3/23/1992

United States Environmental Protection Agency
Region I

and the

State of Rhode Island

and the

United States Department of the Navy

IN THE MATTER OF:

The U.S. Department of the Navy
Naval Education and Training Center
Newport, Rhode Island
and
Naval Undersea Warfare Center
Newport, Rhode Island

FEDERAL FACILITY AGREEMENT UNDER CERCLA § 120

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United States Environmental Protection Agency
Region I
and the
State of Rhode Island
and the
United States Department of the Navy

IN THE MATTER OF: The U.S. Department of the Navy Naval Education and Training Center Newport, Rhode Island and Naval Undersea Warfare Center Newport, Rhode Island	**Federal Facility Agreement under CERCLA § 120**

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

I. PURPOSE

1.1 The general purposes of this Agreement are to:

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

(b) Establish a procedural framework and Timetable for developing, implementing and monitoring appropriate Response Actions at the Site in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L 99-499 (hereinafter jointly referred to as CERCLA/SARA or CERCLA), 42 U.S.C. § 9620(e)(1), CERCLA guidance and policy, the National

Contingency Plan (NCP), 40 CFR 300, the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), (hereinafter jointly referred to as RCRA/HSWA or RCRA), RCRA guidance and policy, Executive Order 12580, and the following State laws to the extent that they are legally applicable, relevant, and appropriate requirements in accordance with Section 121 of CERCLA, and this Agreement: Rhode Island General Laws (R.I.G.L.), Chapters 23-18.9 (Refuse Disposal Act), 23-19.1 (Hazardous Waste Management Act), 46-12 (Water Pollution Control Act), 46-13.1 (Groundwater Protection Act), 23-23 (Rhode Island Clean Air Act), 2-1-20, et seq. (Fresh Water Wetlands Act); and,

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

1.2 Specifically, the purposes of this Agreement are to:

(a) Identify Interim Remedial Actions, which are appropriate at the Site prior to the implementation of a final CERCLA Response Action(s). Any Party may propose Interim Remedial Actions to the other Parties and should do so as soon as the need for such Interim Action is identified. This process is designed to promote cooperation among the Parties in identifying Interim Remedial Actions prior to the selection of final Remedial Action. The Parties do not intend that the identification of or proposal of any Interim Remedial Action preclude the timely initiation of Removal Actions by the Navy necessary to address immediate threats to public health, welfare, and the environment pursuant to Section XII, (Removal and Emergency Action).

(b) Establish requirements for the identification of Study Areas (SA), Study Area Screening Evaluations (SASE) and Remedial Investigation(s) (RI) to assess the nature and extent of the threat to the public health, welfare and the environment caused by the release or threatened release of Hazardous Substances, pollutants or contaminants at the Site and to establish requirements for the performance of Feasibility Studies (FS) for the Site to identify, evaluate and select alternatives for the appropriate Remedial Action(s) at the Site to prevent, mitigate or abate the release or threatened release of Hazardous Substances,

pollutants or contaminants at the Site in accordance with CERCLA and the following State laws to the extent that they are legally applicable, relevant and appropriate requirements in accordance with Section 121 of CERCLA and this Agreement: Rhode Island General Laws (R.I.G.L.), Chapters 23-18.9 (Refuse Disposal Act), 23-19.1 (Hazardous Waste Management Act), 46-12 (Water Pollution Control Act), 46-13.1 (Groundwater Protection Act), 23-23 (Rhode Island Clean Air Act), 2-1-20, et seq. (Fresh Water Wetlands Act), and this Agreement;

(c) Identify the nature, objective, and Schedule of Response Actions to be taken at the Site and to ensure that Response Actions at the Site shall attain that degree of cleanup of Hazardous Substances, pollutants or contaminants mandated by CERCLA, applicable Records of Decision, RCRA, applicable State law and this Agreement;

(d) Implement the selected Remedial Action(s) in accordance with CERCLA, applicable Records of Decision, and the following State laws to the extent that they are legally applicable, relevant, and appropriate requirements in accordance with Section 121 of CERCLA and this Agreement: Rhode Island General Laws (R.I.G.L.), Chapters 23-18.9 (Refuse Disposal Act), 23-19.1 (Hazardous Waste Management Act), 46-12 (Water Pollution Control Act), 46-13.1 (Groundwater Protection Act), 23-23 (Rhode Island Clean Air Act), 2-1-20, et seq. (Fresh Water Wetlands Act), and this Agreement; and to meet the requirements of CERCLA § 120(e)(2), 42 U.S.C. § 9620(e)(2);

(e) Ensure 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 the Naval Education and Training Center (NETC) Newport ;

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

(h) Provide for the Operation and Maintenance (O&M) of any Remedial Action selected and implemented pursuant to this Agreement;

(i) Provide for the appropriate involvement as provided by this Agreement by the State in the initiation, development, selection and enforcement of Remedial Actions to be undertaken at the Naval Education and Training Center (NETC) Newport, including the review of all applicable data, as it becomes available; consultation regarding studies and reports, the development of action plans and other deliverables; and identification and integration of State ARARs for the Remedial Action process; and

(j) Identify Removal Actions which are appropriate for the Site and provide timely notice to the other Parties of such proposed actions.

II. PARTIES AND SCOPE OF AGREEMENT

2.1 The Parties to this Agreement are the EPA, the Navy, and the State of Rhode Island. The terms of the Agreement shall apply to and be binding upon the EPA, the Navy, and the State of Rhode Island their respective officers, successors in office, agents and employees.

2.2 Each Party shall be responsible for ensuring that its contractors comply with the terms and conditions of this Agreement. Failure of the Navy 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.

2.3 Each Party, upon selection of a contractor and when practicable in advance of the contract performance, shall notify the other Parties of the identity and of the assigned tasks of said contractor.

2.4 This Agreement shall not be construed as an agreement to indemnify any person. The Navy shall provide notice of the existence of this Agreement, or a copy of this Agreement, to appropriate members, employees, agents, lessees and Response Action contractors. Pursuant to Section XXXVI, (Transfer of Property), the Navy agrees to provide notice of this Agreement to any subsequent owners and operators of any portion of NETC Newport in accordance with CERCLA § 120(h), and shall notify EPA and the State of any such change of ownership or control at least sixty (60) days prior to such transfer. Transfer of property affected by this Paragraph shall not relieve the Navy of its applicable obligations under this Agreement.

2.5 The scope of this Agreement extends to the entire Site, as defined at Paragraph 3.1(b,b) herein. The Site cannot be removed from the NPL unless it is determined, in accordance with CERCLA, the NCP, and this Agreement, that the Navy has implemented all appropriate Response Actions and the Site no longer poses a threat to human health or the environment. Remedial Actions at the Site shall occur in discrete locations called Study Areas (SA), Areas of Contamination (AOC), or Operable Units (OU) identified at the Site pursuant to this Agreement. For each Study Area, Area of Contamination, or Operable Unit the Navy shall perform all Work identified in Paragraphs 2.6, 2.7, 2.8 and 2.9 below in accordance with the requirements of this Agreement.

2.6 The Navy shall develop, implement and report upon Study Area Screening Evaluations (SASE) for each Study Area, and Remedial Investigations (RI) at the Site for each AOC or OU in accordance with this Agreement, the NCP and applicable EPA regulations, policy and guidance. All SASE and RI documents shall be subject to the review and comment procedures described in Section VII, (Consultation with EPA and the State). All SASE and RI activities at the Site shall be conducted in accordance with the requirements and Deadlines set forth in Section XXXI, (Identification of Study Areas), Appendix I (SOW), and Section XIV, (Deadlines and Schedules) of this Agreement. All SASE and RI activities shall be designed to meet the purposes set forth in Section I, (Purpose) of this Agreement.

2.7 The Navy shall develop, implement and report upon Feasibility Studies (FS) for each AOC or OU at the Site in accordance with the requirements of this Agreement, the NCP applicable EPA regulations, policy and guidance, and to the extent that they are legally applicable, relevant, and appropriate requirements in accordance with Section 121 of CERCLA and this Agreement: Rhode Island Hazardous Waste Management Act and State regulations, policy, and guidance. All Feasibility Study documents shall be subject to the review and comment procedures described in Section VII, (Consultation with EPA and the State) of this Agreement. The Navy shall conduct each FS in accordance with the requirements and Timetable set forth in Section XIV, (Deadlines and Schedules) of this Agreement. Each FS shall meet the purposes set forth in Section I, (Purpose) of this Agreement.

2.8 The Navy shall perform Remedial Design, Remedial Action (RD/RA), and Operation and Maintenance activities at the Site in accordance with CERCLA , Section XVII (Records of Decision and Plans for Remedial Action), of this Agreement, the NCP, and the following State laws to the extent that they are legally applicable, relevant, and appropriate

requirements in accordance with Section 121 of CERCLA and this Agreement: Rhode Island General Laws (R.I.G.L.), Chapters 23-18.9 (Refuse Disposal Act), 23-19.1 (Hazardous Waste Management Act), 46-12 (Water Pollution Control Act), 46-13.1 (Groundwater Protection Act), 23-23 (Rhode Island Clean Air Act), 2-1-20, et seq. (Fresh Water Wetlands Act).

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

III. DEFINITIONS

3.1 The terms used in this Agreement shall have the same definitions as the terms defined in CERCLA, RCRA, and the National Contingency Plan (NCP). The following terms used in this Agreement are defined as follows:

(a) "Additional Work" shall mean all activities required by Paragraphs 7.9 and 32.2 herein;

(b) "Agreement" shall refer to this document and shall include all Appendices to this Agreement;

(c) "Applicable state law" shall mean all laws determined to be applicable under this Agreement consistent with CERCLA § 121 and the NCP for all Remedial Actions. It is recognized that in some instances where this phrase is used, there may be no applicable State laws;

(d) "ARARs" shall mean Federal and State Applicable or Relevant and Appropriate Requirements, standards, criteria, or limitations, identified pursuant to CERCLA § 121(d)(2);

(e) "Area of Contamination" or "AOC" shall mean (1) any of the areas listed or described in Section V, (Statement of Facts) of this Agreement as an Area of Contamination; including any area or any group of areas, if applicable, to or under which a release of Hazardous Substances has come to be located, from any of the above listed areas, and (2) any area or location or group of areas, if applicable, where a Hazardous Substance has been deposited, stored, disposed of, or placed, or otherwise come to be located within the Site boundaries and added to this Agreement pursuant to Section XXXI, (Identification of Study Areas) of this Agreement;

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

(g) "Day" or "Days" shall mean calendar day(s), unless business day(s) are specified. Any submittal or written statement of dispute which under the terms of this Agreement would be due on Saturday, Sunday, or a holiday shall be due on the next occurring business day;

(h) "Deadline(s)" shall be the time limitation applicable to issuance by the Navy of all draft Primary Documents up to and including all RODs for which a date has been established pursuant to the terms of this Agreement;

(i) "EPA" shall mean the United States Environmental Protection Agency and its employees; and only for purposes of access to the Site, its agents, and authorized representatives;

(j) "Federal Facility" or "Naval Education and Training Center Newport or "NETC Newport" shall mean the real property currently comprising the Naval Education Training Center Newport, Rhode Island . Such real property is located on the west shore of Aquidneck Island facing the east passage of the Narragansett Bay. NETC Newport is within and is bounded by the Towns of Portsmouth and Middletown and the City of Newport and comprises approximately 1,400 acres of land owned and operated by the Navy. For purposes of this Agreement, the terms Federal Facility, Naval Education and Training Center Newport and NETC Newport, shall include such real property even if later transferred from ownership of the United States or an agency or department thereof. Solely for the purposes of this Agreement, NETC Newport shall include the real property comprising the Naval Undersea Warfare Center (NUWC) Division Newport which is contiguous to NETC Newport and the portions of Gould Island which are currently owned by the Navy;

(k) "Feasibility Study" or "FS" shall mean a study conducted pursuant to CERCLA and the NCP which fully develops, screens and evaluates in detail Remedial Action alternatives to prevent, mitigate,

or abate the migration or the release or threatened release of Hazardous Substances, pollutants or contaminants at or from the Site, including at an Area of Contamination or any aggregate or combination of Areas of Contamination or OU, which satisfies the same requirements;

(l) "Hazardous Substance(s)" shall mean all those substances which are included under CERCLA § 101(14) which include any hazardous waste having the characteristics identified under or listed pursuant to Section 3001 of the Solid Waste Disposal Act, 42 U.S.C. § 6921;

(m) "Interim Remedial Action" or "IRA" shall mean all discrete Remedial Actions implemented prior to a final Remedial Action which are taken to prevent or minimize the release of Hazardous Substances, pollutants, or contaminants so that it does not migrate or endanger human health or the environment;

(n) "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. Part 300) and any subsequent amendments, promulgated pursuant to CERCLA;

(o) "Natural Resource Trustee(s)" and "Federal or State Natural Resource Trustees" shall have the same meaning and authority as provided in CERCLA and the NCP;

(p) "Navy" shall mean the United States Department of the Navy and its employees;

(q) "Operable Unit" or "OU" shall mean a discrete action that comprises an incremental step toward comprehensively addressing Site problems. Each Operable Unit is a discrete portion of a Remedial Response that manages migration, or eliminates or mitigates a release, or threat of release, or pathway of exposure. Operable Units may address specific geographical portions of the Site, specific Site problems, or initial phases of an action or may consist of any set of actions performed over time or that are concurrent but located in different parts of the Site;

(r) "Operation and Maintenance" or "O&M" shall mean the portion of a Remedial Action required to maintain its effectiveness;

(s) "Parties" shall mean the EPA, the Navy and the State of Rhode Island;

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

(u) "Record of Decision" or "ROD" shall mean the document that describes the Remedial Action alternative(s) selected to be implemented at one or more Operable Units or Areas of Contamination and the basis for the selection. The ROD shall be based on information and technical analysis generated during the RI/FS and consideration of public comments and community concerns;

(v) "Remedial Investigation" or "RI" means that investigation conducted pursuant to CERCLA, the SOW and the NCP. The RI serves as a mechanism for collecting data for Site and waste characterization and conducting treatability studies as necessary to evaluate performance and cost of the treatment technologies. The data gathered during the RI will also be used to conduct a baseline risk assessment, including characterization of risk of harm to the public health, welfare and environment, to perform a Feasibility Study, evaluation of the natural resources damaged by the releases or threatened releases of Hazardous Substances, and to support the design of a selected remedy;

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

(x) "Scope of Work" or "SOW" shall mean the initial Primary Document which outlines and briefly describes the RI/FS and RD/RA activities at the Site. Separate Scope of Work documents will be produced, pursuant to the terms of this Agreement, for the RI/FS and RD/RA phases of the clean-up. The Scope of Work document for both the RI/FS and RD/RA phases will be of the same level of effort and detail as occurred in the document dated December 1990, entitled "Scope of Work for the Remedial Investigation/Feasibility Study" for Loring Air Force Base, Maine, prepared by the Department of Energy under Contract No. DE-AC05-

840R21400 for the Department of the Air Force. The Scope of Work for the RD/RA phase of the clean-up will include descriptions of the topics listed in Appendix I to this Agreement. The Federal Facility Agreement, not the Scope of Work documents, will govern the determination and enforceability of any timetable, schedule or deadline. Any timetables, schedule or deadline listed in the Scope of Work documents will be for informational purposes only.

