UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V
AND THE
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
AND THE
UNITED STATES DEPARTMENT OF THE INTERIOR -
AND THE
UNITED STATES DEPARTMENT OF THE ARMY

AUG 15 1991

Concurrence:
Mark A. Anderson
for Field Solicitor
Robb M. Regional Director

IN THE MATTER OF:	)	
	)	
The U.S. Department of the Interior's Crab Orchard National Wildlife Refuge	)	FEDERAL FACILITY AGREEMENT UNDER CERCLA SECTION 120
	)	
	)	Administrative Docket Number:

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

18104-1/1-B

00053315

1. DEFINITIONS

1.0 The definitions provided in CERCLA and the NCP, as they may be amended, shall control the meaning of the terms used in this Agreement unless clearly indicated otherwise below or elsewhere in this Agreement:

1.1 "Agencies" means the U.S. Environmental Protection Agency and the Illinois Environmental Protection Agency.

1.2 "Agreement" means this Federal Facility Agreement under

CERCLA Section 120 and all Tables and Attachments to this Agreement.

1.3 "ARARs" means "applicable requirements" and "relevant and appropriate requirements" as those terms are defined in the NCP.

1.4 "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499.

1.5 "Contractor" means the company or companies retained by or on behalf of the Lead Department to undertake and complete the work required by this Agreement. Each contractor and subcontractor must be qualified to do those portions of the work for which it is retained. Each contractor and subcontractor shall be deemed to be related by contract to the Lead Department within the meaning of 42 U.S.C. §9607(b).

1.6 "DA" means the Department of the Army and its successors in interest. The Department of Defense has delegated to DA authority for FUDS by letter dated May 7, 1990.

1.7 "Days" means calendar days, unless business days are specified.

1.8 "Deadlines" means due dates provided for or established pursuant to Section 30.

1.9 "DERA" means the Defense Environmental Restoration Account as established under 10 U.S.C. §2703.

1.10 "DERP" means the Defense Environmental Restoration Program, 10 U.S.C. §2701 et seq.

1.11 "DOD" means the United States Department of Defense.

1.12 "DOI" means the U.S. Department of the Interior and its successors in interest.

1.13 "Expedited Operable Unit" or "EOU" means an action that shall be taken prior to the completion of an RI, FS and Record of Decision (ROD) for the NPL Site or operable unit. The EOU must be consistent with the final remedial action, and in accordance with the authorities of Section 104(a) of CERCLA. The purpose of the EOU shall be to stabilize an existing situation to prevent further degradation to public health or the environment.

1.14 "FUDS" means Formerly Used Defense Sites. Formerly Used Defense Sites are facilities or sites which were under the jurisdiction of the Secretary of Defense and owned by, leased to, or otherwise possessed by the United States at the time of actions leading to contamination by hazardous substances.

1.15 "FWS" means the United States Fish and Wildlife Service, a bureau of the U.S. Department of the Interior.

1.16 "Hazardous Waste" shall have the meaning provided in Section 1004(5) of RCRA, 42 U.S.C. §6903, and 40 C.F.R. §261.3.

1.17 "IEPA" means the Illinois Environmental Protection Agency and its successors in interest. IEPA represents the State of Illinois for implementation of this Agreement and its activities under this Agreement pursuant to Section 4(l) of the Illinois Environmental Protection Act, Ill. Rev. Stat. ch 111 1/2, para. 1004(l).

1.18 "IOP" means the Illinois Ordnance Plant.

1.19 "Lead Department" means either DOI or DA. The work under this Agreement covers several operable units. Responsibility for those operable units and the work required by this Agreement for their remediation has been preliminarily divided by this Agreement between DOI and DA. Those divisions of responsibility may be changed by future action under the provisions of Subsection 7.5. The Lead Department for an operable unit is that department, either DOI or DA, which has primary responsibility for a particular operable unit. Primary responsibility for an operable unit includes responsibility for all work required by this Agreement for that operable unit. ~~The authority of DOI or DA as a Lead Department shall include all authorities granted by statute, Executive Order, Regulation and this Agreement to DOI or DA.~~

1.20 "MOA" means the Memorandum of Agreement between DOI and DA as referenced in Section 24.

