency for Toxic Substances and Disease Registry (ATSDR) with all necessary environmental investigation results, including that of the Remedial Investigation. The ATSDR will conduct a Health Assessment for The Army.
- 2.5 Federal and State Applicable or Relevant and Appropriate Requirements (ARARs)
ARARs can be identified only on a site-specific basis. ARARs shall be identified at the following stages in the remedial planning process:
- During scoping of RI/FS
 - During site characterization phase
 - During development of remedial alternatives in Operable Unit Feasibility Studies and the FS
 - During screening of alternatives
 - During detail analysis of Alternatives
 - When the preferred Alternative(s) is selected
- 2.5.1 Identify Ambient or Chemical-Specific ARARs
2.5.2 Identify Performance, Design, or Action-Specific ARARs
2.5.3 Identify Location-Specific ARARs
- 2.6 Preparation of Plans
- 2.6.1 Quality Assurance Project Plan
 - 2.6.2 Sample Plan
 - 2.6.3 Data Management Plan
 - 2.6.4 Health and Safety Plans
 - 2.6.5 Community Relation Plan (CRP)

The investigations in sections 2.7 through 2.11 below should result in data of adequate technical content to characterize the site and its actual or potential hazard to public health and environment and support the development and evaluation of remedial alternatives during FS.

- 2.7 Environmental Settings
- 2.7.1 Regional Physiography and Topography
 - 2.7.2 Regional & Site Geology
 - 2.7.2.1 Stratigraphy
 - 2.7.2.2 Soils' attenuation capacity and mechanisms
 - 2.7.2.3 Other soil properties: structure, porosity, mineralogy, grain size distribution
 - 2.7.2.4 Regional geology
 - 2.7.2.5 Site Geology
 - 2.7.3 Regional & Site Hydrogeology
 - 2.7.3.1 Hydraulic testings: obtain data for the development and evaluation of alternatives in OUFS and FS
 - 2.7.3.2 Aquifer tests to determine aquifer parameters and connection between aquifers
 - 2.7.3.3 Determine depths of water tables
 - 2.7.3.4 Determine groundwater flows
 - 2.7.3.5 Define areas of recharge, discharge, and sea water intrusion

- 2.7.3.6 Vertical gradients
- 2.7.3.7 hydraulic barriers (faults, bedrock, constant head sources)
- 2.7.3.8 Vadose Zone monitoring: moisture content, unsaturated conductivities and relative permeabilities
- 2.7.3.9 Regional groundwater quality
- 2.7.3.10 flow model(s)
- 2.7.4 Regional and site surface water quality
- 2.7.5 Regional and site meteorology and air quality
- 2.7.6 Regional and site surface water quality
- 2.7.7 Regional & Site Land Use
- 2.7.8 Regional & Site Biology
- 2.8(a) Site-specific Source Characterization Plan (efforts should begin with a survey of previous studies and other existing data, see section 2.3)
- 2.8(b) Site-specific Source Characterization Plan (efforts should begin with a survey of previous studies and other existing data, see section 2.3)
 - 2.8(b).1 Groundwater migration pathway characterization (contaminant-specific)
 - 2.8(b).1.1 Vertical & horizontal extent of migration
 - 2.8(b).1.2 Rate of migration
 - 2.8(b).1.3 Groundwater monitoring/contaminants transport model(s)
 - 2.8(b).1.4 Quality assured monitoring & sampling results shall be presented in Progress Reports
 - 2.8(b).1.5 Location and sample frequency
 - 2.8(b).2 Contaminated surface Water Characterization (contaminant-specific)
 - 2.8(b).2.1 Route of contaminated surface water
 - 2.8(b).2.2 Location & sampling frequencies
 - 2.8(b).2.3 Sampling techniques/ methods/analysis
 - 2.8(b).2.4 Quality assured monitoring and sampling results shall be presented in Progress Reports
 - 2.8(b).3 Contaminated Surface, Subsurface Soil, and Sediment Characterization (contaminant-specific)
 - 2.8(b).3.1 Specific Areas to be studied
 - 2.8(b).3.2 Vertical & Horizontal extent of Contamination
 - 2.8(b).3.3 Probable Quantities of Subsurface Wastes
 - 2.8(b).3.4 Rate of Vertical Migration
 - 2.8(b).3.5 Predict the Long Term Disposition of Contaminants
 - 2.8(b).3.6 Correlation Between Subsoil & Groundwater Contaminations
 - 2.8(b).3.7 Locations and Sampling Frequencies
 - 2.8(b).3.8 Sampling Techniques/Methods/Analysis
 - 2.8(b).3.9 Quality Assured Sampling Results Shall Be Presented in Progress Reports
 - 2.8(b).4 Determine the extent of atmospheric contamination (contaminant-specific)
 - 2.8(b).4.1 Tendency of Substances to Enter the Atmosphere