(y) "Schedule(s)" shall mean the time limitations established for the completion of all post-ROD draft final Primary Documents established pursuant to this Agreement;

(z) "Significant New Information" shall mean information that is of material assistance in protecting public health, welfare or the environment, evaluating impacts on public health, welfare or the environment, or evaluating the selection of Remedial Action alternative which become known after a document was finalized;

(a,a) "Significant New Site Conditions" shall mean those conditions of geology, hydrology or contamination that were not known at the time a document was finalized;

(b,b) "Site" shall mean the land encompassed by the existing real estate boundaries at the Naval Education and Training Center Newport (NETC Newport) and any area off NETC Newport to or under which a release of Hazardous Substances, pollutants, or contaminants has migrated from a source on or at NETC Newport, and any area off NETC Newport to or under which there is a substantial threat of a release of Hazardous Substances, pollutants, or contaminants from a source on or at NETC Newport;

(c,c) "Solid Waste Management Units" (SWMUs) shall mean any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released;

(d,d) "State" shall mean the State of Rhode Island and its employees; and only for access purposes, its agents and authorized representatives;

(e,e) "Study Area" or "SA" shall mean an area or areas within the Site, identified pursuant to this Agreement as an area of potential contamination. For the purposes of this Agreement, a Study Area shall be considered part of a Remedial Investigation;

(f,f) "Timetable(s)" shall be the collective terms for all Deadlines and Schedules established pursuant to this Agreement; and,

(g,g) "Work" shall mean activities or obligations required by this Agreement including but not limited to Study Areas, RI/FS, RD/RA, Operation and Maintenance (O&M) and any other activities required to be undertaken pursuant to Section VI, (Work To Be Performed).

IV. JURISDICTION

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

(a) The EPA enters into those portions of this Agreement that relate to Study Areas and RI/FS pursuant to CERCLA § 120(e)(1), RCRA and Executive Order 12580;

(b) EPA enters into those portions of this Agreement that relate to Areas of Contamination, Interim Remedial Actions, Operable Units, and all final Remedial Actions pursuant to CERCLA § 120(e)(2), RCRA and Executive Order 12580;

(c) The Navy enters into those portions of this Agreement that relate to the Study Areas and RI/FS, pursuant to CERCLA §§ 120(e)(1), RCRA §§ 6001, 3008(h) and 3004 (u) and (v), Executive Order 12580, and the Defense Environmental Restoration Program (DERP),10 U.S.C. § 2701 et seq;

(d) The Navy enters into those portions of the Agreement that relate to Interim Remedial Actions and final Remedial Actions pursuant to CERCLA § 120 (e)(2), RCRA §§ 6001, 3004(u) and 3008(h), Executive Order 12580 and the DERP; and,

(e) The State enters into this Agreement pursuant to CERCLA §§ 120(f) and 121(f), RCRA § 3006 (42 U.S.C. § 6929) and Rhode Island General Laws (R.I.G.L.), Chapters 23-18.9 (Refuse Disposal

Act), 23-19.1 (Hazardous Waste Management Act), 46-12 (Water Pollution Control Act), 46-13.1 (Groundwater Protection Act), 23-23 (Rhode Island Clean Air Act), 2-1-20, et seq. (Fresh Water Wetlands Act).

V. STATEMENT OF FACTS

SITE HISTORY

5.1 **For purposes of this Agreement, the following constitutes a summary of the facts upon which this Agreement is based. None of the facts related herein shall be considered admissions by any Party.**

5.2 NETC Newport is comprised of 1,400 acres of land and is spread out along approximately six miles of the western shoreline of Aquidneck Island. It is located north of Newport, Rhode Island on the west shore of Aquidneck Island facing the east passage of Narragansett Bay. NETC Newport is approximately 60 miles south of Boston, MA and 25 miles southeast of Providence, Rhode Island. Block Island Sound and the Atlantic Ocean are approximately 12 miles south of the NETC Newport naval complex. Portions of NETC Newport lie within the City of Newport and the Towns of Middletown and Portsmouth.

5.3 The Navy's first permanent activity at NETC Newport was in 1869 when the experimental Torpedo Station at Goat Island was established. In 1881, Coasters Harbor Island was acquired by the Navy and used for training purposes.

In 1900 the Navy purchased 160 acres of land and constructed the Narragansett Bay Coal Depot. In 1910 four fuel oil tanks were added in the Melville area. Some of these tanks are still in use today.

5.4 The outbreak of World War I brought a significant increase in military activity at Newport and two additional fuel oil tanks were constructed.

5.5 In 1941 the Navy constructed five tank farms with a total of 47 tanks to store fuel oils and other petroleum products with a total storage capacity of 2.8 million barrels. All of the tanks are concrete with the exception of two steel tanks in Tank Farm #3. See Appendix IV for additional information on Tanks Farms 1 through 5.

5.6 In April 1973, the Shore Establishment Realignment Program (SER) was announced and resulted in the largest reorganization of naval forces in the Newport area. The

Public Works Center, Naval Supply Center, Naval Station and Naval Base were reorganized under the Naval Officer Training Center (NOTC). In April 1974, NOTC was changed to the Naval Education Training Center Newport. The reorganization resulted in the Navy excessing a portion of the base.

5.7 NETC Newport is currently under the command of, and receives primary support from, the Chief of Naval Education and Training in Pensacola, Florida and is currently the Navy's largest officer training facility.

5.8 In 1980 the Department of the Navy developed the Navy Assessment and Control of Installation Pollutants (NACIP) to identify and control environmental contaminants from past use and disposal of Hazardous Substances at Naval installations. The program was to be managed in three phases:

- Phase I - Initial Assessment Study (IAS) - identifies potential threats to human health or to the environment caused by past hazardous substance storage, handling or disposal practices at naval activities.

- Phase II - Confirmation Study - analyzes contaminants present at sites of concern and determines their migration paths.

- Phase III - Remedial Action - requires corrective measures to mitigate or eliminate confirmed problems.

5.9 A Phase I IAS study was concluded at NETC Newport in March 1983 by Envirodyne Engineers, Inc. (EEI). It included a review of archival and activity records, interviews with activity personnel, an on-site survey of the activity, and an off-site activity investigation. A copy was forwarded to and received by EPA on 1 October 1984. The IAS report identified a total of 18 potentially contaminated areas. The areas identified are as follows:

Area 1 McAllister Point Landfill

Area 2 Melville North Landfill

Area 3 Substation #14 - Transformer Vault

Area 4 Coddington Cove Rubble Fill

Area 5 Melville North Area

Area 6 STP Sludge Drying Bed

Area 7 Tank Farm One

Area 8 NUWC (Formerly Naval Underwater Systems Center (NUSC)) Disposal Area

Area 9 Fire Fighting Training Area

Area 10 Tank Farm Two

Area 11 Tank Farm Three

Area 12 Tank Farm Four

Area 13 Tank Farm Five

Area 14 Gould Island Disposal Area

Area 15 Gould Island Bunker 11

Area 16 Gould Island Incinerator

Area 17 Gould Island Electroplating Shop

Area 18 Structure 214 - Melville North Area

Areas 3 and 16 were subsequently found to be outside the scope of the NACIP and were not discussed in the report. Areas 1, 2, 5, 6, 7, 10, 11, 12, 13, 14, 15, 17, and 18 were recommended for further studies. The IAS concluded that no further action was required at three areas: 4, 8, and 9. Areas 2, 3, 5, 6, 14, 15, 16, and 18 are outside the real property boundaries of NETC Newport and will not be addressed by this Agreement except to the extent that hazardous substances have migrated from NETC to such areas.

5.10 The second phase of the NACIP (Confirmation Study) was completed in May 1986 by Loureiro Engineering Associates. It consisted of an evaluation of six areas, 1, 2, 7, 12, 14, and 17 (see Section 5.9). The Confirmation Study consisted of two steps: The Verification Step, which consisted of the performance of on-site investigations to confirm or deny the presence of contamination; and the Characterization Step, which determined the extent of contamination (if present) and the recommendation of necessary corrective measures. The Confirmation Study concluded that Area 17 required no further study.

5.11 The Defense Environmental Restoration Program (DERP) was established in 1984 to promote and coordinate efforts for the evaluation and cleanup of contamination at DoD installations. The Program currently consists of three major elements:

- The Installation Restoration Program (IRP)- where potential contamination at DoD installations and formerly used properties is investigated and, as necessary, site cleanups are conducted. The IRP provides for compliance with the procedural and substantive requirements of CERCLA, as amended by SARA, as well as regulations promulgated under these acts or by Applicable State Law and is managed in four phases:

  - Preliminary Assessment (PA) - An initial analysis of existing information to determine if a site requires additional investigation or action;

  - Site Inspection (SI) - To augment data collected during the PA and to generate, if necessary, sampling and other field data to determine if further action or investigation is appropriate;

  - Remedial Investigation/Feasibility Study (RI/FS) - An extensive technical study conducted to determine the nature and extent of the threat or potential threat posed by the release and determine what action, if any, should be taken to remediate the site; and

  - Remedial Design/Remedial Action (RD/RA) - RD is the translating of the FS into designs and specifications for site remediation. RA is the physical implementation of site remediation.

- Other Hazardous Waste (OHW) Operations, through which research, development and demonstration programs aimed at reducing DoD hazardous waste generation rates are conducted.

- Building Demolition and Debris Removal (BD/DR) - Includes demolition and removal of unsafe buildings or structures.

5.12 The following sites are currently being investigated under the third phase of the IRP (RI/FS). In March 1989 an RI/FS Work Plan was proposed by the Navy and final approval by EPA is pending. The Remedial Investigation/Feasibility Study is underway at four (4) sites:

AOC 1	McAllister Point Landfill
AOC 9	Fire Fighting Training Area
AOC 12	Tank Farm Four
AOC 13	Tank Farm Five

The Navy has undertaken, and plans to continue to undertake, IRP activities for Area 2 (Melville North Landfill) pursuant to the Navy's authority under CERCLA, Executive Order 12580, and the DERP.

5.13 The U.S. Department of Defense (DOD) delegated its authority to the U.S. Army Corps of Engineers (ACOE) for the implementation of the Defense Environmental Restoration Program (DERP) at formerly-used DOD sites (FUDS). Sites 3, 5, 6, 14, 15, 16, and 18 as identified in the IAS, (see Section 5.9) are no longer owned or controlled by the Navy and may therefore be remediated by the ACOE.

5.14 On September 10, 1986, NETC was issued a Rhode Island Department of Environmental Management Hazardous Waste Facility Permit #RI1170024243. The following Solid Waste Management Units (SWMU's) have been identified pursuant to RCRA and CERCLA § 120(c), 42 U.S.C 9620 (c):

Types and Size of SWMU's

SWMU		Type of Unit	Dimensions/Size
(1)	McAllister Point	Landfill	6 acres
(2)	Melville North	Landfill	10 acres
(7)	Tank Farm #1	Underground Storage Tanks Above Ground Storage Tanks	6 - 27,000 barrel 1 - 56,000 barrel 1 - 55,000 barrel
(10)	Tank Farm #2	Underground Storage Tanks	11 - 60,000 barrel
(11)	Tank Farm #3	Underground Storage Tanks	5 - 28,000 barrel 1 - 50,000 barrel 1 - 60,000 barrel
(12)	Tank Farm #4	Underground Storage Tanks	12 - 60,000 barrel
(13)	Tank Farm #5	Underground Storage Tanks	11 - 60,000 barrel
(14)	Gould Disposal Area	Landfill	400 ft. X 75 ft.
(17)	Gould Island Electroplating Shop	Building	Unknown

Areas 2 and 14 are outside the real property boundaries of NETC Newport and will not be addressed by this Agreement except to the extent that hazardous substances have migrated from NETC to such areas.

5.15 On February 12, 1988, NETC Newport was listed on the Federal Agency Hazardous Waste Compliance Docket which was established pursuant to CERCLA § 120(c). The listing for NETC Newport also included: i) the real property comprising the Naval Undersea Warfare Center (NUWC) Division Newport which is contiguous to NETC Newport; and, ii) those portions of Gould Island which are currently owned by the Navy.

5.16 Pursuant to 10 U.S.C. 2705(c), a Technical Review Committee (TRC) was convened on April 6, 1988 to facilitate communication of information with regard to Response Actions to be undertaken at NETC Newport. Committee members meet periodically to review technical data, Remedial Investigation reports, work plans, funding status and Timetables for field work, and other documents relating to the Response Actions at NETC Newport. Membership on the TRC includes representatives from the U.S. Navy, the U.S. EPA - Region I, the State of Rhode Island Department of Environmental Management (RIDEM), representatives from the City of Newport, the Towns of Portsmouth and Middletown, and local citizen's groups.

5.17 On July 14, 1989, the EPA proposed adding NETC Newport to the National Priorities List (NPL) (54 FR 29820).

5.18 On November 21, 1989, NETC Newport was listed on the NPL (54 FR 48184).

5.19 In June 1990, the Navy established Public Information Repositories for documents relating to NETC Newport Response Action. The Repositories are located at the Towns of Newport, Middletown, and Portsmouth libraries.

5.20 In July 1990, a Community Relations Plan (CRP) was issued for NETC Newport by the Navy. The CRP describes the community relations activities to be conducted during the Response Action process.

5.21 As of the Effective Date of this Agreement, the following Study Areas (SA) and Areas of Contamination (AOC) have been identified by the Parties. For a more detailed description of these Study Areas and Areas of Contamination, see Appendix IV:

AOC/SA Identifier	Description
AOC (1)	McAllister Point Landfill
SA (4)	Coddington Cove Rubble Fill
SA (7)	Tank Farm One

SA (8) NUWC (Formerly NUSC) Disposal Area

AOC (9) Fire Fighting Training Area

SA (10) Tank Farm Two

SA (11) Tank Farm Three

AOC (12) Tank Farm Four

AOC (13) Tank Farm Five

SA (17) Gould Island Electroplating Shop

5.22 As of the Effective Date of this Agreement, the following potentially-contaminated areas, as identified in the IAS, have been excessed by the Navy. These areas are now known as Formerly-Used Defense Sites (FUDS). The investigation and remediation of the following areas on the following excessed property is scheduled to be performed by either the Navy or the Army Corps of Engineers:

Area (2) Melville North Landfill

Area (3) Substation #14 - Transformer Vault

Area (5) Melville North Area

Area (6) STP Sludge Drying Bed

Area (14) Gould Island Disposal Area

Area (15) Gould Island Bunker #11

Area (16) Gould Island Incinerator

Area (18) Structure 214 - Melville North Area

DETERMINATIONS

The Naval Education and Training Center (NETC) Newport was listed on the National Priorities List (NPL) update of November 21, 1989, 54 Fed. Reg. 29820 and is therefore subject to the special provisions for Federal Facility NPL sites in CERCLA § 120.

5.23 NETC Newport is a facility under the jurisdiction, custody, or control of the U.S. Department of Defense (DOD), within the meaning of Executive Order 12580, 52 Fed. Reg. 2923, January 29, 1987 and within the meaning of DERP, 10 U.S.C. § 2701 et seq., and CERCLA § 120, 42 U.S.C. §9620. The Navy

is authorized to act on behalf of the Secretary of Defense for all functions delegated by the President through Executive Order 12580 which are relevant to this Agreement.

5.24 In 1980 the Department of the Navy developed the Navy Assessment and Control of Installation Pollutants (NACIP) to identify and control environmental contaminants from past use and disposal of Hazardous Substances at Naval installations. These investigations identified 18 areas where Hazardous Substance contamination was suspected to exist both on and off NETC Newport. A description of the areas identified is included in Appendix IV.

5.25 The Navy is the authorized delegatee of the President under Executive Order 12580 for receipt of notification of State ARARs required by CERCLA § 121(d)(2)(A)(ii), 42 U.S.C. § 9621(d)(2)(A)(ii).