1.21 "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan, or National Contingency Plan, 40 C.F.R. Part 300.

1.22 "NPL Site" includes the Refuge, and any area off of the Refuge where hazardous substances have come to be located as a result of migration of hazardous substances from the Refuge.

1.23 "Operable Unit" or "OU" has the meaning used in the NCP. For purposes of this Agreement, Operable Unit has been used to describe four (4) areas of contamination at the Refuge. Those four (4) areas may, if the Parties so decide, be combined in part

or in whole or further divided into smaller OUs. Also, additional OUs composed of one or more sites may be created.

1.24 "Parties" means USEPA, DOI, DA, and IEPA.

1.25 "Potentially Responsible Party" or "PRP" means any person or entity who may be liable pursuant to Section 107 of CERCLA, 42 U.S.C. §9607.

1.26 "RCRA" means 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.

1.27 "Refuge" means the Crab Orchard National Wildlife Refuge.

1.28 "Section" and "Subsection" mean the various sections and subsections of this Agreement.

1.29 "Submittal" means every document, report, schedule, deliverable, work plan, comments or other item to be submitted by any Party to the other Parties, pursuant to this Agreement.

1.30 "Timelines" means those calendars, specifically designated as timelines, of events occurring during the work performed in accordance with Section 7. Timelines are not timetables, deadlines, or schedules.

1.31 "USACE" means the United States Army Corps of Engineers. USACE shall be the executive agent of DA for all purposes of this Agreement unless a specific DA office or official is identified in a section of this Agreement.

1.32 "USEPA" means the United States Environmental Protection Agency and its successors in interest.

2. BACKGROUND

2.1 The United States Government is the owner of the Crab Orchard National Wildlife Refuge, Marion, Illinois.

2.2 The Refuge is currently administered by the FWS. The mission of the FWS with regard to the management of the Refuge is to conserve, protect, and enhance fish, wildlife, and their habitats for the continuing benefit of the American people, consistent with 16 U.S.C. §§666(f) and (g). The FWS is concerned with the welfare of fish and wildlife and preservation of their habitats. Primary responsibilities are for migratory birds, threatened and endangered species, anadromous and Great Lakes fisheries, and certain marine mammals.

2.3 Portions of the Refuge were administered by the War Department and its successor, DA, as the IOP under whose administration industries operated on the eastern portion of the Refuge, with industries continuing to operate after the land was transferred, pursuant to Public Law 95-616, 16 U.S.C. §§666(f) and (g), to DOI. On October 26, 1945, the War Department declared the IOP excess property except for 49.76 acres being used for an ammonium nitrate fertilizer plant. The excessed property was transferred to the War Assets Administration, an element of the Reconstruction Finance Corporation. The final 49.76 acres were declared excess property in 1950 and transferred to DOI.

2.4 Congress, in passing the law that created the Crab

Orchard National Wildlife Refuge in 1947, provided that those lands chiefly valuable for industrial purposes be leased for such purposes under terms and conditions set by the Secretary of the Interior. Congress contemplated the Refuge being used for industry, agriculture, and recreation, as well as for wildlife conservation. The legislative history of the act that transferred the property to DOI indicates that Congress believed fees from industrial users would promote the viability of the Refuge.

2.5 The property containing the IOP in Williamson County, Illinois, was included in the Refuge by the enabling legislation (16 U.S.C. §§666(f) and (g)). The Crab Orchard enabling legislation further provided that no jurisdiction shall be exercised by the Secretary of the Interior over that portion of such lands and the improvements thereon utilized at that time by DA, directly or indirectly, until determined by the Secretary of the Army that utilization is no longer required. On September 28, 1954, the Department of Defense canceled all restrictions and reservations regarding the Refuge. The enabling legislation also provided that any lease or other disposition would be made subject to such terms, conditions, restrictions and reservations imposed by the Secretary of the Army as would, in the opinion of the Secretary of the Army, be adequate to assure the continued availability for war production of such lands and improvements.