- 2.8(b).4.2 Air monitoring program (based on information from study of contaminated surface soils)
- 2.8(b).4.3 Quality assured sampling & monitoring results shall be presented in Progress Reports
- 2.9 RCRA/CERCLA Integration
 - 2.9.1 RCRA Facility Assessment (RFA)
 - 2.9.1.1 Areas of Concern
 - 2.9.1.2 Preliminary Review
 - 2.9.1.2.1 Gathering New Information
 - 2.9.1.2.1.1 Written Information & Documents
 - 2.9.1.2.1.2 Interview Relevant Individuals
 - 2.9.1.2.1.3 Collecting Additional Information
 - 2.9.1.2.2 Evaluating New Information
 - 2.9.1.2.2.1 Investigating Facility Waste Generation Process
 - 2.9.1.2.2.2 Identifying Solid Waste Management Units (SWMUs)
 - 2.9.1.2.2.3 Other Potential Release of Concern
 - 2.9.1.2.2.4 Evaluating the Facility's Release Potential
 - 2.9.1.2.2.5 Identifying Significant Data gaps
 - 2.9.1.2.2.6 Determining the Need for Further Action During the RFA
 - 2.9.1.2.2.6.1 Need for Sampling Visit
 - 2.9.1.2.2.6.2 Need for Removal Action
 - 2.9.1.2.2.6.3 Need for RI
 - 2.9.1.3 Conducting the Sampling Visit
 - 2.9.1.3.1 Developing Sampling Plan
 - 2.9.1.3.2 Conducting the Sampling Visit
 - 2.9.1.3.3 Analyzing and Interpreting Sampling Results
 - 2.9.1.4 Final RFA Recommendations for Further Action
 - 2.9.1.4.1 Making RFA Release Determinations
 - 2.9.1.4.2 Making Recommendations for Each SMWU or Group of SWMUs
 - 2.9.2 Further Investigation of SWMUs Under CERCLA
If 2.9.1.4 above recommends any further action, which is normally a task of a RCRA Facility Investigation (RFI), then the action shall be addressed under the RI
 - 2.9.3 Corrective Action of SWMUs Under CERCLA
If 2.9.2 above requires Corrective action(s) for any SMWU(s), then these corrective actions shall be addressed under CERCLA
- 2.10 Site Characterization Analysis
Analyze all site investigation results to prepare a summary to ensure the investigation data are sufficient in quality and quantity to support the FS
- 2.10.1 Organize and present logically the relationship between site investigations for each medium.
- 2.10.2 Develop a summary of the types and extent of contaminants
- 2.11 Supplemental Surveys and Investigations
The Army may need to perform additional tasks in order to accomplish the RI/FS objectives. Such tasks may include additional field work and studies to provide information on newly discovered contaminants, pathways of concern, and bench scale tests of possible remedial technologies.

- 3.2.2.2 Estimate Exposure Point Concentrations
 - 3.2.2.2.1 Quantify Chemical Releases
 - 3.2.2.2.2 Predict Environmental Fate and Transport
- 3.2.2.3 Compare to Requirements, Standards, and Criteria
 - 3.2.2.3.1 Compare to ARARs:
 - Maximum Contaminant Levels (MCL) & Maximum Contaminant Level Goal (MCLG)
 - National Ambient Air Quality Standards (NAAQS)
 - Federal Ambient Water Quality Criteria
 - State Environmental Standards
 - 3.2.2.3.2 Compare to Other Criteria, Advisories, and Guidances
 - Proposed MCLs, MCLGs
 - Drinking Water Health Advisories
- 3.2.3 STEP 3: ESTIMATION OF CHEMICAL INTAKES
 - 3.2.3.1 Calculate Air Intakes
 - 3.2.3.2 Calculate Groundwater Intakes
 - 3.2.3.3 Calculate Surface Water Intakes
 - 3.2.3.4 Calculate Intakes From Other Exposure Pathways
 - 3.2.3.5 Combine Pathway-Specific Intakes to Yield Total Oral and Total Inhalation Intakes
- 3.2.4 STEP 4: TOXICITY ASSESSMENT
- 3.2.5 STEP 5: RISK CHARACTERIZATION
 - 3.2.5.1 Non-Carcinogenic Effects
 - 3.2.5.2 Potential Carcinogenic Effects
 - 3.2.5.3 Uncertainties
- 3.3 Development of Performance Goals and Analysis of Risks For Each of Remedial Alternatives

Perform this sub-task (3.3) for each remedial action alternatives at the alternative evaluation stage

 - 3.3.1 Re-Evaluate Indicator Chemicals
 - 3.3.2 Identify Potential Exposure Pathways
 - 3.3.3 Determine Target Concentrations at Human Exposure Points
 - 3.3.4 Estimate Target Release Rates
 - 3.3.5 Assess Chronic Risk For Non-Carcinogens
 - 3.3.6 Assess Potential Short-Term Health Effects of Each of the Remedial Alternatives
- 3.4 Development of Alternative / FS Phase I

Alternatives should be developed concurrently with the RI site characterization, with the results of one influencing the other in an iterative fashion

 - 3.4.1 Establishment of Remedial Response Objectives Based on the Baseline Risk Assessment and ARARs identification Remedial response objectives should be developed to specify contaminants and media of interest, exposure pathways, and remediation goals that permit a range of treatment and containment alternatives to be developed.
 - 3.4.2 Identifying Volumes and Areas of Media to Which Treatment or Containment Action May be Applied
 - 3.4.3 Developing Response Actions for each Medium
 - 3.4.4 Identifying Potential Treatment Technologies