5.26 The actions to be taken pursuant to this Agreement are reasonable and necessary to protect the human health and environment.

5.27 CERCLA § 120(a), 42 U.S.C. § 9620 applies to NETC Newport;

.28 The Site is a Facility within the meaning of § 101(9) of CERCLA, 42 U.S.C. § 9601(9);

5.29 Hazardous Substances, pollutants, or contaminants within the meaning of CERCLA §§ 101(14), 42 U.S.C. § 9601(14), have been disposed of and are located at the Site;

5.30 There have been releases and there continue to be releases and threatened releases of Hazardous Substances, pollutants, or contaminants into the environment within the meaning of CERCLA §§ 101(22), 42 U.S.C. §§9601(22), at and from the Site; and,

5.31 With respect to those releases and threatened releases at the Site, the Navy will take Response Actions within the meaning of CERCLA and pursuant to Executive Order 12580 and DERP, 10 U.S.C 2701 et seq.

VI. WORK TO BE PERFORMED

6.1 The Navy, pursuant to the terms of this Agreement, agrees to perform the tasks, obligations and responsibilities described in this Agreement in accordance with CERCLA, applicable CERCLA guidance and policy, the NCP, RCRA and applicable RCRA guidance and policy, Executive Order 12580, the following State laws to the extent that they are legally applicable, relevant, and appropriate requirements in accordance with Section 121 of CERCLA and this Agreement:

Rhode Island General Laws (R.I.G.L.), Chapters 23-18.9 (Refuse Disposal Act), 23-19.1 (Hazardous Waste Management Act), 46-12 (Water Pollution Control Act), 46-13.1 (Groundwater Protection Act), 23-23 (Rhode Island Clean Air Act), 2-1-20, et seq. (Fresh Water Wetlands Act), and all terms and conditions of this Agreement including documents prepared and finalized in accordance with Section VII, (Consultation with EPA and the State).

6.2 With respect to integration of past or ongoing Work into Work required by this Agreement, it is the intent of the Parties that documents completed and data generated prior to the Effective Date of this Agreement be utilized as elements of any SASE and RI/FS documents required under this Agreement to the maximum extent practicable consistent with CERCLA, CERCLA guidance and policy, the NCP, RCRA, applicable RCRA guidance and policy and Federal and State ARARS. The Navy need not halt currently ongoing Work but may be obligated to modify or supplement Work previously completed. Such modification or supplement shall be performed pursuant to the terms of this Agreement to produce a final product which meets the requirements of this Agreement.

6.3 In order to facilitate and expedite the Parties' intent as described in Paragraph 6.2, the EPA and the State have reviewed the documents and data generated by the Navy prior to the Effective Date of the Agreement. The Navy shall perform an SASE as described in Section XXXI, (Identification of Study Areas) at those areas identified as Study Areas.

6.4 The Navy, in accordance with this Agreement, 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) Removal Actions at areas on the Site which pose or may pose an imminent and substantial endangerment to human health and the environment;

(b) Study Area Screening Evaluations for Study Areas identified pursuant to this Agreement;

(c) Remedial Investigations performed for all Areas of Contamination and Operable Units;

(d) Feasibility Studies for all Areas of Contamination and Operable Units;

(e) Proposed Plans and RODs for all Areas of Contamination and Operable Units;

(f) Remedial Actions and Remedial Designs for all Areas of Contamination and Operable Units consistent with the Record of Decision;

(g) Operation and Maintenance of Remedial Actions at the Areas of Contamination and Operable Units consistent with the Record of Decision;

(h) Consultation and coordination with EPA and the State regarding testing and closure of underground storage tanks pursuant to applicable law;

(i) Consultation and coordination with EPA and the State regarding groundwater monitoring and remediation based on the results of the Phase I RI activities of Tank Farm 5, for Tanks 53 and 56, pursuant to applicable law; and,

(j) Federal and State Natural Resource Trustee Notification and Coordination.

6.5 The Parties agree to:

(a) Make their best efforts to expedite the performance of their responsibilities under this Agreement; and

(b) Conduct all activities under this Agreement so as to protect human health and the environment.

VII. CONSULTATION WITH EPA AND THE STATE

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 notice, technical support, review, comment, and response to comments regarding documents, specified herein as either Primary or Secondary Documents. In accordance with CERCLA § 120, 42 U.S.C. § 9620, and 10 U.S.C. § 2705, the Navy shall be responsible for issuing Primary and Secondary Documents to EPA and the State, unless otherwise agreed to by all Parties in writing. The designation of a document as "draft" or "final" is solely for purposes of consultation with EPA and the State in accordance with this Section. Such designation does not affect the obligation of the Parties to issue documents, which may be referred to herein as "final", to the public for review and comment as appropriate and as required by law.

The State shall have a minimum of forty-five (45) days to review any documents submitted under this Section, except as otherwise indicated. If the State determines that it cannot complete its formal review of documents within the designated Timetable below, it shall immediately notify the other Parties. Upon determination that it will not complete a formal review of documents in accordance with the Timetable in this Section, the State may submit informal comments to the Navy and EPA by telephone or memorandum and, if applicable, the Navy and EPA shall informally respond to such comments. After the expiration of any Timetable regarding review of documents under this Section of the Agreement, the Navy shall not halt Work based on the absence of formal or informal comments from the State.

7.2 Process for Primary Document Review:

(a) Primary Documents are those reports specified in Paragraph 7.2(b) and 7.2(c). Primary Documents shall be initially issued by the Navy in draft form subject to review and comment by EPA and the State. Following receipt of comments on a particular draft Primary Document, the Navy shall review and respond to the comments received and the Parties shall meet to informally dispute any unresolved issues. Following the informal dispute resolution period, the Navy shall issue to EPA and the State a draft final Primary Document or those portions of the draft document amended during informal dispute. EPA and the State will either issue a Letter of Concurrence regarding the draft final Primary Document (which shall include those portions of the document amended during the informal dispute period) or invoke Formal Dispute Resolution. The Navy shall submit a final Primary Document sixty (60) days after either: i) issuance of the draft final document; or ii) within 45 days of a decision pursuant to the Dispute Resolution process. In the absence of either the issuance of a Letter of Concurrence or Formal Dispute Resolution, the draft final Primary Document will become the final document;

(b) Prior to the Effective Date of this Agreement, the Navy has forwarded the following Primary Documents to EPA and the State:

(i) RI/FS Work Plan
(ii) Draft RI Report

(c) The Navy for each Study Area or AOC shall complete and transmit the applicable draft document for the following Primary Documents, to EPA and the State for

review and comment in accordance with the provisions of this Section:

(i) Study Area Screening Evaluation (SASE)

(ii) RI/FS Work Plan (and any RI/FS Work Plan addenda for subsequent phases)

(iii) Phase I Remedial Investigation (RI) Report (including Sampling and Data Results, Risk Assessment and Preliminary Analysis of Alternatives)

(iv) Phase II Remedial Investigation (RI) Work Plan

(v) Phase II Remedial Investigation (RI) Report (including Sampling and Data Results, Risk Assessment Addendum, if warranted by the scope of the Remedial Investigation)

(vi) RI/FS Report (including Treatability and Pilot Study(s), Initial Screening of Alternatives, Detailed Analysis of Alternatives, and Risk Assessment Addendum, if warranted by the scope of the Remedial Investigation)

(vii) Proposed Plan

(viii) Remedial Design (RD) Work Plan

(ix) Sixty percent (60%) Remedial Design (including QA/QC and Contingency Plan)

(x) Final Remedial Design (including Remedial Action Work Plan and Final Construction QA/QC Project Plan

(xi) Project Closeout Report

(xii) RI/FS Scope of Work (SOW)

(xiii) RD/RA Scope of Work (SOW)

(d) Only the draft final document for the Primary Documents identified above shall be subject to Dispute Resolution. The Navy shall complete and transmit draft Primary Documents in accordance with the Timetable and Deadlines established in this Section and Section XIV, (Deadlines and Schedules).

7.3 Secondary Documents:

(a) Secondary Documents include those documents that are discrete portions of the Primary Documents and are typically input or feeder documents. Secondary Documents shall be issued by the Navy in draft form subject to review and comment by EPA and the State. Although the Navy shall respond to comments received from the EPA and the State, the draft Secondary Documents may be finalized in the context of the corresponding draft Primary Documents;

(b) The Navy shall complete and transmit draft documents for the following Secondary Documents to EPA and the State for review and comment in accordance with the provisions of this Section:

(i) Study Area Screening Evaluation (SASE) Work Plan

(ii) Initial Screening of Alternatives

(iii) Detailed Analysis of Alternatives

(iv) Treatability and Pilot Study Work Plan (if warranted by the scope of the RI/FS)

(v) Treatability and Pilot Study(s), (if warranted by the scope of the RI/FS)

(vi) Sampling and Data Results

(vii) Remedial Action Work Plan

(viii) Pre-Final Remedial Design (85%)

(c) Although the EPA and the State may comment on the draft reports for the Secondary Documents listed above, such documents shall be subject to Dispute Resolution only at the time the corresponding draft final Primary Document is issued. Target Dates shall be submitted by the Navy to EPA and the State for the completion and transmission of draft Secondary Documents. The purpose of Target Dates is to assist the Navy in meeting Deadlines, but Target Dates do not become enforceable by their inclusion in the Primary Documents and are not subject to Section XIV, (Deadlines and Schedules), Section XV, (Extensions), and Section XXI, (Enforceability).

7.4 Meetings of the Project Managers on Development of Reports.

The Project Managers shall meet in person or confer by telephone every thirty (30) 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. Prior to preparing any draft report specified in Paragraphs 7.2 and 7.3 above, the Project Managers shall meet in an effort to reach a common understanding to the maximum extent practicable with respect to the contents of the draft document. At least one week prior to each scheduled Project Manager meeting, the Navy will provide to the EPA and the State a draft agenda and summary of the status of the work subject to this Agreement. These status reports shall include:

(a) all results of sampling tests (including screening data when requested by EPA or State) and all other data (or summary thereof) received or generated by the Navy during the reporting period consistent with the limitations of Paragraph 10.1;

(b) all activities completed pursuant to this Agreement since the last Project Manager meeting as well as such actions and plans which are scheduled for the upcoming ninety (90) days; and

(c) a description of any delays, the reasons for such delays, anticipated delays, concerns over possible Timetable implementation or problems that arise in the execution of a Work Plan during the quarter and any steps that were taken to alleviate the delays or problems.

The minutes of each Project Manager meeting, with the meeting agenda and all documents discussed during the meeting (which were not previously provided as attachments), will be sent to all Project Managers within twenty-one (21) days after the meeting. If more than ninety (90) days will occur between Project Manager meetings, the Navy shall prepare and submit to EPA and the State within the ninety (90) day period, a summary of the status of the Work subject to the Agreement as described above, including progress on Primary and Secondary Documents.

7.5 Identification and Determination of Potential ARARs

(a) For those Primary Documents or Secondary Documents that consist of, or include ARAR determinations, the Parties' Project Managers shall, prior to the issuance of a draft document, meet to identify and propose, to the best of their ability, all potential ARARs

pertinent to the document being addressed. Draft ARAR determinations shall be prepared by the Navy in accordance with CERCLA § 121(d)(2), 42 U.S.C. § 9621(d)(2), the NCP and pertinent guidance issued by EPA which is consistent with CERCLA and the NCP. The State shall identify all potential State ARARs as early in the remedial process as possible consistent with the requirements of CERCLA § 121 and the NCP. The Navy shall consider any written interpretations of ARARs provided by the State. In identifying potential ARARs, the Parties recognize that actual ARARs can be identified only on a location specific basis and that ARARs depend on the specific Hazardous Substances, pollutants and contaminants at the location, the particular actions proposed as a remedy and the characteristics of the AOC or OU. The Parties recognize that ARAR identification is necessarily an iterative process and that potential ARARs must be reexamined throughout the RI/FS process until a ROD is issued; and

(b) ARARs shall apply under this Agreement in the same manner and to the same extent that ARARs are applied to a non-Federal Facility pursuant to CERCLA § 120(a)(1) and the NCP.

7.6 Review and Comment on Draft Documents

(a) The Navy shall complete and transmit each draft Primary Document to EPA and the State on or before the corresponding time limitation established for the issuance of such document(s) pursuant to Section XIV, (Deadlines and Schedules), of this Agreement;

The Navy shall complete and transmit each draft Secondary Document in accordance with the target dates established for the issuance of such Documents;

(b) Unless the Parties mutually agree to another time period, all draft documents shall be subject to the review times specified in 7.6(e) and (f). Review of any document by the EPA and the State may concern all aspects of the document (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP, any pertinent guidance or policy issued by the EPA, and with the following State laws to the extent that they are legally applicable, relevant, and appropriate requirements in accordance with Section 121 of CERCLA and this Agreement: the Rhode Island Hazardous Waste Management Act. To expedite the review process, the

Navy shall make an oral presentation of Primary Document(s) to the Parties at the next scheduled meeting of the Project Managers subsequent to the transmittal of the draft document. Comments by the EPA and the State shall be provided with adequate specificity so that the Navy may respond to the comments and, if appropriate, make changes to the draft document. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and upon request of the Navy, the EPA and the State shall provide a copy of the cited authority or reference. EPA and the State shall transmit its written comments to the Navy on or before the close of the comment period;

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

(d) In commenting on a draft document which contains a proposed ARAR determination, EPA and the State shall include a reasoned statement of whether they object to any portion of the proposed ARAR determination. To the extent that EPA or the State objects, it shall explain in detail the basis for the objection(s) and shall identify any ARARs which it believes are not properly addressed in the proposed ARAR determination. If the Navy rejects an EPA or State ARAR determination, it shall explain in detail the basis for its rejection;

(e) The review and comment period for all draft Primary and Secondary documents developed and submitted by the Navy to the EPA and State for which public comment periods are not required shall be as follows:

(1) EPA/State review of draft Primary and Secondary Documents----------45 days

(2) Navy review and response to EPA/State comments of draft Primary and Secondary Documents----------45 days

(3) Meeting(s) held to informally dispute any unresolved issues regarding draft Primary Documents or to discuss any unresolved issues regarding draft Secondary Documents; Navy revision and submittal of draft final Primary Documents----------45 days

(4) EPA and State shall each submit Letter of Concurrence with draft final Primary Document or invoke Formal Dispute Resolution in accordance with Section XIII, (Dispute Resolution)----------30 days

(5) Navy issuance of final Primary Document after Navy submittal of draft final Primary Document pursuant to Paragraph 7.6(e)(3) ----------60 days

Navy issuance of final Primary Document which conforms to the results of Dispute Resolution----------45 days

(f) The review and comment period for the draft Proposed Plan, which requires a public comment period shall be as follows:

(1) EPA/State review of the draft Proposed Plan ----------30 days

(2) Meeting(s) held to discuss EPA/State comments regarding draft Proposed Plan; Navy revision and submittal of draft final Proposed Plan ----------45 days

(3) EPA and State each submit Letter of Concurrence with draft final Proposed Plan or invoke Formal Dispute Resolution in accordance with Section XIII, (Dispute Resolution)----------30 days

(4) Navy issuance of final Proposed Plan for public comment after submittal of draft final Proposed Plan or upon conclusion of Dispute Resolution pursuant to Paragraph 7.6(f)(3) ----------45 days

(5) Public comment on Proposed Plan-------30 days

(6) Navy submittal of draft ROD and Responsiveness Summary to EPA and State upon close of Public Comment period -------45 days

(g) The Parties may extend any review, comment or document issuance period set out in Paragraph 7.6(e) and (f) hereof for fifteen (15) days, by providing a written notice to the other Parties within seven (7) days prior to the close of such comment period, if practicable. In appropriate circumstances, this time period may be further

extended in accordance with Section XV, (Extensions).