2.6 Because of the actual and potential release of hazardous substances from the NPL Site, and pursuant to Section 105 of

CERCLA, 42 U.S.C. §9605, USEPA proposed the NPL Site for the National Priorities List, which is set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on October 15, 1984, 49 FR 40320, and finalized the listing of the NPL Site on the National Priorities List by publication in the Federal Register on July 22, 1987, 52 FR 27620.

2.7 Over the years, numerous companies have operated on the Refuge property. Sangamo Weston, Inc., is one of the industries that operated at the Refuge, manufacturing electrical components such as capacitors and transformers between 1946 and 1962. Sangamo merged with Schlumberger Industries, Inc., on or about January 1, 1990.

2.8 On February 26, 1986, the FWS and USEPA entered into a Federal Facility Initial Compliance Agreement, which required the performance of a Remedial Investigation and Feasibility Study (RI/FS).

2.9 On May 13, 1986, the FWS and Sangamo Weston, Inc., entered into a Cooperative Agreement to conduct the RI/FS at the Refuge.

2.10 In August 1988, the FWS and Sangamo Weston, Inc., completed a draft-final RI Report, which detailed the investigation of thirty-three (33) sites at the Refuge, including two background sites. The RI Report recommended actions for each site. Seven (7) were recommended for consideration as study sites in the FS, four (4) for further evaluation by DOD, eight (8) for periodic monitoring, and fourteen (14) for no further

evaluation or action.

2.11 On August 25, 1988, USEPA held a public meeting in Carterville, Illinois. Representatives of USEPA, FWS, and O'Brien and Gere, the consultants for Sangamo Weston, Inc., discussed the results of the RI.

2.12 In August 1989, the FWS and Sangamo Weston, Inc., completed the draft-final FS Report for the seven (7) study sites identified in the RI Report. They included four (4) study sites contaminated primarily with PCBs and lead, and three (3) study sites contaminated primarily with metals such as cadmium, chromium and lead.

2.13 IEPA reviewed the draft RI and FS Reports and submitted comments on July 27, 1988, and May 24, 1989, respectively.

2.14 On August 18, 1989, USEPA, in consultation with DOI and IEPA, made available to the public the draft-final FS Report on the seven (7) study sites, together with two Proposed Plans for remedial action. The first Proposed Plan was for the three (3) study sites contaminated primarily with metals. These were designated as the "Metals Areas" OU. The second Proposed Plan addressed the remaining four (4) study sites. These were designated as the "PCB Areas" OU.

2.15 On September 23, 1989, the public comment period for the Metals Areas OU closed. USEPA signed a Record of Decision (ROD) for the Metals Areas OU on March 30, 1990, Attachment 1.

2.16 On December 1, 1989, the public comment period for the PCB Areas OU closed. USEPA signed the ROD for the PCB Areas OU

on August 1, 1990, Attachment 2.

3. JURISDICTION

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

3.1 USEPA enters into those portions of this Agreement that relate to the RI/FS pursuant to Sections 120(e)(1) and (6) of CERCLA, 42 U.S.C. §9620(e)(1) and (6), and Sections 3004(u) and (v), 3008(h), and 6001 of RCRA, 42 U.S.C. §§6924(u) and (v), 6928(h), and 6961, and Executive Order 12580.

3.2 USEPA enters into those portions of this Agreement that relate to remedial actions pursuant to Sections 120(e)(2) and (6) of CERCLA, Sections 3004(u) and (v), 3008(h), and 6001 of RCRA, and Executive Order 12580.