- 3.4.5 Screening the Technologies Based on:
 - 3.4.5.1 Public Health & Environmental Impact
 - 3.4.5.2 Effectiveness
 - 3.4.5.3 Implementability
 - 3.4.5.4 Cost
- 3.4.6 Assembling Technologies and their Associated Containments or Disposal Requirements into Alternatives
- 3.4.7 Community Relations During FS Phase I
- 3.4.8 Reporting and Communication During FS Phase I
- 3.5 Screening of Alternatives / FS Phase II
 - 3.5.1 Initial Screening of Alternatives Based On:
 - 3.5.1.1 Health and Environmental Protection
 - 3.5.1.2 Technical Feasibility
 - 3.5.2 Community Relation During FS Phase II
 - 3.5.3 Reporting & Communication During FS Phase II
- 3.6 Post-Screening Investigations
 - 3.6.1 Determination of Data Requirements
 - 3.6.2 Additional Site Characterization
 - 3.6.3 Treatability Study
 - 3.6.3.1 Conduct laboratory and/or bench scale studies to determine applicability of remedial technologies
 - 3.6.3.2 Analyze the technologies to determine the testing requirements
 - 3.6.3.3 Develop a testing plan:
 - 3.6.3.3.1 Testing types
 - 3.6.3.3.2 Testing goals
 - 3.6.3.3.3 Levels of efforts
 - 3.6.3.3.4 Data management & interpretation guidelines
 - 3.6.3.4 Perform tests
 - 3.6.3.5 Evaluation of testing results
 - 3.6.3.6 Scale-up those technologies based on testing results
 - 3.6.4 Application of Results
 - 3.6.5 Community Relations During the Post-Screening Investigations
 - 3.6.6 Reporting and Communication During Post-Screening Investigations
- 3.7 Detail Analysis of the Remaining Alternatives / FS Phase III
 - 3.7.1 Health Information/Environmental Effects
 - 3.7.2 Technical Aspects of the Remedial Alternatives
 - 3.7.3 Evaluation Criteria for Detail Analysis of Alternatives
 - 3.7.3.1 Short-term Effectiveness
 - 3.7.3.2 Long-term Effectiveness and Permanence
 - 3.7.3.3 Reduction of Toxicity, Mobility or Volume
 - 3.7.3.4 Implementability
 - 3.7.3.5 Cost
 - 3.7.3.6 Compliance with ARARs
 - 3.7.3.7 Overall Protection of Human Health & the Environment
 - 3.7.3.8 State Acceptance
 - 3.7.3.9 Community Acceptance
 - 3.7.4 Community Relations During FS Phase III
 - 3.7.5 Reporting & Communication During FS Phase III
- 3.8 Recommended Remedial Alternatives
- 3.9 Submit Progress Reports to EPA, DOHS, and RWQCB pursuant to the progress report requirements in Appendix B of this Agreement

3.10 Feasibility Study Report(s)

The report shall include the results of tasks from 3.1 through 3.8 of this Appendix. The FS report shall be consistent with CERCLA, the NCP, the EPA Guidance on Conducting RIs/FSs Under CERCLA, Draft, October 1988 and any subsequent revisions thereof, the EPA Risk Assessment Guidance for Superfund (Volumes I & II) and any subsequent revisions thereof[@], the Superfund Exposure Assessment Manual, EPA, Draft, April 1988, any revisions thereof, the Compendium of Superfund Field Operations Methods, and other applicable EPA guidances.

II. Development of Proposed Plan for Remedial Action

The Proposed Plan shall be consistent with CERCLA, the NCP, and applicable EPA guidances.

III. Public Review Comment

The Army shall provide the public the opportunities of review and comment on the RI and FS reports and the Remedial Action Proposed Plan(s) in a manner consistent with Section 26, Public Participation and Community Relations, of this Agreement.

IV. Responsiveness Summary

The Army shall prepare a Responsiveness Summary (part of the Record of Decision) after the public comment period in a manner consistent with CERCLA, Section 26, Public Participation and Community Relations, of this Agreement, the EPA Community Relations in Superfund-A Handbook, interim Guidance, June 1988, any revisions thereof[@], EPA Guidance on Community Relations for Operable Unit Response Action, the NCP, and other applicable EPA guidances.

V. Record of Decision(s)

The Army shall prepare a Record of Decision for each remedial action in a manner consistent with CERCLA, the NCP, and Guidances on Preparing Superfund Decision Documents. The Army shall document the final remedy(ies) selected for the site. The ROD shall be based on the material contained within the Administrative Record. The ROD shall include a Responsiveness Summary which addresses major comments, concerns, criticisms, or new data raised during the Public Comment Period on the Remedial Action Proposed Plan(s), including those that may led to significant changes from the proposal(s) contained in the Proposed Remedial Action Plan. The ROD should also include schedules for remedial design, construction, remedial operations plan, and commencement of remedial action(s).

VI. Remedial Design

The Army shall prepare Preliminary and Final Remedial Design documents which provides detailed engineering design and specifications which will allow other Parties to review and to ensure the selected remedy(ies) is(are) fully considered by The Army in the Design.

VII. Remedial Action Work Plan

The Army shall prepare a Remedial Action Work Plan, using appropriate EPA guidances, for each remedial action. The work plan(s) shall contain the following:

- a. Tentative formulation of remedial action team, descriptions of duties, and lines of authority in the management of the construction, operation, and maintenance activities;
- b. Description of the roles and relationships of The Army, the Army, resident engineers.

- independent quality assurance team, remedial design professionals, and remedial constructor,
- c. Process for selection of remedial action constructor(s);
 - d. Schedule for the remedial action(s) and the process to continuously update the project schedule;
 - e. Methods to implement the construction quality assurance plan, including criteria and composition of the independent quality assurance team;
 - f. A health and safety plan for field construction activities;
 - g. Strategy for implementing the Contingency Plan;
 - h. Procedure for data collection during the remedial action(s) to validate the completion of the project; and
 - i. Requirements for project closeout.

VIII. Contingency Plan

The Army shall develop a Contingency Plan, using appropriate EPA guidances, to protect the local affected population in the event of an accident or emergency. It may incorporate an air monitoring plan, a spill control, and countermeasures plan, if applicable, for the site.