7.7 Availability of Dispute Resolution for Draft Final Primary Documents:

(a) Dispute Resolution shall be available to the Parties for draft final Primary Document as set forth in Section XIII, (Dispute Resolution);

(b) When Dispute Resolution is invoked on a draft final Primary Document, Work may be stopped in accordance with the procedures set forth in Section XIII, (Dispute Resolution).

7.8 Finalization of Reports:

The draft final Primary Document shall serve as the final Primary Document after opportunity for review and comment by the EPA and the State, if no party invokes Dispute Resolution regarding the document or, if invoked, at completion of the Dispute Resolution process should the Navy's position be sustained. If the Navy's position is not sustained in the Dispute Resolution process, the Navy shall prepare, within forty-five (45) days, a revision of the draft final Primary 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 XV, (Extensions). Once final, the Navy shall implement such Primary Document pursuant to the terms of this Agreement .

7.9 Subsequent Modifications of Timetables, Final Reports and Additional Work:

(a) Following finalization of any Primary Document pursuant to Paragraph 7.8 above, any party may seek to modify a report, including seeking additional field Work, pilot studies, computer modeling or other supporting technical Work only as provided in 7.9(a) and (b). A party may seek to modify a report after finalization if it determines, based on Significant New Information, (i.e. information that became available, or conditions that became known, after the report 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 the Significant New Information upon which the requested modification is based.

(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 human health or the environment, in evaluating the selection of Remedial Action alternatives, or in protecting human health and the environment.

7.10 Nothing in this Section shall alter EPA's or the State's authority to request the performance of additional Work that was not contemplated by this Agreement. The Navy's obligation to perform such Work must be established by either a modification of a report or document or by amendment to this Agreement. The Navy agrees to perform such Additional Work pursuant to the terms of this Agreement.

VIII. PROJECT MANAGERS

8.1 Prior to the Effective Date of this Agreement, the Parties shall each designate a Project Manager and notify the other Parties of the name and address of their Project Manager. The Parties Project Managers shall be responsible for assuring implementation of all SASE, RI/FS, and RD/RA in accordance with the terms of this Agreement. Communications between all Parties on all documents, including reports, comments, and other correspondence concerning the activities performed pursuant to this Agreement to the extent practicable, shall be directed by Section XXX, (Notices and Submissions).

8.2 The Parties may change their respective Project Managers. Such change shall be accomplished by notifying the other Parties in writing within five (5) days of the change.

8.3 The Parties Project Managers shall meet and discuss progress as described in Paragraph 7.4.

8.4 A Project Manager may recommend and request minor field modifications to the Work performed pursuant to this Agreement, or in techniques, procedures or designs utilized in carrying out this Agreement. The minor field modifications proposed under this Paragraph must be approved orally by each Party's Project Managers to be effective. No

such Work modifications can be so implemented if an increase in contract cost will result without the authorization of the Navy Contracting Officer.

8.5 If agreement cannot be reached on the proposed field modification to Work discussed in Paragraph 8.4 above, the Dispute Resolution provisions of Section XIII of this Agreement may be invoked by the Party requesting the modification by submitting a written statement to the other Parties in accordance with Section XIII, (Dispute Resolution). If the Parties agree to the modification, within five (5) business days following such modification made pursuant to Paragraph 8.4 above, the Party requesting the modification shall prepare a memorandum detailing the modification and the reasons therefore and shall provide or mail a copy of the memorandum to the other Parties for signature and return. Modifications of Work not provided for in Paragraph 8.4 of this Section must be approved in accordance with Paragraph 7.9 of this Agreement.

8.6 The Project Manager for the Navy shall represent the Navy with regard to the day-to-day field activities at the Site. The Navy Project Manager or other designated employee of the Navy shall be physically present at the Site or available to supervise Work during implementation of the Work performed at the Site pursuant to this Agreement. For all times that such Work is being performed, the Navy Project Manager shall inform the Command Duty Officer (CDO) at NETC Newport and the other Project Managers of the name and telephone number of any designated employee responsible for supervising the Work. The absence of the EPA or State Project Managers from the Site shall not be cause for Work stoppage or delay, unless the Project Managers agree otherwise in writing.

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

8.8 The Parties shall transmit Primary and Secondary Documents and all notices required herein to the Project Managers specified in Paragraph 30.1 by the applicable Timetable in the Agreement. The Navy shall provide to EPA and the State eight (8) and five (5) copies, respectively, of each Primary and Secondary document.

8.9 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, 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 IX, (Access) hereof;

(c) Reviewing sampling data, records, files and documents relevant to the Agreement, subject to the limitations set forth in Section XXXV, (Release of Records); and

(d) Determining the form and specific content of the Project Manager meetings.

IX. ACCESS

9.1 Without limitation of any authority conferred on the Parties by statute or regulation, EPA, the State, or their authorized representatives shall be allowed to enter NETC Newport 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:

(a) inspecting records, operating logs, and other documents necessary to the implementation of this Agreement, subject to the limitations of Section XXXV,(Release of Records);

(b) monitoring field activities of the Navy and Navy contractors, lessees and employees to assure that such activities are carried out in compliance with the terms of this Agreement;

(c) verifying data or information submitted by the Navy to the EPA and the State;

(d) conducting such tests that the EPA or the State Project Managers deem necessary; and,

(e) assessing the need for planning additional Remedial Actions at the Site.

9.2 The Navy shall honor all requests for access at reasonable times by the EPA or the State, conditioned upon presentation of credentials showing the bearers identification and that he/she is an employee or agent of the EPA or State authorized to work on the Remedial Action pursuant to this Agreement. The Navy Project Manager or his/her designee will provide briefing information, coordinate access and

escort to restricted or controlled-access areas, arrange for base passes and coordinate any other access requests which arise. The Navy shall use best efforts to ensure that conformance with the requirements of this Paragraph do not delay access.

9.3 EPA and the State shall provide reasonable notice (which shall, if practical, be 48 hours advance notice) to the Navy Project Manager to request any necessary escorts. The Navy shall not require an escort to any area of the Site unless it is a restricted or controlled-access area. Upon request of EPA or the State, the Navy shall promptly provide a written list of current restricted or controlled-access areas. Nothing in this Agreement shall preclude the Navy Project Manager or his delegate from accompanying EPA or State employees, or their agents, whenever they are present on the Site.

9.4 The access by EPA and the State granted in Paragraph 9.1 shall be subject to the protection of national security and mission essential activities. Such regulation shall not be applied so as to unreasonably hinder EPA or the State from carrying out their responsibilities and authority pursuant to this Agreement. In the event that access requested by either EPA or the State is denied by the Navy, the Navy shall provide an explanation within 48 hours of the reason for the denial, including reference to the applicable regulations, and, upon request, a copy of such regulations. The Navy shall expeditiously make alternative arrangements for accommodating the requested access. The Parties agree that this Agreement is subject to CERCLA § 120(j), 42 U.S.C. § 9620(j), regarding the issuance of Site specific Presidential Orders as may be necessary to protect national security.

9.5 If EPA or the State 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 Navy agrees to reschedule or postpone such sampling or work if EPA or the State so requests, until such mutually agreeable time when the requested access is allowed. The Navy shall not restrict the access rights of the EPA or the State to any greater extent than the Navy restricts the access rights of its contractors performing work pursuant to this Agreement.

9.6 All Parties with access to NETC Newport pursuant to this Section shall comply with all applicable health and safety plans.

9.7 To the extent the activities pursuant to this Agreement must be carried out on other than Navy property, the Navy shall use its best efforts, including its authority under CERCLA section 104, to obtain access agreements from the owners which shall provide reasonable access for the Navy, EPA, and the State and their representatives. Although the Navy may choose to do so, nothing in this Section requires the Navy to purchase easements or pay for access to such non-Navy property. In the event that such access is not obtained within a reasonable time to avoid interference with on-going Remedial Actions, the Navy shall notify the EPA and the State regarding the lack of the necessary access agreements and describe the efforts to obtain such access agreements. EPA and the State may thereafter, consistent with their authority, assist the Navy in obtaining access. The Navy shall submit to EPA and the State appropriate modifications to any Remedial Action affected by the inability of the Navy to obtain proper access.

9.8 With respect to non-Navy property or property leased from the Navy at NETC Newport on which monitoring wells, pumping wells, or other Response Actions are to be located, the Navy shall use its best efforts to ensure that access agreements shall provide for: (i) the continued right of entry for all Parties for the performance of such remedial activities; (ii) that no conveyance of title, easement, or other interest in the property shall be consummated without the continued right of entry; and (iii) that the owners or lessees of any such property shall notify the Navy, EPA and the State by certified mail, at least sixty (60) days prior to any conveyance of an interest in the property, of the property owner's or lessee's intent to convey and of the provisions made for the continued operation of the monitoring wells, treatment facilities, or other Remedial Actions pursuant to this Agreement; and (iv) EPA and the State shall have identical access as Navy.

9.9 The Navy shall take appropriate actions to ensure that all Remedial Actions to be undertaken pursuant to this Agreement will not be impeded or impaired by any transfer of title or transfer of any other interest in real property relating to NETC Newport or any structures located thereon. Such actions shall include, but shall not be limited to, ensuring that the Parties shall have the rights of access to and over such property which are set forth in Paragraph 9.1.
The Navy shall use best efforts to ensure that the owners or lessees of any such property shall notify the Navy, EPA and the State by certified mail, at least sixty (60) days prior to any conveyance of an interest in the property, of the property owner's or lessee's intent to transfer any interest in the property and of the provisions made for the continued

operation of monitoring wells, treatment facilities, or other Remedial Action, if any, which is still being implemented pursuant to this Agreement.

9.10 Nothing in this Section shall be construed to limit EPA's full right of access as provided in 42 U.S.C. § 9604(e), and to the extent such a right exists the State's right of access as provided by Chapters 42-17.1 and 23-19.1 of the R.I.G.L., except as those rights may be limited by 42 U.S.C § 9620(j)(2), E.O. 12580, or other applicable national security regulations or federal law.

X. DATA AND DOCUMENT AVAILABILITY

10.1 The Navy shall make all sampling results, test results or other data generated through the implementation of this Agreement available to the other Parties. If data validation is not completed within ninety (90) days after the last sample of a discrete sampling event is taken in the field, the Navy shall request raw data or results and shall forward such data or test results to EPA and the State within five (5) working days of receipt of such data or test results by the Navy Project Manager. EPA and the State shall similarly make available to the Navy the results of sampling, tests or other data generated by EPA or the State.

10.2 At the request of EPA or the State the Navy shall allow, to the extent practicable, split or duplicate samples to be taken by EPA or the State, or their authorized representatives, of any samples collected by the Navy pursuant to the implementation of this Agreement. At the request of the Navy, the EPA or the State shall allow, to the extent practicable, split or duplicate samples to be taken by the Navy or their authorized representative, of any samples collected by EPA or the State pursuant to the implementation of this Agreement. The Parties shall notify the other Parties not less than fifteen (15) days in advance of any scheduled sampled collection activity, unless otherwise agreed upon by the Parties.

10.3 The Parties shall use the following EPA-approved Quality Assurance, Quality Control and chain of custody procedures throughout all sample collection and analyses activities:

EPA Region I Laboratory Data Validation Functional Guidelines for Evaluating Organic Analysis, February 1, 1988, modified November 1, 1988.

EPA Region I Laboratory Data Validation Functional Guidelines for Evaluating Inorganic Analyses, February 1, 1988, modified November 1, 1988.

EPA Statement of Work for Organic Analysis, Multimedia, Multi-concentration, 2/88

EPA Statement of Work for Inorganic Analysis, Multimedia, Multi-concentration, 7/88

10.4 If preliminary analysis indicates an imminent or substantial endangerment to the human health or the environment, all other Project Managers shall be immediately notified.

XI. PERMITS

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

11.2 The Parties recognize that pursuant to CERCLA § 121(e)(1), 42 U.S.C. § 9621(e)(1), and the NCP, portions of the Response Actions called for by this Agreement and conducted entirely on the Site are exempt from the procedural requirement to obtain Federal, State, or local permits. All activities must, however, comply with all Federal and State standards, requirements, criteria or limitations which would have been included in any such permit as required by CERCLA § 121.

11.3 This Section is not intended to relieve the Navy from the requirement(s) of obtaining a permit whenever it proposes a Response Action involving the shipment or movement of a Hazardous Substance, pollutant or contaminant off the Site or in any other circumstances where the exemption provided for at 42 U.S.C. § 9621(e) does not apply.

11.4 The Navy shall notify EPA and the State in writing of any permits required for any activities it plans to undertake as soon as it becomes aware of the requirement. Should the Navy apply for such a permit and provided EPA and the State are not issuing the permit, the Navy shall provide EPA and the State with copies of the permit.

11.5 During any appeal by any Party of any permit required to implement this Agreement or during review of any proposed modification(s) to the permit, the Navy shall continue to implement those portions of this Agreement which can be reasonably implemented independent of final resolution of the permit issue(s) under appeal. However, as to Work that cannot be so implemented, any corresponding Timetables, Deadlines, or Schedules shall be subject to Section XV, (Extensions), of this Agreement.

XII. REMOVAL AND EMERGENCY ACTION

12.1 Nothing in this Agreement shall alter the Navy's authority with respect to Removal Actions conducted pursuant to Section 104 of CERCLA, 42 U.S.C. Section 9604. Nothing in this Agreement shall alter any authority the State or EPA may have with respect to Removal Actions conducted at the Site.

12.2 Any Removal Action conducted on the Site shall be conducted in a manner consistent with this Agreement, CERCLA, Executive Order 12580, DERP and the NCP. All activities conducted pursuant to this Section will be performed in accordance with the applicable Health and Safety Plan and will be performed so as to minimize the threat to the surrounding public.

12.3 **Discovery and Notification.** If any Party discovers or becomes aware of an emergency or other situation that endangers public health or safety or the environment at or near the Site, which is related to or may affect the work performed under this Agreement, that Party shall promptly notify all other Parties. If the emergency arises from activities conducted pursuant to this Agreement, the Navy shall promptly notify the appropriate State and local agencies and affected members of the public in accordance with 10 U.S.C. 2705(a).

12.4 If a Party determines that there is 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, the Party may request that the Navy take such Removal 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 Removal Actions listed in CERCLA section 101(23), or such other relief as the public interest may require. The Navy's decision whether to undertake such requested Removal Actions is not subject to Dispute Resolution under Section XIII of this Agreement. The Parties agree to negotiate an amendment to the previous sentence if there is a change in Removal Action authority at federal facilities as currently provided in Executive Order 12580, after the Effective Date of this Agreement.

12.5 If during the course of performing the activities required under this Agreement, the Navy identifies an actual or a substantial threat of a release of any hazardous substance from the site, the Navy may propose that it undertake actions to abate the danger and threat which may be posed by such actual or threatened release. Actions may include, but

are not limited to, a removal or treatment or both. A proposal to undertake such actions by the Navy shall be submitted to EPA and the State for review and comment and shall include:

a. Documentation of the actual or threatened release from the site;

b. Documentation that the actions posed will abate the danger and threat which may be posed by release of Hazardous Substances from the Site;

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

d. A screening and evaluation of several action alternatives which address the actual or threatened release from the site, which screening shall be based on cost, feasibility, and effectiveness of the alternative actions; and,

e. A work plan and schedule for the proposed action.

f. Schedule for Removal Document Review and Comment

- EPA/State shall have 30 days to review and comment upon items (a) - (e) listed above;

- Navy shall have 30 days to review and respond to comments received from EPA and the State and, if deemed necessary by the Parties, revise and resubmit the proposed removal action document;

- EPA/State shall have 30 days to either disagree or concur with the proposed removal action.