3.3 DOI enters into those portions of this Agreement that relate to the RI/FS pursuant to Section 120(e)(1) of CERCLA, Sections 3004(u) and (v), 3008(h), and 6001 of RCRA, Executive Order 12580, the Fish and Wildlife Act of 1956, as amended, 16 U.S.C. §742a et seq., the Endangered Species Act, 16 U.S.C. §§1531-1534, the Fish and Wildlife Coordination Act, 16 U.S.C. §661, the Migratory Bird Treaty Act, 16 U.S.C. §701, the National Wildlife Refuge System Act, 16 U.S.C. §668dd, the Bald and Golden Eagle Protection Act, 16 U.S.C. §668 et seq., and the National Environmental Policy Act (NEPA), 42 U.S.C. §4321.

3.4 DOI enters into those portions of this Agreement that relate to remedial actions pursuant to Section 120(e)(2) of CERCLA, Sections 3004(u) and (v), 3008(h), and 6001 of RCRA,

Executive Order 12580, the Fish and Wildlife Act of 1956, as amended, the Fish and Wildlife Coordination Act, the Endangered Species Act, 16 U.S.C. §§1531-1534, the Migratory Bird Treaty Act, the National Wildlife Refuge System Act, the Bald and Golden Eagle Protection Act, and NEPA.

3.5 DA enters into those portions of this Agreement that relate to the RI/FS pursuant to Sections 101, 107(a), 120(a)(1) and 120(e)(1) of CERCLA, 42 U.S.C. §9601, 9607(a), 9620(a)(1) and §9620(e)(1), Executive Order 12580, NEPA, and the Defense Environmental Restoration Program (DERP), 10 U.S.C. §2701 et seq.

3.6 DA enters into those portions of this Agreement that relate to remedial actions pursuant to Sections 101, 107(a), 120(a)(1) and 120(e)(2) of CERCLA, Executive Order 12580, and the DERP.

3.7 IEPA enters into this Agreement pursuant to CERCLA Section 120(f), 42 U.S.C. §9620(f), CERCLA Section 121(f), 42 U.S.C. §9621(f), RCRA Section 3006, 42 U.S.C. §6926; and Section 4 of the Illinois Environmental Protection Act, Ill. Rev. Stat. ch 111 1/2, par. 1004.

4. PARTIES BOUND

4.0 The Parties to this Agreement are USEPA, DOI, DA and IEPA. This Agreement applies to and is binding upon the undersigned Parties and their successors in interest. The Parties shall ensure that their respective officers, employees and agents comply with the terms of this Agreement. The undersigned representative of each Party to this Agreement

certifies that he or she is fully authorized by the Party whom he or she represents to enter into the terms and conditions of the Agreement and to execute and legally bind such Party to this Agreement. Each Party shall provide a copy of this Agreement to any contractor hired to perform the work required by this Agreement and shall require the contractor to provide a copy thereof to any subcontractor retained to perform any part of the work required by this Agreement. USEPA, DOI, and/or DA shall provide a copy of this Agreement to any Potentially Responsible Party (PRP) with whom it enters into negotiations to perform any of the work required by this Agreement.

5. NPL SITE DESCRIPTION

5.1 The Crab Orchard National Wildlife Refuge, located in Williamson, Jackson, and Union Counties, near Marion, Illinois, consists of approximately 43,000 acres. Both before and after its establishment as a National Wildlife Refuge as a result of Congressional action, numerous industries, defense-related and otherwise, have operated on the eastern portion of the Refuge. The property containing the IOP in Williamson County, Illinois, which included the site of the War Department's ammonium-nitrate plant, was included in the Refuge by the enabling legislation (16 U.S.C. §666f).

5.2 The August 1988 RI focused on areas that were thought to have been impacted by past or current industrial activity. This draft final RI looked at thirty-three (33) study sites, including two (2) background sites. These study sites are listed in Table

1 and shown on Figure 1.