IX. Five-Year Review

If the selected remedial action results in any hazardous substances, pollutants, or contaminants remaining at the site, the Army shall review such remedial action no less often than each 5 years after the initiation of such remedial action as mandated in 9621(c) of SARA.

X. Project Closeout

At the completion of the remedial action(s), the Army shall prepare a Project Closeout Report which certifies that all items contained in the final remedial action Record of Decision have been completed. The report shall include Proper documentations (e.g., test results) substantiating that the performance standards are being met. The report should also include "Record Drawings" of the project.

As soon as the Project Closeout Report becomes final, the Army shall initiate project completion and deletion process as described in "Procedures for Completion and Deletion of National Priorities List Sites", OSWER Directive 9320.2-3A, EPA, April 1989.

@ Such revisions will be provided to The Army prior to submittal of the subject deliverable

QUALITY ASSURANCE PROJECT PLAN OUTLINE

EPA guidelines and specification for preparing an QAPP is available

- 1 Bottom of title page should include signature blocks for following approving personnel:
 - 1.1 EPA Project Officer's immediate supervisor
 - 1.2 EPA QA Officer
 - 1.3 The Army Project Manager
 - 1.4 The Army Responsible QA Official
 - 1.5 Funding organization's Project Officer
 - 1.6 Funding organization's QA Officer
- 2 Table of Contents includes:
 - 2.1 Introduction
 - 2.2 Listing of the 16 QAPP components
 - 2.2 Listing of Appendices required to augment the QAPP
 - 2.3 Listing of all individual receiving official copies of the QAPP and its revisions
- 3 Project Description
- 4 Project Organization and Responsibility
- 5 Quality Assurance Objectives for Measurement of Data
For each major parameter provide Quality Assurance Objectives for:
 - 5.1 Precision
 - 5.2 Accuracy
 - 5.3 Completeness
 - 5.4 Representativeness
 - 5.5 Comparability
- 6 Sampling Procedures
 - 6.1 Method of Collection
 - 6.2 Rational for Sample Site Selection
 - 6.3 Preparation of Sampling Equipments and containers
 - 6.4 Type and Volume of Sample Container
 - 6.5 Description of Decontamination Procedures
 - 6.6 Holding Time and Preservation Method
 - 6.7 Time Consideration for Sample Shipping
 - 6.8 Documentation of Sampling History, Conditions & Analyses (including forms, note books ...)
- 7 Sample Chain of Custody Procedures
 - A. Field Sampling Operation
 - 7.1 Documentation of Exact Location and Consideration Associated with Sample Acquisition
 - 7.2 Documentation of Procedure for Preparation of Reagents
 - 7.3 Documentation of Method for Sample Preservation
 - 7.4 Labeling Techniques
 - 7.5 Availability of Chain Of Custody Form
 - B. Lab Operation
 - 7.6 Identification of Sample Custodian
 - 7.7 Lab Procedure for Sample Handling, Storage and Dispersement for Analysis

- 7.8 Specification of Lab Sample Custody Procedures for Sample Handling, Storage and Dispersment for Analysis
- 8. Calibration Procedures and Frequency and information for Field Equipment and Lab Equipment:
 - 8.1 Major measurement parameters
 - 8.1.1 Pollutant Measurement System
 - 8.1.2 Standard Operation Procedure (SOP)
 - 8.1.3 Description of calibration procedures
 - 8.2 List frequency of re-calibration
 - 8.3 List calibration standards
 - 8.4 Where Calibration and Repairs Logged
- 9 Analytical Procedures
 - 9.1 Cite Method Name and Number
 - 9.2 Description of Analytical Procedure
 - 9.2.1 Analytes
 - 9.2.2 Parameter Group
 - 9.2.3 Method Name and Number
 - 9.2.4 Detection Limit
- 10 Data Reduction, Validation and Reporting
 - 10.1 Data Reduction Scheme Planned on Collected Data
 - 10.2 Criteria Used to Validate Data Integrity During Data Collection and Reporting
 - 10.3 Methods Used to Identify and Treat Outliers
 - 10.4 Reporting Scheme for Collection of Raw Data
 - 10.5 Key Individuals In this Reporting Scheme
- 11 Internal Quality Control Checks (both Lab & Field)
 - 11.1 Replicates
 - 11.2 Spiked Samples
 - 11.3 Split Samples
 - 11.4 Control Charts
 - 11.5 Blanks
 - 11.6 Internal Standards
 - 11.7 Zero and Span Gases
 - 11.8 Quality Control Samples
 - 11.9 Surrogate Samples
 - 11.10 Calibration Standards & Devices
 - 11.11 Reagent Checks
- 12 Performance and System Audits
 - 12.1 Internal Audits
 - 12.1.1 Description of Audits
 - 12.1.2 Audited by
 - 12.1.3 Frequency of Audits
 - 12.1.4 Person to Receive Audit Reports
 - 12.2 External Audits
 - 12.2.1 Description of Audits
 - 12.2.2 Audited by
 - 12.2.3 Frequency of Audits
 - 12.2.4 Person to Receive Audit Reports
- 13 Preventive Maintenance
 - 13.1 Schedule of Maintenance to Minimize Downtime
 - 13.2 Critical Spare Parts to Minimize Downtime