12.6 The opportunity for review and comment for proposed Removal Actions, as stated in Section 12.5 above, may not apply if the action is in the nature of an emergency removal taken because of an imminent and substantial endangerment to human health or the environment. The Navy may determine that review and comment, as stated in 12.5 above, is impractical. However, in the case of an emergency removal action, the Navy shall provide EPA and the State with oral notice as soon as possible and written notice within 48 hours after the Navy determines that an emergency removal is necessary. Within 7 days after initiating an emergency Removal Action, the Navy shall provide the EPA and the State with the written basis (factual, technical and scientific) for such

action and any available documents supporting such action. Upon completion of an emergency Removal Action, the Navy shall state whether, and to what extent, the emergency Removal Action varied from the description of the action in the written notice provided pursuant to this Section. Such actions may be conducted at any time, either before or after the issuance of a ROD.

12.7 **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 12.3, the Party may propose the termination of such activities. If the Parties mutually agree, the activities shall be stopped for such a period of time as is 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 Paragraph 13.10.

XIII. DISPUTE RESOLUTION

13.1 Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Section shall apply.

13.2 **INFORMAL DISPUTE RESOLUTION.** Prior to any Party's issuance of a written statement of dispute, the disputing Party shall engage the other Parties in informal Dispute Resolution through 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. If resolution of a dispute cannot be achieved informally, the procedures of Paragraphs 13.3 through 13.12 may be implemented to resolve a dispute.

13.3 **FORMAL DISPUTE RESOLUTION.** Within thirty (30) days after: (1) the issuance of a draft final Primary document pursuant to Section VII, (Consultation with EPA and the State), or (2) any action which leads to or generates a dispute, the disputing Party shall submit to the other Parties 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.

13.4 The Dispute Resolution Committee (DRC) is hereby established for the purpose of resolving disputes arising under this Agreement. 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 Waste Management Division Director of EPA's Region I (EPA Division Director). The State representative on the DRC is the Chief, Division of Air and Hazardous Materials, Department of Environmental Management. The Navy's designated member is the Commanding Officer, Naval Facilities Engineering Command, Northern Division, or his representative. Written notice of any delegation of authority from the Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Section XXX, (Notices and Submissions).

13.5 Following the submittal of a dispute to the DRC, the DRC shall have twenty-one (21) days to unanimously resolve the dispute and issue a written decision signed by all Parties. If the DRC is unable to unanimously resolve the dispute within this twenty-one (21) day period, the written statement of dispute shall be forwarded to the Senior Executive Committee (SEC) for resolution within fourteen (14) days after the twenty-one (21) day resolution period.

13.6 An SEC is hereby established for the purpose of resolving disputes for which agreement has not been reached by the DRC. The EPA representative on the SEC is the Regional Administrator of EPA's Region I. The State representative on the SEC is the Assistant Director for Regulations, Department of Environmental Management and the Navy representative on the SEC is the Commander, Naval Facilities Engineering Command, or his representative. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a unanimous written decision signed by all Parties. EPA's Regional Administrator shall issue a written position within twenty-one (21) days if unanimous resolution of the dispute is not reached. The Navy or the State may, within twenty-one (21) days of the Regional Administrator's issuance of EPA's position, issue a written notice elevating the dispute to the Administrator of United States EPA for resolution in accordance with all applicable laws and procedures. In the event that a Party elects not to elevate the dispute to the Administrator within the designated twenty-one (21) day

period, the Party shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.

13.7 Upon submittal of a dispute for resolution to the Administrator of EPA pursuant to Paragraph 13.6 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 Navy's representative of the Office of the Secretary of the Navy and the State's Director of the Department of Environmental Management to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the other Parties with a written final decision setting forth the resolution of the dispute and a statement of the information upon which the decision is based. The duties of the Administrator set forth in this Section shall not be delegated.

13.8 The State reserves its right to maintain an action under CERCLA § 121 (f)(3)(b), 42 U.S.C. § 9621(f)(3)(B) to challenge the selection of a Remedial Action that does not attain a legally Applicable or Relevant and Appropriate Requirement, standard, criteria or limitation.

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

13.10 When Dispute Resolution is in progress, Work affected by the dispute will immediately be discontinued if the EPA Region I Waste Management Division Director 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 and the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. The State may request the U.S. EPA's Region I Division Director to order Work be stopped for the reasons set forth above. To the extent possible, the Parties seeking a Work stoppage shall consult with the other Parties prior to initiating a Work stoppage request. After stoppage of Work, if a Party believes the Work stoppage is inappropriate or may have potential significant adverse impacts, the Party may meet with all the other

Parties to discuss the Work stoppage. Following this meeting, and further consideration of the issues, the EPA Division Director will issue, in writing, a final decision with respect to the Work stoppage. The final written decision of the EPA Division Director may immediately be subjected to formal Dispute Resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the Party requesting Dispute Resolution.

13.11 Within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this Section, the Navy shall incorporate the resolution and final determination into the appropriate plan, Timetable or procedures and proceed to implement this Agreement according to the amended plan, Timetable or procedures.

13.12 Except as provided in Paragraph 13.8, resolution of a dispute pursuant to this Section of the Agreement constitutes a final resolution to any dispute arising under this Agreement. The Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Section of this Agreement.

XIV. DEADLINES AND SCHEDULES

14.1 The Parties agree to the Deadlines set forth below for completion of the following draft Primary Documents:

(a) Study Area Screening Evaluation (SASE)

(b) RI/FS Work Plan (and any RI/FS Work Plan addendums for subsequent phases)

(c) Phase I RI Report (including Sampling and Data Results, Risk Assessment, and Preliminary Analysis of Alternatives)

(d) Phase II RI Work Plan

(e) Phase II RI Report (including Sampling and Data Results, Risk Assessment Addendum, if warranted by the scope of the Remedial Investigation

(f) RI/FS Report (including Treatability and Pilot Study(s), Initial Screening of Alternatives, Detailed Analysis of Alternatives, and Risk Assessment Addendum, if warranted by the scope of the Remedial Investigation)

(g) Proposed Plan

(h) RI/FS Scope of Work

(i) RD/RA Scope of Work

14.2 The Parties will establish target dates for completion of the following draft Secondary Documents:

(a) Study Area Screening Evaluation (SASE) Work Plan

(b) Initial Screening of Alternatives

(c) Detailed Analysis of Alternatives

(d) Treatability and Pilot Study Work Plan (if warranted by the scope of the RI/FS)

(e) Treatability and Pilot Study(s) (if warranted by the scope of the RI/FS)

(f) Sampling and Data Results

(g) Remedial Action Work Plan

(h) Pre-Final Remedial Design (85%)

14.3 The Navy shall submit a draft Phase II RI Work Plan for each AOC or OU warranting Phase II RI Work based on the results of the Phase I RI within ninety (90) days of submission of the Final Phase I RI Report.

14.4 The Navy shall submit the draft Phase II RI Report for each AOC or OU within two hundred and ten (210) days of the submittal of the Final Phase II RI Work Plan.

14.5 For each AOC or OU identified by the Parties pursuant to this agreement after the Effective Date of this Agreement, the Navy shall submit a Draft RI/FS Report for each AOC or OU within one hundred twenty (120) days of submission of a final RI Report.

14.6 For each AOC or OU identified by the Parties pursuant to this agreement after the Effective Date of this Agreement, the Navy shall submit a draft Proposed Plan for each AOC or OU within thirty (30) days of submission of a final RI/FS Report.

14.7 The Navy shall submit the draft ROD and Responsiveness Summary for each AOC or OU within ninety (90) days after the issuance of the Final Proposed Plan for such AOC or OU.

14.8 The Navy shall begin the Remedial Action for the remedy selected in each ROD within four-hundred and fifty (450) days of the signing of the ROD by the EPA.

14.9 Within twenty-one (21) days of issuance of each ROD issued pursuant to this Agreement, the Navy shall propose deadlines for completion of the following draft Primary Documents:

(a) Remedial Design Work Plan; (35%)

(b) Sixty percent (60%) Design of Remedial Action (including QA/QC and Contingency Plan);

(c) Final Remedial Design (including Remedial Action Work Plan and Final Construction QA/QC Project Plan); and

(d) Project Closeout Report.

Within fifteen (15) days of receipt, EPA and the State shall review and provide comments to the Navy regarding such proposed Deadlines. Within fifteen (15) days following receipt of comments, the Navy shall, as appropriate, make revisions and reissue the proposal. The Parties shall meet as necessary to discuss and finalize the proposed Deadlines. If the Parties agree on proposed Deadlines, EPA and the State shall issue a Letter of Concurrence with the proposed Deadlines, and the finalized Deadlines shall be incorporated into the Agreement. 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 XIII, (Dispute Resolution), of this Agreement. The final Deadlines established pursuant to this Paragraph shall be published by EPA and shall become an Appendix to this Agreement enforceable hereunder.

14.10 Section XXXI, (Identification of Study Areas) shall apply to any Study Area currently identified in Appendix IV or identified after the Effective Date of this Agreement.

14.11 For any AOC or OU not identified as of the Effective Date of this Agreement, the Navy shall propose Deadlines for all documents listed in Paragraphs 14.1 and target dates for all documents listed in 14.2, which conform to CERCLA Section 120, the NCP and EPA CERCLA guidance and policy within twenty-one (21) days after the receipt of approval of any SASE report which identifies an AOC not previously listed in Appendix IV of this Agreement. Within fifteen (15) days of receipt, EPA and the State shall review and provide comments to the Navy regarding such proposed Deadlines. Within fifteen (15) days following receipt of comments, the Navy shall, as appropriate, make revisions and reissue the proposal. The Parties shall meet as necessary to discuss and finalize the proposed Deadlines. If the Parties agree on proposed Deadlines, EPA and the State shall each issue a Letter of Concurrence with the proposed Deadlines, and the finalized Deadlines shall be incorporated into the

Agreement. 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 XIII, (Dispute Resolution) of this Agreement. The final Deadlines established pursuant to this Paragraph shall be published by EPA and shall become an Appendix to this Agreement.

14.12 The Deadlines and Schedules set forth in this Section, or to be established as set forth in this Section after the Effective Date of this Agreement, may be extended pursuant to Section XV, (Extensions), of this Agreement. The Parties recognize that one possible basis for extension of the Deadlines for completion of the RI/FS is the identification of Significant New Site Conditions during the performance of the Remedial Investigation.

The following Timetable is based on the Navy's March 1989 RI/FS Work Plan submitted to EPA and the State which addresses all Areas of Contamination identified as of the Effective Date of the Agreement. The Parties agree to amend this Timetable pursuant to Paragraph 14.11, if applicable, upon the Navy's submission of the final Phase I RI Report:

RI/FS Work Plan	March 1989
Community Relations Plan	July 1990
Phase I RI Report	November 18, 1991
Phase II RI Work Plan	July 30, 1992
Phase II RI Report	September 1, 1993
RI/FS Report Phase II RI	July 30, 1994
Proposed Plan Phase II RI	March 15, 1995
ROD (for each identified AOC or OU) Phase II RI	November 15, 1995

RI/FS SOW - 150 days after the Effective Date of the Agreement

RD/RA SOW - 120 days after submission of the Final RI/FS Report

If a time extension is granted for any of the submissions listed above, all deadlines for subsequent related submissions will be extended by the same time period.

XV. EXTENSIONS

15.1 A Timetable, Deadline or Schedule shall be extended by EPA, in consultation with the State, upon receipt of a timely request for Extension of a Timetable, Deadline or Schedule and when good cause for the requested Extension exists. Any request for Extension by the Navy shall be submitted to the other parties in writing and shall specify:

(a) The Timetables, Deadlines or Schedules that are sought to be extended;

(b) The length of the Extension sought;

(c) The good cause(s) for which the Extension is sought; and

(d) The extent to which any related Timetables, Deadlines or Schedules would be affected if the Extension were granted.

15.2 Good cause exists for an Extension when sought in regard to:

(a) An event of Force Majeure, (Section XVI);

(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 other Timetables, Deadlines or Schedules pursuant to this Agreement; and,

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

15.3 Denial of a request for Extension is subject to the Dispute Resolution procedures of Section XIII, (Dispute Resolution) hereof.

15.4 Within fifteen (15) days of receipt of a request for an Extension of Timetables, Deadlines or Schedules, EPA, after consultation with the State, shall advise the Navy in writing of their respective positions on the request. Any failure by EPA or the State to respond within the fifteen (15) day period shall be deemed to constitute concurrence in the request for Extension. If EPA or the State does not

concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

15.5 If there is a consensus among the Parties that the requested Extension is warranted, the Navy shall extend the affected Timetables, Deadlines or Schedules accordingly or to a mutually agreed upon alternative. If there is no consensus among the Parties as to whether all or part of the requested Extension is warranted, the Timetables, Deadlines or Schedules shall not be extended except in accordance with the determination resulting from the Dispute Resolution process.

15.6 Any Party may invoke Dispute Resolution within fifteen (15) days of receipt of a statement of nonconcurrence with a requested Extension or the right to invoke Dispute Resolution is waived.

15.7 A written timely and good faith request by the Navy for an extension shall toll any assessment of stipulated penalties or application for judicial enforcement of the affected Timetable, Deadline or Schedule until a decision is reached on whether the requested extension will be approved. If dispute resolution is invoked and the 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.

XVI. FORCE MAJEURE

16.1 A Force Majeure shall mean any event arising from causes beyond the control of the Party that causes a delay in or prevents the performance of any obligation under this Agreement, including but not limited to, acts of God; fire; war; insurrection; civil disturbance; explosion; unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance; adverse weather conditions that could not be reasonably anticipated; unusual delay in transportation; restraint by court order or order of public authority; inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority other than the Navy; delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; and insufficient

availability of appropriated funds, if the Navy shall have made a timely request for such funds as part of the budgetary process as set forth in Section XXV, (Funding) of this Agreement. A Force Majeure shall also include any strike or other labor dispute, whether or not within the control of the Parties affected thereby. Force Majeure shall not include increased costs or expenses of Response Actions, whether or not anticipated at the time such Response Actions were initiated.

16.2 When circumstances, which are caused by a Force Majeure event, occur which may delay or prevent the completion of the Navy's obligation under this Agreement, the Navy shall notify the EPA and State Project Managers orally of the circumstances within seventy-two (72) hours after the Navy first knew of such circumstances. If the EPA Project Manager is unavailable, the Navy shall notify the Director of the Waste Management Division, EPA Region I. The Navy shall supply to EPA and the State in writing an explanation of the cause(s) of any actual or expected delay and the anticipated duration of any delay. The Navy shall exercise best efforts to avoid or minimize any such delay and any effects of a such delay. Failure to give timely notice to the EPA and the State in accordance with this Paragraph shall not constitute a waiver of any claim of Force Majeure with respect to the circumstances in question.