5.3 Because the study sites differ in terms of contamination problems, types of remedies and schedules that may be appropriate, PRPs, etc., and because site problems are spatially distinct, four (4) OUs have been created, consisting of the following:

5.3.1 Explosive/Munitions Manufacturing Areas - those areas physically associated with explosive/munitions manufacturing including, but not limited to the August 1988 RI study sites 3, 4, 5, and 19 (previously referred to by USEPA as "DOD areas"), and all of the sites from a study for USACE, the "Confirmation Study at the Crab Orchard National Wildlife Refuge, Hampton Cemetery and Ammunition Plant DERA Site," dated April 11, 1988, prepared by Woodward-Clyde Consultants, including sites designated as COC 1 through COC 10 and COP 1 through COP 4, shown on Figure 2. DA is the Lead Department for this Operable Unit.

5.3.2 Miscellaneous Areas - those areas that were proposed in the RI Report of August 1988 to require no further work or that will need further investigation, monitoring or maintenance, including study sites 7, 7A, 8, 9, 10, 11, 11A, 12, 13, 14, 16, 18, 20, 21, 24, 25, 26, 27, 30, 31, 34, and 35. Of these, study sites 24, 25, and 26 are known to require no further work. In addition, the Miscellaneous Areas shall include for investigation the Refuge wastewater treatment plant and the stream sediments downstream of the plant in Dove Creek and Pigeon Creek. DOI is the Lead Department for this Operable Unit.

5.3.3 PCB Areas - those areas contaminated with PCBs, and which may also be contaminated with other constituents such as lead, including study sites 17, 28, 32 and 33. DOI is the Lead Department for this Operable Unit.

5.3.4 Metals Areas - those areas primarily contaminated with heavy metals, including study sites 15, 22 and 29. DOI is the Lead Department for this Operable Unit.

5.4 Additional OUs may be created, or study sites may be added to or moved between the OUs depending on new or additional information.

6. PURPOSE

6.1 The general purposes of this Agreement are to:

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

6.1.2 Establish a procedural framework and schedule for developing, implementing and monitoring appropriate response actions at the NPL Site in accordance with CERCLA, the NCP, Superfund guidance and policy, RCRA, RCRA guidance and policy, the DERP, and applicable state law; and,

6.1.3 Facilitate cooperation, exchange of information and participation of the Parties in such actions.

6.2 Specifically, the purposes of this Agreement are to:

6.2.1 Identify EOU alternatives which are appropriate at the NPL Site prior to the implementation of final remedial

actions(s) for the NPL Site. If needed, EOU alternatives shall be identified and proposed informally to the Parties as early as possible prior to formal proposal of EOUs pursuant to CERCLA and applicable state law. This process is designed to promote cooperation among the Parties in identifying EOU alternatives prior to selection of final EOUs;

6.2.2 Establish requirements for the performance of RIs to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release and threatened release of hazardous substances, hazardous wastes, pollutants or contaminants at the NPL Site and to establish requirements for the performance of any necessary FSs for the NPL Site to identify, evaluate, and select alternatives for the appropriate remedial action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, hazardous wastes, pollutants or contaminants at the NPL Site in accordance with CERCLA and applicable state law;

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

6.2.4 Implement the selected remedial action(s) in accordance with CERCLA and applicable state law and meet the requirements of CERCLA Section 120(e)(2), 42 U.S.C. §9620(e)(2), for an interagency agreement among the Parties;

6.2.5 Assure compliance, through this Agreement, with RCRA and any other applicable federal and state hazardous waste laws and regulations for matters covered by this Agreement;

6.2.6 Coordinate response actions at the NPL Site with the mission and support activities at the Refuge;

6.2.7 Expedite the cleanup process to the extent consistent with protection of human health and the environment;

6.2.8 Provide IEPA the opportunity for involvement in the initiation, development, selection, and implementation of remedial actions to be undertaken at the Refuge, including the review of all applicable data as it becomes available, including pre-existing data not previously reviewed by the Agencies, and the development of studies, reports, and action plans, to identify and integrate State ARARs into the remedial action process, and to allow for participation in negotiations with other entities that pertain to the remedial actions at the NPL Site;

6.2.9 Provide for the implementation of the RODs for the PCB Areas and Metals Areas OUs, provided that in acknowledging this purpose of the Agreement, IEPA in no way alters its position concerning the PCB and Metals RODs, and with respect to ~~those~~ decisions, IEPA reserves whatever rights it has under Section 122(e)(2) and Section 122(f) of CERCLA, and the Illinois Environmental Protection Act;

6.2.10 Provide for operation and maintenance of any remedial action selected and implemented pursuant to this

Agreement; and,

6.2.11 Assure the integration of DERP requirements into DA's RI, FS and remedial action work required by this Agreement and provide USEPA and IEPA coordination on the DERP processes at the NPL Site.