- 14 Routine Procedures Used to Assess:
 - 14.1 Data Precision
 - 14.2 Data Accuracy
- 15 Corrective Action
 - A. Procedures Include the Following:
 - 15.1 Limit for Data Acceptability Beyond Which Corrective Action is Required
 - 15.2 Re-evaluation of Analyst's Work & Instrumentation Checks
 - 15.3 Corrective Action Initiator & Approver
 - B. Other QA activities May Also Initiate Corrective Action:
 - 15.4 Performance Audits
 - 15.5 System Audits
 - 15.6 Lab/Interfield Comparison Studies
 - 15.7 QA Program Conducted by Quality Management Staff (QAMS)
- 16 Quality Assurance Report and Management
 - 16.1 Periodic Assessment of Data Quality, Precision & Completeness
 - 16.2 Results for Performance Audits
 - 16.3 Results for System Audits
 - 16.4 QA problems & Solutions
 - 16.5 Frequency of Report

SAMPLE PLAN OUTLINE

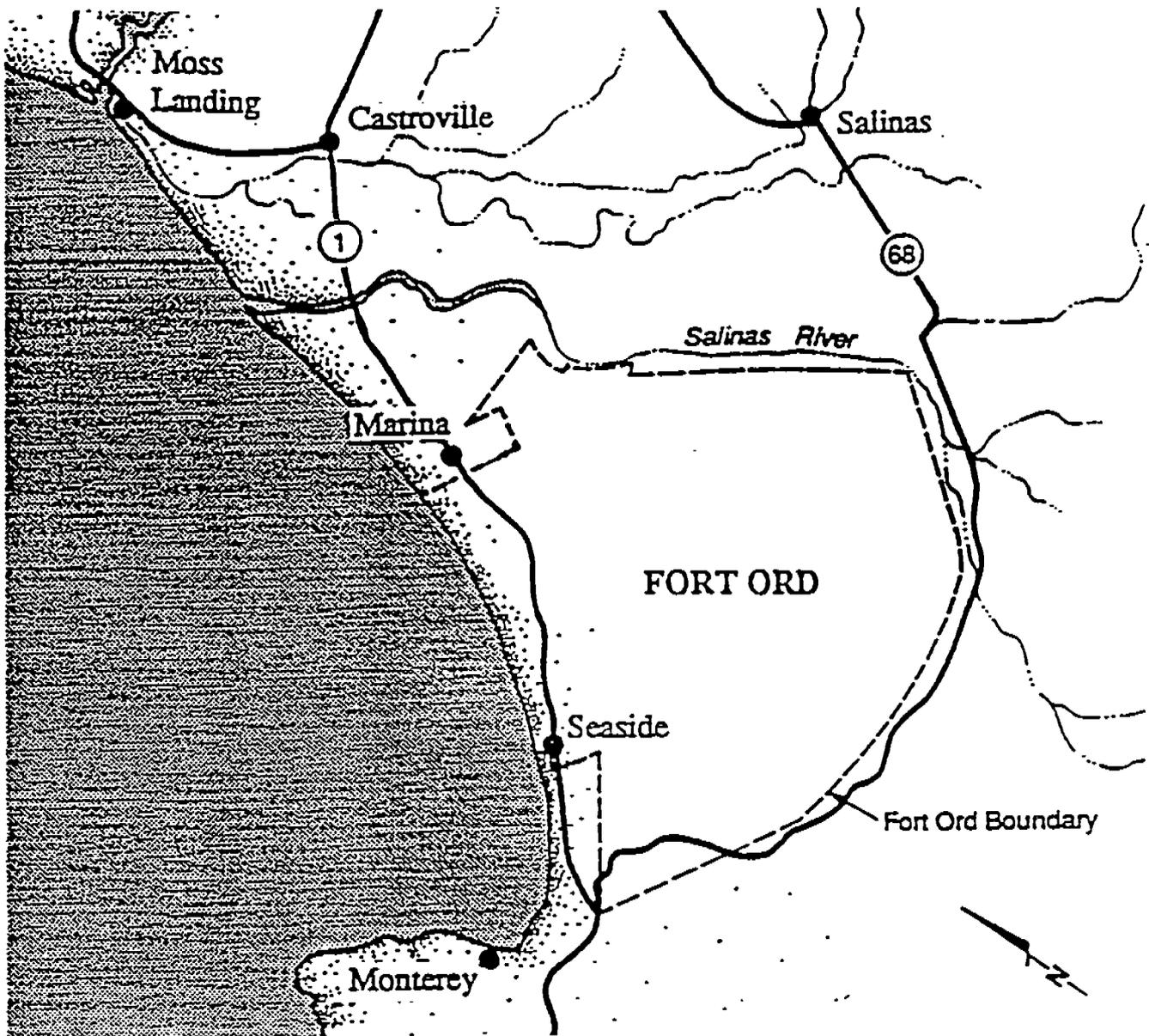
- 1 Objectives of the Sampling Effort
- 2 Maps of All Pertinent Locations & Sampling Points
- 3 Rationale for Sampling Location and Numbers of Samples
- 4 Request for Analyses
 - 4.1 Narrative Request for Analyses
 - 4.2 Tabular Request for Analyses
- 5 Field Methods & Procedures
 - 5.1 Sample Collection
 - 5.2 Disposal of Contaminated Materials
 - 5.3 Equipment Decontamination
 - 5.4 Sample Containers
 - 5.5 Sample Preservation
 - 5.6 Sample Shipment
 - 5.7 Sample Documentation
 - 5.8 Quality Assurance
 - 5.8.1 Replicates
 - 5.8.2 Blanks
- 6 Site Safety Plan