XVII. RECORDS OF DECISION AND PLANS FOR REMEDIAL ACTION

17.1 This Section shall apply to selection of CERCLA Remedial Actions and any disputes relating thereto.

17.2 As appropriate, for each AOC or OU the Navy shall submit the final RI/FS and draft Proposed Plan to EPA and the State for review within the Timetable detailed in Section XIV, (Deadlines and Schedules), of this Agreement. These documents shall contain a statement of the preferred Remedial alternative(s). EPA's and the State's comments shall be addressed by the Navy when preparing the final RI/FS and drafting the Proposed Plan. The RI/FS and Proposed Plan shall be issued by the Navy and made available to the public and the Navy will hold a public information meeting to discuss the preferred alternative for each AOC or OU. A public comment period will be announced, and a public hearing will be held by the Navy to receive comments on the RI/FS and Proposed Plan for each AOC or OU. Copies of all written and oral public comments received shall be provided to the Parties. Following public comment the Navy, in consultation with EPA and the State, if appropriate, will modify the FS or Proposed Plan based on the comments received. Subject to Section VII, (Consultation with EPA

and the State) and Section XIII, (Dispute Resolution), modifications will be made by the Navy and the modified documents will be reviewed by EPA and the State. Any of the Parties may require additional public comment be solicited if modification to the Proposed Plan substantially change the proposed remedy.

17.3 Based on the RI/FS, Proposed Plan and comments received from EPA, the State and the public, the Navy shall draft and submit to EPA and the State, a draft ROD for each AOC or OU in accordance with the Timetable established pursuant to Section XIV, (Deadlines and Schedules) of this Agreement. The draft ROD will include a Responsiveness Summary, in accordance with applicable EPA guidance. The review and comment period for the draft ROD shall be as follows:

(1) Pursuant to Paragraph 7.6(f)(6), the Navy shall submit a draft ROD and Responsiveness Summary to EPA and the State upon close of the public comment period on the draft Proposed Plan.....45 days

(2) EPA and the State shall each submit to the Navy either (i) written comments on the draft ROD or (ii) a Letter of Concurrence with the draft ROD....30 days

(3) If EPA or the State submits comments on the draft ROD, the Navy shall submit to EPA and the State a written response to each comment, together with a revised draft ROD.....30 days

(4) EPA and the State shall review the revised draft document and either (i) submit a Letter of Concurrence with the revised draft ROD or (i) submit a letter detailing the reason(s) for non-concurrence .....30 days

If the Parties are unable to reach agreement on the draft ROD, selection of a Remedial Action shall not be subject to Dispute Resolution. The selection of a Remedial Action shall be made by the EPA Administrator, and EPA shall then prepare and issue a final ROD.

17.4 Upon issuance of a ROD for the selected Remedial Action(s) the RI/FS will be deemed completed.

17.5 The selection of Remedial Action(s) by the EPA Administrator shall be final and not subject to dispute by the Navy or the State, except as provided for in Paragraph 13.8.

17.6 Within twenty-one (21) days of issuance of each ROD the Navy shall submit Work Plans, other plans or documents described in the SOW, Remedial Design/Remedial Action (RD/RA)

Requirements, and in conformance with all Schedules and Timetables therein, and in this Agreement. The Remedial Design Work Plan and final Remedial Design are Primary documents subject to the review and comment process in Section VII, (Consultation With EPA and the State).

17.7 Once the ROD is approved by EPA, the Navy shall implement the Remedial Action(s) in accordance with the requirements Timetables and Schedules determined pursuant to this Agreement. Upon approval by EPA and the State, Timetables, Deadlines, Schedules, proposed Work, and ROD relating to any AOC (or group of AOC, if applicable) or OU required by this Section shall be incorporated into this Agreement and become an enforceable part thereof.

XVIII. EXEMPTIONS

18.1 The obligation of the Navy to comply with the provisions of this Agreement may be relieved by a Presidential order or exemption issued pursuant to the provisions of CERCLA § 120(j)(1), or the order of an appropriate court.

18.2 The State reserves any statutory right it may have to challenge any order or exemption specified in Paragraph 18.1 relieving the Navy of its obligations to comply with this Agreement.

XIX. EPA CERTIFICATION AND TERMINATION OF THE AGREEMENT

19.1 When the Navy determines that a Remedial Action at the Site has been completed in accordance with the requirements of this Agreement, it shall so advise EPA in writing, and shall request from EPA certification that the Remedial Action has been completed in accordance with the requirements of this Agreement. The Navy shall schedule and conduct a pre-certification inspection to be attended by the Navy, EPA and the State. Within thirty (30) days of such inspection, the Navy shall submit a Project Closeout Report signed by the Navy's signatory authority or designee certifying that the Remedial Action has been completed in full satisfaction of the requirements of this Agreement. Within ninety (90) days of the receipt of the Closeout Report, EPA, after opportunity for review and comment by the State, shall advise the Navy in writing that:

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

(b) EPA denies the Navy request for certification, stating in full the basis of the denial.

An EPA certification under this Section does not affect the Parties' rights reserved in Section XXIII, (Other Claims).

19.2 **If EPA, after opportunity for review and comment by the State, denies the Navy request for certification that such Remedial Action has been completed in accordance with this Agreement, the Navy may invoke Dispute Resolution to review EPA's determination on certification and/or Additional Work needed. If The EPA fails to respond within ninety (90) days of the Navy's request for certification, such failure shall be treated as a denial of certification subject to Dispute Resolution. If EPA's denial of certification is upheld in Dispute Resolution, EPA may seek to require Additional Work by the Navy pursuant to the terms of the Agreement The Navy may submit a request for certification to EPA at any time.**

19.3 **Termination of The Agreement.** Following EPA certification, pursuant to this Section, of all the Remedial Actions at the Site, the Navy may propose in writing the termination of this Agreement upon showing that the Navy's obligations under this Agreement have been satisfied. The obligations of this Agreement shall be deemed satisfied and terminated upon receipt by the Navy of written notice from EPA, with concurrence of the State, that the Navy has demonstrated that all the terms of the Agreement have been satisfied. EPA and the State shall have ninety (90) days from receipt of a written Navy request for such notice to grant or deny the request for termination of the Agreement. If the Navy's request is denied, EPA shall within the same ninety (90) days provide a written statement of the basis of its denial. A denial under this Section may be subject to Dispute Resolution.

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

19.5 This Section shall not affect the Parties obligations pursuant to Section XXXII, (Five Year Review) of this Agreement. In no event will this Agreement terminate prior to the Navy's completion of the Work required by this Agreement.

XX. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

20.1 The Parties intend to integrate the Navy's CERCLA response obligations and RCRA Corrective Action obligations which relate to the release(s) of Hazardous Substances, hazardous

wastes, pollutants or contaminants covered by this Agreement into this comprehensive Agreement. Therefore the Parties intend that the activities covered by this Agreement will achieve compliance with CERCLA, 42 U.S.C. § 9601 et seq.; satisfy the corrective action requirements of RCRA §§ 3004(u) and (v), 42 U.S.C. § 6924(u) and (v), for RCRA permit, and § 3008(h), 42 U.S.C. § 6928(h) for interim status facilities; and meet or exceed Federal and State ARARs to the extent required by CERCLA § 121, 42 U.S.C. § 9621, and the following State laws to the extent that they are legally applicable, relevant, and appropriate requirements in accordance with Section 121 of CERCLA, and this Agreement: Rhode Island General Laws (R.I.G.L.), Chapters 23-18.9 (Refuse Disposal Act), 23-19.1 (Hazardous Waste Management Act), 46-12 (Water Pollution Control Act), 46-13.1 (Groundwater Protection Act), 23-23 (Rhode Island Clean Air Act), 2-1-20, et seq. (Fresh Water Wetlands Act).

20.2 Based upon the foregoing, the Parties intend that any Remedial Action selected, implemented and completed under this Agreement shall protect human health and the environment such that there shall be no further need for Corrective Action under RCRA for remediation of releases covered by the Agreement. The Parties also agree that with respect to releases or threatened releases of Hazardous Substances covered by the Agreement that are associated with the Site, RCRA shall be considered an applicable or relevant and appropriate requirement pursuant to CERCLA § 121. Any release or other hazardous waste activities not covered by this Agreement remain subject to all applicable State and Federal environmental requirements.

20.3 The Parties recognize that the requirement to obtain permits for Response Actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties further recognize that any ongoing hazardous waste management activities at NETC Newport require the issuance of permits under Federal and State law. This Agreement does not affect the requirement, if any, to obtain such permits. However, if a permit is issued to NETC Newport for ongoing hazardous waste management activities at the Site, the EPA and/or the State shall reference and incorporate any appropriate provisions, including appropriate Schedules (and the provision for Extension of such Schedules), of this Agreement into such permit. With respect to those portions of this Agreement incorporated by reference into permits, the Parties intend that judicial review of the incorporated portions shall, to the extent review is authorized by law, only be reviewed under the provisions of CERCLA.

XXI. ENFORCEABILITY

21.1 Upon the Effective Date of this Agreement any standard, regulations, condition, requirement or order which has become effective under CERCLA and is incorporated into the Agreement is enforceable by any person pursuant to CERCLA § 310, and any violation of such standard, regulation, condition, requirement or order will be subject to civil penalties under CERCLA §§ 310(c) and 109.

21.2 All Timetables and Deadlines associated with any RI/FS shall be enforceable by any person pursuant to CERCLA § 310, and any violation of such Timetable and Deadlines will be subject to civil penalties under CERCLA §§ 310(c) and 109.

21.3 All terms, conditions, and Schedules of this Agreement which relate to Interim Remedial Actions or final Remedial Actions, including corresponding Timetables, Deadlines or Schedules, and all Work associated with the Interim or final Remedial Actions, shall be enforceable by any person pursuant to CERCLA § 310(c), and any violation of such terms or conditions will be subject to civil penalties under CERCLA §§ 310(c) and 109.

21.4 Any final resolution of a dispute pursuant to Section XIII, (Dispute Resolution), of this Agreement which establishes a term, condition, Timetable, Deadline or Schedule shall be enforceable by any person pursuant to CERCLA § 310(c), and any violation of such term, condition, Timetable, Deadline or Schedule will be subject to civil penalties under CERCLA §§ 310(c) and 109.

21.5 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 § 113(h).

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

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

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

XXII. STIPULATED PENALTIES

22.1 In the event that the Navy fails to submit a Primary Document set forth in this Agreement to EPA and the State pursuant to the appropriate Schedules, Timetable or Deadlines in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement, which relates to an Interim Remedial Action or final Remedial Action, EPA may assess a stipulated penalty against the Navy. The Navy agrees that to the extent funds are appropriated for such penalties it shall pay all assessed stipulated penalties not rescinded through Dispute Resolution. The State may recommend to EPA that a stipulated penalty be assessed. If EPA does not notify the Navy that a violation has occurred within thirty (30) days of the State's recommendation, the State may refer the matter to Dispute Resolution. A stipulated penalty may be assessed for violations which are described in this Paragraph. Penalties shall be in an amount not to exceed $5,000 for the first week (days 1 through 7) (or part thereof), and $10,000 for each additional week (or part thereof for which a failure set forth in this Paragraph occurs.

22.2 Upon determining that the Navy has violated the Agreement as described in Paragraph 22.1, EPA shall so notify the Navy in writing. If the violation in question is not already subject to Dispute Resolution at the time such notice is received, the Navy shall have fifteen (15) days after receipt of the notice to invoke Dispute Resolution on the question of whether the violation did in fact occur. The Navy shall not be liable for the stipulated penalty assessed by the EPA if the violation 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.

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

(a) The facility responsible for the failure;

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

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

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

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

22.4 Stipulated penalties assessed pursuant to this Section shall be payable only in a manner and to the extent expressly provided for in Acts authorizing funds for, and appropriations to the DOD. EPA and the State agree to share equally any stipulated penalties paid by the Navy unless prohibited by law to do so. Any stipulated penalty(s) payable to the State shall be payable to the "Emergency Response Fund" pursuant to R.I.G.L. 23-19.1-23.

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

22.6 This Section shall not affect the Navy's ability to obtain an Extension of a Timetable, Deadline or Schedule pursuant to Section XV, (Extensions), of this Agreement.

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

XXIII. OTHER CLAIMS

23.1 Subject to the limitations set forth in Section XX, (Statutory Compliance/RCRA-CERCLA Integration), nothing in this Agreement shall restrict the Parties from taking any action under CERCLA, or other Federal or State statutes for any matter not specifically part of the Work performed under CERCLA which is the subject matter of this Agreement.

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

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

23.4 This Agreement does not bar any claim for:

(a) natural resources damage assessments, or for damage to natural resources;

(b) claims by EPA and the State based on a failure or refusal by the Navy to meet a requirement of the Agreement; and

(c) liability for the disposal of any Hazardous Substances or waste material taken from the Site.

In the event that EPA or the State of Rhode Island seeks such remedies, the Navy reserves the right to raise or assert any defense, whether procedural or substantive, in law or equity, or to raise any issue of jurisdiction or standing of any Party, or any other matter in any relevant proceeding.

XXIV. 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 which support or document 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 the Freedom of Information Act 5 U.S.C. 552 and the Privacy Act 5 U.S.C. 552.

XXV. FUNDING

25.1 The Parties to this Agreement expect that all obligations of the Navy arising under this Agreement will be fully funded. The Navy agrees to seek sufficient funding through the Department of Defense (DOD) budgetary process, to fulfill its obligations under the Agreement.

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

25.3 Any requirement for the payment or obligation of funds, including stipulated penalties, by the Navy established by the terms of this Agreement shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 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.

25.4 If appropriated funds are not available to fulfill the Navy's obligations under this Agreement, EPA and the State reserve the right to initiate an action against any other person, or to take any Response Action, which would be appropriate absent this Agreement.

25.5 Funds authorized and appropriated annually by Congress in the "Environmental Restoration, Defense" appropriation in the Department of Defense Appropriation Act and allocated by the DASD(E) to the Navy will be the source of funds for activities required by this Agreement for the Navy consistent with SARA § 211, 10 U.S.C. § 2701 et seq. However, should the "Environmental Restoration, Defense" appropriation be inadequate in any year to meet the total Navy CERCLA implementation requirements, the DOD shall employ and the Navy shall follow the standardized DOD prioritization process which allocates that year's appropriations in a manner which maximizes the protection of human health and the environment.

XXVI. COMMUNITY RELATIONS

26.1 The Parties agree that this Agreement and all Remedial Actions arising thereunder shall comply with all the administrative record and public participation requirements of CERCLA, including §§ 113(k) and 117, 42 U.S.C. §§ 9613(k) and 9617, and the NCP. The Parties also agree to comply with all relevant EPA policy and guidance on community relations programs and public participation requirements which are in accordance with CERCLA and consistent with the NCP .

26.2 Any revision or amendment of the Community Relations Plan (CRP) developed by the Navy in consultation with EPA and the State, dated July 1990, shall be subject to the Dispute Resolution provisions of Section XIII, (Dispute Resolution). The CRP shall control all community relations activities at the Site.

26.3 Except in case of an emergency requiring the release of necessary information and except in the case of an enforcement action, any Party issuing a press release with reference to any of the Work required by this Agreement shall to the maximum extent practicable, advise the other Party of such press release and the contents thereof, at least three (3) days prior to the issuance of such release.

26.4 Community relations activities, as outlined in the Community Relations Plan, will be implemented by the Navy for the selection of Response Actions for AOCs or OUs .

26.5 The Navy shall establish and maintain an Administrative Record at or near the Site available to the public, and another copy at a central location, in accordance with CERCLA § 113(k), 42 U.S.C. § 9613. The Administrative Record developed by the Navy shall be regularly updated and a copy of the Index will be provided to EPA and the State.

26.6 Pursuant to 10 U.S.C. Section 2705(c), the Navy has established a Technical Review Committee (TRC) for NETC Newport. The purpose of the TRC is to afford a forum for cooperation between the Parties and local community representation, on actions and proposed actions at the Site.