DATA MANAGEMENT PLAN OUTLINE

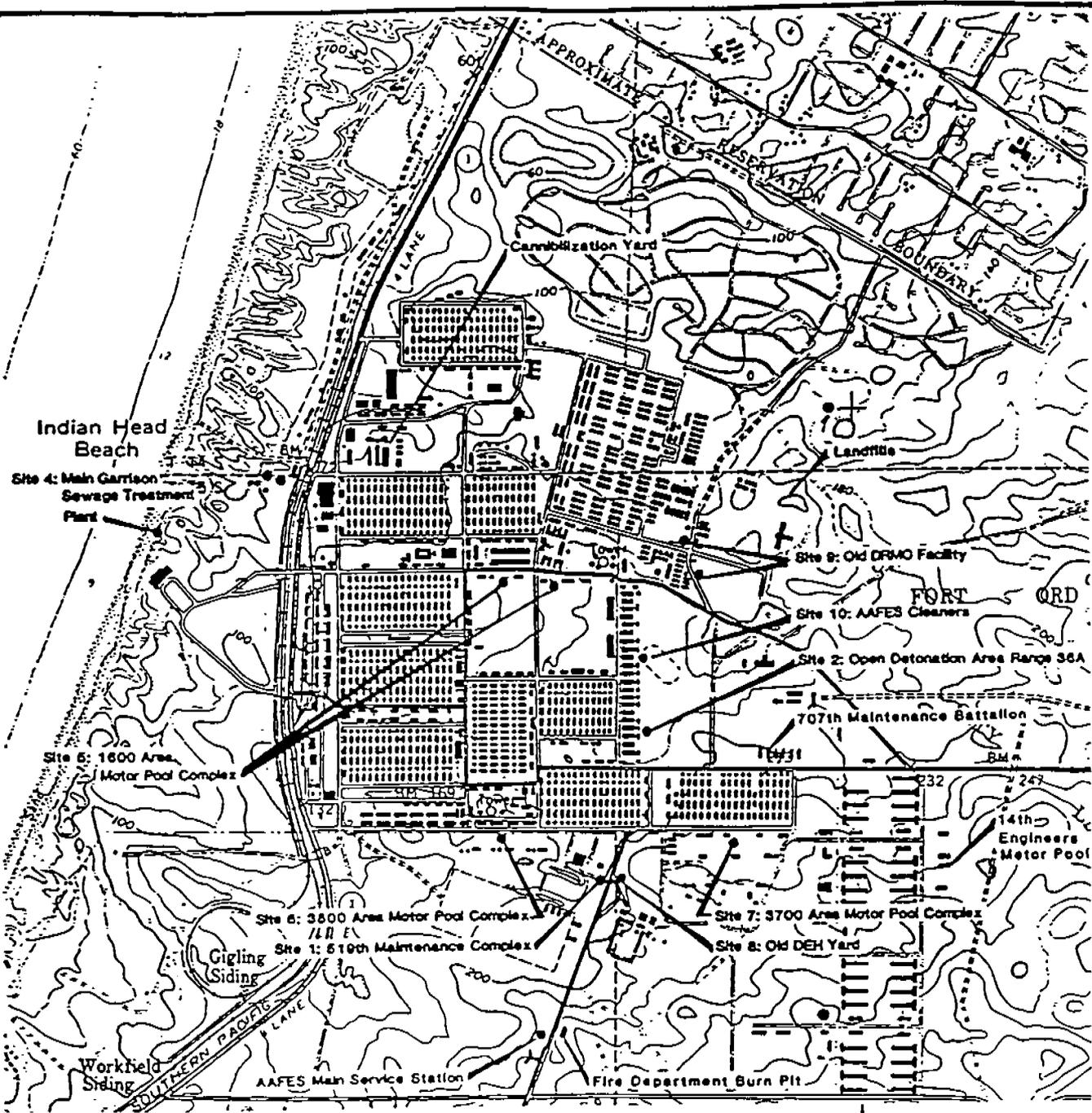
Field sampling and analytical procedures for the acquisition & compilation of field and lab data & demonstrated activities are subject to data management procedures

1. Document and track data, information, and results (all analytical data collected by The Army shall be reported separately using the same format and in the same report for easy reference)
 1. Field activities
 2. Sample management and tracking
 3. Document control & inventory
2. Identify lab documentation procedures
3. Project file requirements
4. Project related progress

ATTACHMENT A
MAPS



ATTACHMENT A-1
 FORT ORD LOCATION MAP
 FORT ORD, CALIFORNIA



**ATTACHMENT A-2
 AREAS OF CONCERN
 FORT ORD ARMY BASE
 FORT ORD, CALIFORNIA**

ATTACHMENT B

TOXICITY OF SUBSTANCES FOUND AT FORT ORD ARMY BASE

METALS:

Barium 7440-39-3:

Acute - upper respiratory irritation, gastrointestinal, muscle spasm, slow pulse, extrasystoles, hypokalemia, eye irritant, skin burns

Chronic - heart, central nervous system (CNS), skin, respiratory system, eyes

Chromium 7440-47-3:

Acute - skin irritation, gastrointestinal bleeding, fluid loss, shock

Chronic - fibrosis of lungs, cancer of lungs, nasal cavity, paranasal sinus, dermatitis, rhinitis

Copper 7440-50-8:

Acute - mucus membrane irritant, pharynx, nasal perforation, eye irritant, metal taste, dermatitis, gastrointestinal disturbances, low blood pressure, jaundice

Chronic - respiratory system, skin, liver

Mercury 7439-97-6:

Acute - cough, dyspnea, bronchitis, pneumonia, tremor, irritability, indecision, headache, fatigue, weakness, stomatitis, salivation, gastrointestinal, anorexia, weight loss, proteinuria, eye irritation, skin

Chronic - skin, respiratory system, central nervous system, kidneys, eyes

Nickel 7440-02-0:

Acute - sensitization dermatitis, allergic asthma, nasal cavities, pneumonitis

Chronic - nasal cavities, lungs, skin

Zinc Chloride 7646-85-7:

Acute - conjunctivitis, nose irritation, throat, cough, copious sputum, dyspnea, chest pain, pulmonary fibrosis, pulmonary edema, bronchitis pneumonia, cor pulmonale, fever, cyanosis, tachypnea, burns skin, eye

Chronic - respiratory system, skin, eyes

Zinc Oxide 1314-13-2:

- Acute - sweet metal taste, dry throat, cough, chill, fever, tight chest, dyspnea, rales, low pulmonary function, headache, blurred vision, back pain, nausea, vomiting, fatigue
- Chronic - respiratory system

Lead 7439-92-1:

- Acute - lassitude, insomnia, pallor, eye grounds, anorexia, weight loss, malnutrition, constipation, abdominal pain, colic, hypotense, anemia, gingival lead line, tremors, wrist paralysis, constipation
- Chronic - gastrointestinal tract, central nervous system (CNS), blood, kidneys, gingival tissue

Arsenic 7740-38-2:

- Acute - ulceration of nasal septum, dermatitis, gastrointestinal disturbances, peripheral neuropathy, irritation, hyperpigmentation of skin, vascular collapse
- Chronic - liver, kidneys, skin, lungs, lymphatic system

Antimony 7440-36-0:

- Acute - nose, throat, and mouth irritation, cough, dizziness, headache, nausea, vomiting, diarrhea, cramps, insomnia, anorexia, skin irritation, unable to smell, cardiac
- Chronic - respiratory system, cardiovascular system, skin, eyes, liver

OTHER

Benzene 71-43-2:

- Acute - eye, nose, and respiratory system irritation, giddy, headache, nausea, staggered gait, fatigue, anorexia, lassitude, dermatitis, bone marrow depressant, abdomen pain
- Chronic - blood, central nervous system, skin, bone marrow, eyes, respiratory system, gastrointestinal

Toluene 108-88-3:

- Acute - fatigue, weakness, confusion, euphoria, dizziness, headache, dilated pupil, lacrimation, nervousness, muscle fatigue, insomnia, paresthesia, dermatitis, photophobia
- Chronic - central nervous system, liver, kidneys, skin

Xylene 1330-20-7:

- Acute - nose, eye, and throat irritant, dizziness, drowsiness, unconsciousness, nausea, vomiting, kidney and liver damage
- Chronic - eye damage, dermatitis

Ethyl Benzene 100-41-4:

- Acute - skin, nose, throat, eye irritant, weakness, dizziness, central nervous system depression
- Chronic - skin irritant, chronic dermatitis

Di-n-butyl phthalate 84-74-2:

Acute - irritation of nasal passages, upper respiratory, and stomach, photosensitivity

Chronic - respiratory system, gastrointestinal tract

Trichloroethene 79-01-6:

Acute - skin and eye irritant, central nervous system depression, headache, nausea, vomiting

Chronic - liver and kidney damage, paresthesia

Perchloroethylene 127-18-4:

Acute - irritation of eyes, nose, and throat, nausea, flush face and neck, vertigo, dizziness, incoordination, headache, somnolence, erythema

Chronic - liver, kidneys, eyes, upper respiratory system, central nervous system

Diethyl phthalate 84-66-2:

Acute - irritation of mucus membranes, narcotic

Chloroform 67-66-3:

Acute - dizziness, dullness, nausea, headache, fatigue, anesthesia, hepatomegaly, eye and skin irritation, CNS depression

Chronic - liver, kidneys, heart, eyes, skin

Carbon tetrachloride 56-23-5:

Acute - central nervous system depression, nausea, vomiting, liver, kidney damage, skin irritant, gastrointestinal bleeding, visual and circulatory disturbances

Chronic - central nervous system, eyes, lungs, liver, kidneys, skin

Methylene Chloride 75-09-2:

Acute - fatigue, weakness, sleepiness, light-headedness, limbs numb, tingle, nausea, irritated eyes, cardiovascular system

Vinyl Chloride 75-01-4:

Acute - weakness, abdominal pain, gastrointestinal bleeding, hepatomegaly, pallor or cyanosis of extremities, CNS depression

Chronic - liver, central nervous system, blood, respiratory system, lymphatic system

Methyl ethyl ketone 78-93-3:

Acute - irritation of eyes and nose, headache, dizziness, vomiting

Chronic - central nervous system, gastrointestinal tract

Cyanides (as CN) 151-50-8; 143-33-9:

Acute - asphyxia and death can occur, weakness, headache, confusion, nausea, vomiting, incoordination rate respiration, slow gasping, eye and skin irritation

Chronic - central nervous system, cardiovascular system, liver, kidneys, skin

1,1,1-Trichloroethane 71-55-6:

Acute - headache, lassitude, central nervous system depression, poor equilibrium, eye irritation, dermatitis, cardiac arrhythmias

Chronic - kidney and liver lesions

1,1-Dichloroethane 75-34-3:

Acute - central nervous system depression, skin irritation, drowsiness, unconsciousness, liver and kidney damage

Chronic - skin, liver, kidneys

1,2-Dichloroethane 107-06-02:

Acute - central nervous system depression, nausea, vomiting, dermatitis, eye irritation, corneal opacity

Chronic - kidneys, liver, eyes, skin, central nervous system

1,2-Dichloropropane 78-87-5:

Acute - mild irritation of eyes, nose and throat, dry cracking skin, drowsiness, headache, ataxia, gastrointestinal pain, abdominal cramps, nausea, vomiting, diarrhea

1,2-Dichloroethylene 540-59-0:

Acute - eye and respiratory system irritant, central nervous system depression

Chronic - respiratory system, eyes, central nervous system, liver, kidneys

Trichlorofluoromethane 75-69-4:

Acute - incoordination, tremors, dermatitis, frostbite, cardiac arrhythmias, cardiac arrest

Chronic - cardiovascular system, skin

Trans-1,2-dichloroethene:

Acute - dizziness, drowsiness and unconsciousness, central nervous system depression

Chronic - lung irritant, unconsciousness, liver and lung toxicity

1,1,2-Trichloro-1,2,2-trifluoroethane 76-13-1:

Acute - throat irritation, drowsiness, dermatitis

Chronic - skin, heart

1,2-Dichlorobenzene 95-50-1:

Acute - nose and eye irritation, liver and kidney damage, skin blister

Chronic - liver, kidneys, skin, eyes

1,4-Dichlorobenzene 106-46-7:

Acute - headache, eye irritation, swelling periorbital, profuse
rhinitis, anorexia, nausea, vomiting, weight loss,
jaundice, cirrhosis

Chronic - liver, respiratory system, eyes, kidneys, skin

Chlorobenzene 108-9--7:

Acute - skin, eyes, and nose irritation, drowsiness,
incoordination, liver damage

Chronic - respiratory system, eyes, skin, central nervous system

ATTACHMENT C
SUMMARY OF FACTS

Fort Ord Army Base serves as the headquarters of the Seventh Infantry Division (light) of the United States Army. The base covers 46 square miles (29,440 acres) adjacent to Monterey Bay approximately 5.6 miles north of Monterey, Monterey County, California. The installation is bordered by the City of Marina and Salinas River to the north, El Toro Creek to the east, Seaside and Del Rey Oaks to the south, and Monterey Bay to the west.

Fort Ord was established in 1917 as a maneuver area and field artillery target range for units then stationed at the Presidio of Monterey. The base's primary mission now is training. Industrial operations at Fort Ord include a battery charging/repair facility, photographic processing laboratories, spray painting, a plastics shop, laundry/dry cleaning facilities, vehicle wash rack, and a small arms repair shop. Chemicals and hazardous wastes were managed and disposed of at Fort Ord. Wastes/hazardous wastes from on-going processes are currently stored at hazardous waste storage facilities for off-site disposal. The local population at Fort Ord (including both civilian and military personnel and their dependents) is approximately 30,000.

Fort Ord is underlaid by a 85 to 200 foot sandy, unconfined uppermost aquifer. Water levels are about 60 to 100 feet below ground surface. Ground water flow in the uppermost aquifer is generally west-northwest toward the Pacific Ocean and the City of Marina. Two deeper water bearing units, the 180 foot and 400-foot aquifers, are comprised of finer materials and are hydraulically interconnected. Ground water flow in these two aquifers are generally northeast/southeast, due to the influence of local production well pumping in the City of Marina.

There are three inactive landfill areas comprised of about 100 acres that were used during the past 30 to 35 years for residential and

commercial waste disposal. The main landfill facility was operated from mid 1950 until May 31, 1987. No detailed records were kept on the amount and type of wastes disposed. The two other landfills occupy areas comprised of gently rolling landforms that are sparsely vegetated or covered by residential developments.

Vehicle and equipment repair and maintenance resulted in soil contamination and possibly ground-water contamination at the 707th Maintenance Facility. The facility consisted of leaking hazardous waste tanks, containers of waste oil and various automotive chemicals, chemical storage areas, a oil-water separator, and fueling stations. Soil samples from the facility contain benzene, toluene and tetrachloroethene.

Another area of known contamination is the 14th Engineers Motor Pool. This facility consisted of several 5,000 gallon underground fuel tanks, drums of waste oil and other wastes, sand pits in which waste oil, liquid wastes, battery acid, etc. were disposed of. Runoff from the motor pool has caused vegetative distress. Soil samples from the facility contain toluene, bis(2-ethylhexyl)Phthalate, and petroleum hydrocarbons.

Old equipment, consisting mostly of vehicles, were stripped of usable parts at the Cannibalization Area. Cleaning solvents were possibly used at this area. Other fluids, chemicals, fuels, battery acid spills have occurred at this area. The discharge has apparently caused vegetative distress. Toluene and petroleum hydrocarbons were detected in soil samples collected at this location.

A burn pit located behind the Fire Station has been used since the 1950's as a training area for fire fighters. The pit was constructed without a lining to contain unburned chemicals. Approximately 300 gallons of off-spec fuel (possibly other organic chemicals) per year were burned in the pit. Numerous organic contaminants have been detected in soil samples from beneath the pit.

In addition to the previously mentioned areas, fourteen other contaminated problems/areas of concern have been identified by the Army at Fort Ord.

According to tests conducted by the Army in 1986, groundwater off-base is contaminated at significant levels. The contamination is emanating from the base and may be contaminating the drinking water supplies of the City of Marina; however, the exact location of the source has not yet been identified. The contaminants include carbon tetrachloride, tetrachloroethylene (PCE), trichloroethylene (TCE), 1,1,1-trichloroethane (TCA), and trans-1,2-dichloroethylene (DCE). An estimated 38,600 people obtain drinking water from wells within 3 miles of known areas of hazardous substances on the base. Ground water is also used for irrigation.