XXVII. PUBLIC COMMENT ON THIS AGREEMENT

27.1 Within 15 days after the date the Administrator of U.S. EPA executes this Agreement, the EPA shall announce the availability of this Agreement to the public for a forty-five (45) day period to review and comment, including publication in at least two (2) major local newspapers of general circulation. Comments received shall be transmitted within fourteen days (14) of the close of the comment period to the other Parties. The Parties shall review such comments and shall jointly determine within thirty (30) days of receipt whether or not modifications to the Agreement should be made.

27.2 If the Parties agree that the Agreement shall be made effective without any modifications, and if the Parties agree on the responsiveness summary, EPA shall notify the Navy and the State in writing that the Agreement is effective as of the date of the notification.

27.3 If the Parties agree that modifications are needed, they shall modify the Agreement by mutual consent within sixty (60) days after the expiration of the public comment period. EPA and the State, in consultation with the Navy, shall determine whether the modified Agreement requires additional public notice and comment pursuant to CERCLA. If EPA determines that no additional notice and comment are

required and if the Parties agree on the responsiveness summary, EPA shall notify both Parties in writing that the modified Agreement is effective as of the date of the notification. If the Parties amend the Agreement within the sixty (60) day period and EPA determines that the modifications require additional public notice and comment, such additional notice and comment shall be provided consistent with Paragraph 27.1 above. If the Parties agree, after such additional notice and comment that the Agreement does not require any further modification and if the Parties agree on the responsiveness summary, EPA shall notify both Parties that the Agreement is effective as of the date of the notification.

27.4 In the event that the Parties cannot agree on the modifications or on the responsiveness summary within the time period listed in Paragraph 27.3, the Parties agree to have at least one meeting to attempt to reach agreement. The Parties agree to take best efforts to come to the meeting with a range of alternative positions approved by their respective headquarters in an attempt to reach agreement. The Parties agree to negotiate in good faith for at least a thirty (30) day period before invoking the Dispute Resolution provision of Paragraph 27.5.

27.5 If, sixty (60) days after the expiration of the thirty (30) day period discussed in Paragraph 27.4, the Parties have not reached an agreement on:

(a) whether modifications to the Agreement are needed;

(b) what modifications to the Agreement are required;

(c) any language, provisions, Timetables, Work to be performed or content of the Agreement or any attachments to the Agreement;

(d) whether additional public notice and comments are required;

(e) the contents of the responsiveness summary;

then the matters which are in dispute shall be resolved by the Dispute Resolution procedures of Section XIII, (Dispute Resolution). For the purpose of this Section, the Agreement shall not be effective while the Dispute Resolution proceedings are underway. The Parties reserve the right to withdraw from the Agreement by providing written notice to the other Party within twenty (20) days after receiving the final notice of the resolution of the matters in dispute. Failure by a Party to provide such a written notice of withdrawal within this twenty (20) day period shall act as a

waiver of the right of the Party to withdraw from the Agreement. If no Party withdraws from the Agreement within this twenty (20) day period, EPA shall thereafter send a copy of the final Agreement to the Navy and the State and shall notify both Parties that the Agreement is effective. The Effective Date of the Agreement shall than be the date of notification from EPA to the Navy.

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

XXVIII. AMENDMENT OR MODIFICATION OF AGREEMENT

28.1 Except as provided in Paragraph 8.4 (regarding minor field modifications) this Agreement can be amended or modified solely upon written consent of the Parties. Such amendments or modifications shall become effective on the third business day following the date on which EPA signs the amendments or modifications. Upon such signing, EPA shall notify the other Parties. The Parties may agree to a different Effective Date.

28.2 A Party which proposes an amendment of this Agreement shall propose such amendment in writing and distribute such amendment for the signature of the other Parties.

28.3 Any amendment or modification to this Agreement relating to a Remedial Action which the parties mutually agree will not significantly effect authority or obligations established under this Agreement shall be published in two (2) major local newspapers of general circulation. Any amendments or modifications to this Agreement which the parties mutually agree will significantly effect authority or obligations established under this agreement, shall be published in two (2) major local newspapers of general circulation and the public shall be given an opportunity to comment in a manner consistent with Section XXVII, (Public Comment on this Agreement), of this Agreement. In the event the parties cannot mutually agree, the amendments or modifications shall be published in two (2) major local newspapers of general circulation and the public shall be given an opportunity to comment in a manner consistent with Section XXVII of this Agreement.

XXIX. EFFECTIVE DATE

29.1 This Agreement shall become effective in accordance with Section XXVII, (Public Comment On this Agreement).

).2 Any Timetable, Deadline, Schedule, or ROD required by this Agreement are effective upon finalization pursuant to Section VII, and incorporation into this Agreement.

XXX. NOTICES AND SUBMISSIONS

30.1 Whenever, under the terms of this Agreement, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the Parties' Project Managers at the addresses specified below, unless those individuals or their successors give written notice of a change to the other Parties. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Agreement with respect to the EPA, the Navy, and the State.

For the EPA: Carol Keating
U.S. EPA - Region I
J.F.K. Federal Building (HAN-CAN1)
Boston, MA 02203

Phone Number (617)573-5764
Emergency Number (617)223-7265

For the State: Paul Kulpa
State of Rhode Island
Department of Environmental Management
Division of Air & Hazardous Materials
291 Promenade Street
Providence, RI 02908

Phone Number (401) 277-2797
Emergency Number (401) 277-3070

For the Navy: Francisco La Greca
U.S. Department of the Navy
Naval Facilities Engineering Command
Northern Division
Environmental Restoration Mgmt. Section
U.S. Naval Base, Bldg. 77-L
Philadelphia, PA 19112-5094

Phone Number (215)897-6280
Emergency Number (401)841-3456 (Rachel Marino, NETC Newport)

XXXI. IDENTIFICATION OF STUDY AREAS

31.1 Any area on the Site which is identified by a Party pursuant to the procedures described in this Section as a Study Area after the Effective Date of this Agreement shall be added to the list of Study Areas and AOC found in Appendix IV as an additional Study Area to be investigated and remediated pursuant to the requirements of this Agreement. Notice to the public of all Study Areas that become an Area of Contamination identified by the Parties after the Effective Date of this Agreement shall be provided pursuant to Paragraph 28.3 of this Agreement.

31.2 When a Party to this Agreement determines that an area on the Site may be a threat, or potential threat, to human health or the environment, such Party shall notify the other Parties of such determination. Notification of the other Parties under this Paragraph shall at a minimum include; the location of such area on the Site and the reason(s) the Party believes such area poses a threat, or potential threat, to human health or the environment.

31.3 The Parties shall have thirty (30) days from the date of receipt of notification pursuant to Paragraph 31.2 to agree whether such area shall be addressed under this Agreement as a Study Area. If an agreement on whether to address such area under the Agreement cannot be reached within thirty days, the dispute shall be immediately brought to the DRC (Paragraph 13.4) for resolution.

31.4 The Navy, upon agreement of all the Parties, or upon determination by the DRC that an area is added to this Agreement as a Study Area, shall perform a Study Area Screening Evaluation (SASE) as described in Paragraph 31.5 of this Agreement.

31.5 Study Area Screening Evaluations. A Study Area Screening Evaluation (SASE) shall be conducted for those Study Areas identified pursuant to Paragraph 31.2 of this Agreement. An SASE shall be conducted to determine whether the Study Area is a threat to human health and the environment in accordance with CERCLA and the NCP.

31.6 Submittal of SASE Work Plan(s). The Navy shall submit to EPA and the State a SASE Work Plan which shall outline the activities necessary to confirm either the existence or absence of a threat, or potential threat, to human health and the environment. The SASE Work Plan shall be a Secondary Document and shall be reviewed by the Parties in accordance with Section VII of this Agreement. The Navy shall submit a timetable for the completion of SASE Work

Plans for those Study Areas identified in Appendix IV within ninety (90) days of the Effective Date of this Agreement or pursuant to a determination in accordance with Paragraph 31.4. The SASE Work Plan shall include a proposed schedule for the submittal of a SASE Report. Within fifteen (15) days of receipt, EPA and the State shall review and provide comments to the Navy regarding such proposed timetables. Within fifteen (15) days following receipt of comments, the Navy shall, as appropriate, make revisions and reissue the proposal. The Parties shall meet as necessary to discuss and finalize the proposed timetables. If the Parties agree on proposed timetables, EPA and the State shall each issue a Letter of Concurrence with the proposed Timetables, and the finalized Timetable shall be incorporated into the Agreement. 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 XIII, (Dispute Resolution) of this Agreement. The final Deadlines established pursuant to this Paragraph shall be published by EPA and shall become an Appendix to this Agreement.

31.7 Submittal of SASE Report(s). Upon conclusion of an SASE, the Navy shall submit to EPA and the State a draft SASE Report which shall provide the basis for a determination that either: i) an RI/FS be performed on the area addressed by the SASE or, ii) the area does not pose a threat, or potential threat, to human health or the environment and therefore the area should be removed from further study under this Agreement. The SASE Report shall be a Primary Document and shall be reviewed by the Parties in accordance with Section VII of this Agreement.

31.8 For any AOC or OU identified after the Effective Date of this Agreement pursuant to this Section, the Navy shall propose Deadlines for the submittal of the documents listed in Paragraphs 14.1 and target dates for the submittal of the documents listed in 14.2 for each such AOC or OU, in accordance with Paragraph 14.11.

XXXII. FIVE YEAR REVIEW

32.1 Consistent with 42 U.S.C. § 9621(c) and in accordance with this Agreement, if a selected Remedial Action results in any Hazardous Substance, pollutants or contaminants remaining at the Site, the Parties shall review each such Remedial Action at least every five (5) years after the initiation of the selected final Remedial Action at the Site to assure that human health and the environment are being protected by the Remedial Action which is being implemented.

32.2 If, upon such review, it is the conclusion of the EPA that Additional Work for any Remedial Action is appropriate at the Site in accordance with 42 U.S.C. §§ 9604 or 9606, the Navy shall implement such Additional Work pursuant to the terms of this Agreement. Any Additional Work agreed upon pursuant to this Section shall be made a part of this Agreement.

32.3 Any dispute by the Parties regarding the need for or the scope of Additional Work to a Remedial Action shall be resolved under Section XIII, (Dispute Resolution), of this Agreement and enforceable hereunder.

32.4 The EPA reserves the right to exercise any available authority to seek the performance of Additional Work that arises from a Five Year Review, pursuant to applicable law.

XXXIII. RESERVATION OF RIGHTS FOR RECOVERY OF 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 EPA cost reimbursement. Pending such resolution, EPA reserves any rights it may have with respect to cost reimbursement.

XXXIV. SEVERABILITY

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

XXXV. RELEASE OF RECORDS

35.1 The Parties may request of one another access to or a copy of any record or document relating to this Agreement. 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 the record or document is 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.

35.2 Records or documents identified by the originating Party as confidential pursuant to the non-disclosure provisions of the Freedom of Information Act, 5 U.S.C. § 552 or pursuant to CERCLA § 9604 (e)(7), shall be released to the requesting Party, provided the requesting Party states in writing that the document is necessary to carry out a function relating to this Agreement and that the requesting Party will not

release the record or document to the public without prior approval of the originating Party. 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 or pursuant to procedures available under the applicable law or regulation.

35.3 The Parties will not assert one of the exceptions in Paragraph 35.2 above, including any available under the Freedom of Information Act even if applicable, in the absence of any governmental interest in withholding the information.

35.4 Subject to CERCLA § 120 (j)(2), 42 U.S.C. § 9620 (j)(2), any documents required to be provided by Section VII, (Consultation with EPA and the State), and analytical data showing test results will always be releasable in final draft form and no exemption shall be asserted by any Party.

35.5 A determination to withhold a document for one of the reasons specified above shall not be subject to Section XIII, (Dispute Resolution). Any Party objecting to another Party's determination may pursue the objection through the determining Party's appeal procedures and judicial review, if applicable.

35.6 This Section does not affect any requirement pertaining to press releases contained in Section XXVII (Public Comment on this Agreement).

XXXVI. TRANSFER OF REAL PROPERTY

36.1 The Navy shall not enter into an agreement to sell or otherwise transfer real property comprising an Area of Contamination (including any Areas of Contamination added pursuant to this Agreement after its Effective Date) until the Navy has completed all Remedial Actions and Operation and Maintenance for such Area of Contamination as required by this Agreement unless the Navy has complied with the provisions of CERCLA § 120(h), 42 U.S.C. § 9620(h). The Navy shall give EPA and the State at least sixty (60) days written notice prior to such transfer.

36.2 The Navy may sell or transfer real property comprising the Federal Facility which does not include an Area of Contamination, provided:

(a) such sale or transfer is completed in accordance with CERCLA § 120(h);

(b) the Navy ensures that the sale or transfer of such property does not effect the Parties rights of access contained in Section IX, (Access) in order to effectuate the purposes of this Agreement in connection with any Area of Contamination under this Agreement; and

(c) the Navy gives EPA and the State at least sixty (60) days written notice prior to such sale or transfer, together with a summary of the terms of such sale or transfer which shall include: the name of the transferee(s); the type of transfer document; if applicable, the duration of the transfer; the description and location of the property to be sold or transferred; and, the provisions that ensure the Parties continued access to the Site. The Navy shall provide to EPA and the State a signed copy of any final agreement of such sale or transfer.

XXXVII. PROCEDURES FOR INTERIM REMEDIAL ACTIONS

37.1 The Navy shall implement those Interim Remedial Actions (IRA) necessary to prevent, minimize, or eliminate risks to human health and the environment caused by the release of hazardous substances, pollutants, or contaminants. An Interim Remedial Action (IRA) is identified, proposed and implemented prior to a final Remedial Action and shall be consistent with the final Remedial Action taken at the site. An IRA shall, to the greatest extent practicable, attain ARARs and be consistent with and contribute to the efficient performance of a final Remedial Action(s). An IRA must be protective of human health and the environment, and comply with CERCLA, the NCP, applicable EPA regulations, policy and guidance, and the following State laws to the extent that they are legally applicable, relevant, and appropriate requirements in accordance with Section 121 of CERCLA, and this Agreement: the Rhode Island Hazardous Waste Management Act.

37.2 Upon submission of the draft Phase I RI Report, a Party may propose an IRA(s) for those AOCs/Ous most suitable for an accelerated Remedial Action response. Any Party may request a meeting of the Parties to assist in expediting selection of the IRA.

37.3 Once an IRA is agreed upon by the Parties, the Navy shall prepare and submit for EPA and the State, a Focused Feasibility Study (FFS) which shall include a limited number of proposed Interim Remedial Action alternatives, and to the extent practicable, an assessment of the degree to which these alternatives were analyzed during their development

and screening. The FFS shall be a Primary Document and reviewed by the Parties in accordance with Section VII, (Consultation with EPA and the State).

37.4 After submittal of the final Focused Feasibility Study, the Navy shall prepare and submit a Proposed Interim Remedial Action Plan within thirty (30) days, in accordance with Paragraph 14.6. The Navy shall make the Proposed Interim Remedial Action Plan available for public review and comment in accordance with Paragraphs 7.6(f) and 17.2. Adequate information on the proposed Interim Remedial Action and a limited number of alternatives must also be available to the public along with the Proposed Plan. Copies of all written and oral public comments received shall be provided to the Parties.

37.5 Within sixty (60) days following the close of the comment period the Navy, in consultation with EPA and the State, will modify the FFS or Proposed Interim Remedial Action Plan based on the comments received. Any of the Parties may require an additional public comment period in the event of a substantial difference in the preferred alternative in the Focused Feasibility Study and Proposed Interim Remedial Action Plan.

37.6 Based on the FFS, Proposed Interim Remedial Action Plan, and comments received from EPA, the State, and the public, the Navy shall draft and submit to EPA and the State, a draft Interim Remedial Action ROD and Responsiveness Summary in accordance with Section XVII, (Records of Decision and Plans for Remedial Action) and the Timetable established pursuant to Section XIV, (Deadlines and Schedules).

37.7 Following approval of the Interim Remedial Action ROD, the Navy shall submit to EPA and the State a final Remedial Action Plan for implementation of the selected Interim Remedial Action, including appropriate Schedules and Timetables. Review, by the EPA and the State, of the selected IRA will continue as the Parties develop the final remedial alternatives for such AOC or OU.

XXXVIII. BASE CLOSURE

38.1 Unless superseded by a subsequent act of Congress, the Navy's closure of NETC Newport will not affect the Navy's obligation to comply with the terms of this Agreement and to specifically ensure the following:

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

(b) Designation of DRC and SEC members as appropriate for the purposes of implementing Section XIII, (Dispute Resolution); and

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

38.2 Base closure will not constitute a Force Majeure under Section XV, (Force Majeure), nor will it automatically constitute good cause for extensions under Section XV, (Extensions), unless otherwise mutually agreed to by the Parties.

XXXIX. STATE RESERVATION OF RIGHTS

39.1 Notwithstanding any other Section of this Agreement, the State shall retain any statutory right it may have to obtain judicial review of any final decision of EPA on selection of Remedial Action(s) including, without limitation, any authority the State may have under CERCLA Sections 113, 121(e)(2), 121(f), and 310, 42 U.S.C. Sections 9613, 9621(e)(2), 9621(f), and 9659, except that the State expressly agrees to exhaust any applicable remedies provided in Section VII, (Consultation With EPA and the State) and Section XIII, (Dispute Resolution) of this Agreement, prior to exercising any such rights.

39.2 Notwithstanding any other provision of the Agreement, in the event that the Navy is granted an extension under Section XV, (Extensions) of this Agreement based upon insufficient availability of funds or in the event the Navy's work obligations under this Agreement are not fulfilled for six (6) consecutive months due to insufficient availability of funds, whichever occurs first, the State may terminate all provisions of the Agreement affecting the State's rights and responsibilities upon providing ten (10) days notice of its intent to terminate to the other Parties.

XL. SIGNATURE PAGE

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

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY: Julie D. Belaga — 23 March 1992
DATE

Julie D. Belaga
Regional Administrator
U.S. EPA - Region I

FOR THE UNITED STATES DEPARTMENT OF THE NAVY

BY: Jacqueline G. Schafer — 23 March 1992
DATE

Jacqueline Schafer
Assistant Secretary of the Navy
(Installations & Environment)

FOR THE STATE OF RHODE ISLAND

BY: Louise Durfee — 23 March 1992
DATE

Louise Durfee
Director
State of Rhode Island
Department of Environmental Management

APPENDIX I

TOPICS TO BE DESCRIBED IN THE SCOPE OF WORK FOR RD/RA

I REMEDIAL DESIGN WORK PLAN

a. Health and Safety Plan (HSP), if required by the ROD

b. Sampling and Analysis Plan, if required by the ROD, including the:

   1. Quality Assurance Project Plan
   2. Field Sampling Plan

c. Site Security Plan, if required by the ROD

d. RD Investigation Description(s), if required by the ROD

e. Preliminary Monitoring Plans

f. Review and Evaluation of Monitoring Data

g. Detailed Statement of ARARs

h. Development of Design Plans and Specifications for the following stages:

II. Sixty Percent (60%) Remedial Design

a. Revisions to the RD Work Plan based upon EPA and State's review and comment

b. Plans, specifications and calculations equivalent to 60% of the overall design

c. Statement of ARARs Evaluation

d. Initial Draft Construction QA/QC Project Plan

e. Initial Draft Contingency Plan

f. Results of a value engineering study, if applicable.

III. **Eighty-five Percent (85%) Remedial Design**

a. Corrected design prints and calculations, including written comments to define corrections and/or additions to 60% Design

b. Plans, specifications and calculations equivalent to 85% of the overall design

c. Initial draft Operation and Maintenance Plan

IV. **Final Remedial Design**

a. 100% final design plans and specifications

b. Final Draft Construction QA/QC Project Plan

c. Final Contingency Plan

d. Final Operation and Maintenance Plan

e. Constructability Review Verification

V. **REMEDIAL ACTION WORK PLAN**

a. Final Construction QA/QC Project Plan

b. Description of Implementation Activities to Effectuate RD, including:
   1. Contractor mobilization/site preparation
   2. Construction and start-up of soil treatment facilities, if applicable
   3. Construction and start-up of groundwater extraction and treatment facilities, if applicable
   4. Excavation/dredging of contaminated sediments in wetland areas, if applicable
   5. Restoration of disturbed wetlands, if applicable
   6. Performance monitoring of groundwater and demobilization of treatment facilities
   7. Long-term environmental monitoring

c. Description of Schedule for RA Completion

VI. **FINAL REMEDIAL CONSTRUCTION REPORT(S)/CLOSE-OUT REPORT(S)**

a. Summary of Procedures Employed during RD/RA

b. Analytical Data and Field Notes

c. Presentation of RD/RA Results

d. Conclusions regarding conformance of treatment processes with Performance Standards

e. Descriptions of the actions taken and any potential future actions to be taken to grade, loam, and vegetate the Site

f. Updated O & M Plan

APPENDIX II

NAVY'S INSTALLATION RESTORATION PROGRAM (IRP) DOCUMENTS RECEIVED BY EPA AND THE STATE

1. Initial Assessment Study of the Naval Education and Training Center, Newport, RI, Envirodyne Engineers, Inc. (EEI), St. Louis, MO, March 1983.

2. Confirmation Study Report on Hazardous Waste Sites at the Naval Education and Training Center, Newport, RI, Loureiro Engineering Associates, Avon, CT and York Wastewater Consultants, Stamford, CT, May 15, 1986.

3. RI/FS Work Plan - Naval Education Training Center, Newport, Rhode Island, TRC Environmental Consultants, Inc., Hartford, CT, March 1989.

4. Community Relations Plan for the Installation Restoration Program at the Naval Education and Training Center, Newport, Rhode Island, Prepared by NETC Public Affairs Office and Public Works Department, July 1990.

5. Draft Phase I Remedial Investigation Report- Naval Education and Training Center Newport, Rhode Island. Prepared by TRC Environmental Consultants, Inc., Windsor, CT, November 1991.

APPENDIX III

Site Map

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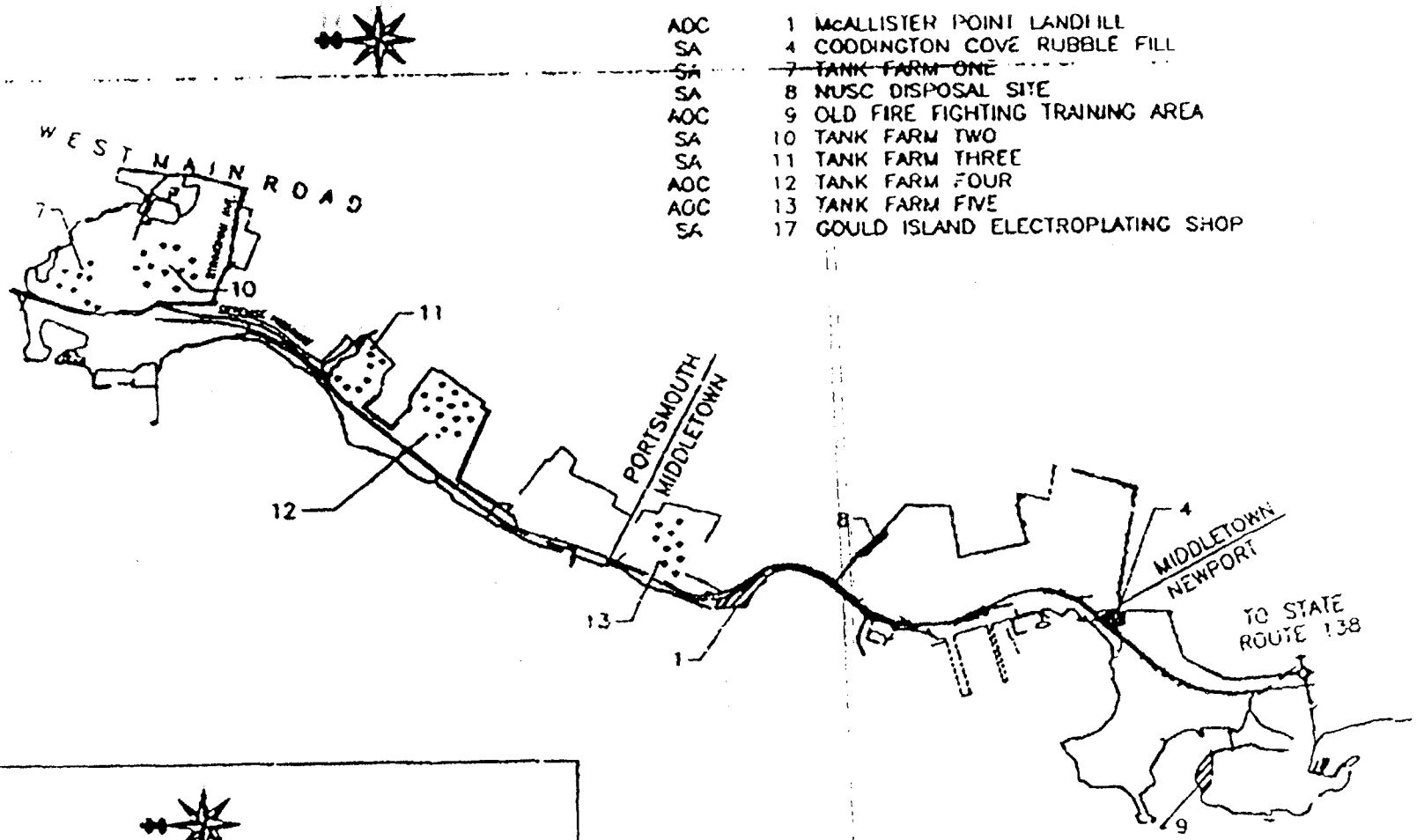
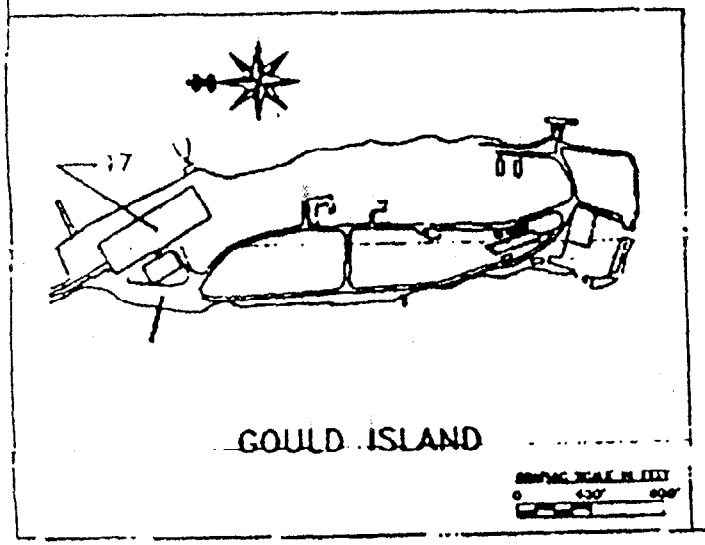
AOC	1	McALLISTER POINT LANDFILL
SA	4	COODINGTON COVE RUBBLE FILL
~~SA~~	~~7~~	~~TANK FARM ONE~~
SA	8	NUSC DISPOSAL SITE
AOC	9	OLD FIRE FIGHTING TRAINING AREA
SA	10	TANK FARM TWO
SA	11	TANK FARM THREE
AOC	12	TANK FARM FOUR
AOC	13	TANK FARM FIVE
SA	17	GOULD ISLAND ELECTROPLATING SHOP





APPENDIX IV

LIST OF STUDY AREAS AND AREAS OF CONTAMINATION

AOC/IRP Identifier	Description
AOC (1)	McAllister Point Landfill This site is located along the shoreline of Narragansett Bay and encompasses approximately six acres. From 1955 through the mid-1970's, this site was used as a landfill which received industrial and domestic-type wastes such as domestic-type refuse, spent acids, paints, solvents, waste oils, and PCB-contaminated oil. Wastes from the operational areas (machine shops, electroplating operations, etc.), Navy housing areas, and from the ships homeported at Newport prior to the 1973 Shore Establishment Realignment action were disposed of in the landfill. Throughout the time period that the landfill was used, the landfill was extended out into the bay using the wastes as fill material.
SA (4)	Coddington Cove Rubble Fill This site was used from 1978 to 1982 for the disposal of demolition type materials including concrete, scrap lumber, tires, wire, cable, empty paint cans, and ash. The site covers six acres and is located in the Coddington Cove area where the northern portion of the site abuts Connell Highway.
SA (7)	Tank Farm One This site is used for the storage of diesel oil, fuel oil, 100 octane gasoline and aviation fuel. There are six underground steel tanks and two above ground concrete tanks. From World War II until the mid-1970's, tank bottom sludges containing tetraethyl lead, obtained during tank cleaning operations, was placed in pits adjacent to the tanks. There were twelve to fifteen pits located throughout the tank farm.

SA (8) NUWC (Formerly NUSC) Disposal Area

This site was used during the 1970's as a dump for materials including scrap lumber, tires, wire, cable, and empty paint cans. The site is located on the northwestern boundary of the NUWC complex.

AOC (9) Fire Fighting Training Area

This site is located on the northern shoreline of Coaster's Harbor Island and was used as a fire fighting training area during World War II up to 1972. Waste oils and spent solvents were poured onto the ground, ignited, and then put out during fire fighting training exercises. The quantities and exact types of materials used are unknown. The site has since been extensively excavated and traces of oil were found in the soil in the immediate area.

SA (10) Tank Farm #2

This site is located in the Melville North Area and is used for the storage of diesel and fuel oil and consists of eleven 60,000 barrel storage tanks. Tank bottom sludges obtained during cleaning operations were disposed of on the ground in the general vicinity of the tank being cleaned.

SA (11) Tank Farm #3

This site is located in the South Melville area and is used for the storage of jet engine fuel. Tank bottom sludge obtained during cleaning operations from the seven underground storage tanks was disposed by burning in burning chambers. These burning chambers had steel sides and sand bottoms.

AOC (12) Tank Farm #4

This site was used for the storage of diesel and fuel oil and consists of twelve 60,000 barrel underground storage tanks. From World War II until the mid-1970's, tank bottom sludges obtained during cleaning operations, was disposed of directly onto the ground in the vicinity of the tank being cleaned.

AOC (13) Tank Farm #5

This site was used for the storage of diesel and fuel oil and consisted of eleven 60,000 barrel underground storage tanks. Tank bottom sludge obtained during cleaning operations was disposed of by burning in a burning pit. This burning pit had steel sides and a sand bottom.

SA (17)

Gould Island Electroplating Shop

Extensive electroplating and degreasing operations occurred in the northern portion of the island (Building 32) during World War II. The wastes generated included muratic acid, achromic acid, copper cyanide, sodium cyanide sodium hydroxide, nickel sulfate, Anodex cleaner, and degreasing solvents. This site is located on a portion of Gould Island which is currently owned by the Navy.