7. WORK TO BE PERFORMED

7.0 DOI shall be the Lead Department for documents related to the NPL Site as a whole. These documents are listed in Subsection 11.3.1.1. DOI shall meet the deadlines provided in and established pursuant to Subsection 30.1.1 for submission of these documents.

7.1 DA shall be the Lead Department for the Explosive/Munitions Manufacturing Areas OU. As the Lead Department, DA shall: (1) submit the documents applicable to each phase of the work for consultation in accordance with Section 11; (2) carry out the required work in accordance with the final documents; (3) meet the deadlines provided in and established pursuant to Section 30 for each phase of the work; and (4) perform the following work:

7.1.1 DA shall perform an RI for this OU, which shall at a minimum consist of the first phase of field work which is now underway, and, if necessary, a second phase of field work to adequately assess the condition of the study sites comprising the OU.

7.1.2 DA shall prepare and submit an RI Report incorporating the results of all site investigation activities.

The RI Report shall contain a risk assessment and an assessment as to whether an FS is necessary.

7.1.3 If determined to be necessary, DA shall prepare and submit an FS Report for this OU.

7.1.4 DA shall submit and publish a Proposed Plan and a ROD in accordance with Section 10. If it is determined that no further response action is required for this OU, the Proposed Plan and ROD shall so specify, and the work specified in Subsections 7.1.6 through 7.1.8 shall be deemed to be satisfied.

7.1.5 DA may enter into negotiations with other entities to perform any RD or RA work required by the ROD and this Agreement, pursuant to Section 12.

7.1.6 DA shall ensure the implementation and completion of any Remedial Action selected in the ROD. DA shall perform or arrange for the performance of any necessary RD. The RD may include predesign activities which will assist in designing the selected remedy. 7.1.7 DA shall conduct or arrange for the performance of any RA required for this OU in accordance with the final RD documents.

7.1.8 DA shall ensure the conduct of all necessary long-term monitoring, operation and maintenance in accordance with the Operation and Maintenance Plan.

7.1.9 DA has completed some of the work required by this Section prior to the effective date of this Agreement. All documents submitted for the Explosive/Munitions Manufacturing Areas OU prior to the effective date of this Agreement shall be

deemed to have satisfied the requirements of this Agreement so long as DA has complied with Section 11 procedures for consultation on the documents, including Dispute Resolution procedures of Section 15. IEPA reserves the right to comment and to invoke its authority under Section 15 on Phase 1 RI work during review of the Phase 2 work plan or upon submittal of the RI report. All work performed under a document so finalized shall be deemed to have satisfied the requirements of this Agreement so long as DA has completely implemented the final document.

7.2 DOI shall be the Lead Department for the Miscellaneous Areas OU. As the Lead Department, DOI shall: (1) submit the documents applicable to each phase of the work for consultation in accordance with Section 11; (2) carry out the required work in accordance with the final documents; (3) meet the deadlines provided in and established pursuant to Section 30 for each phase of the work; and (4) perform the following work:

7.2.1 DOI shall prepare and submit the Recommendation on Necessary Work - Miscellaneous Areas OU, which will recommend whether any additional RI and FS work, or any remedial action is required for any of the study sites included in this OU. The recommendation shall be based on the Administrative Record.

7.2.2 DOI may enter into negotiations with other entities to perform any RI/FS work required by the Recommendation on Necessary Work - Miscellaneous Areas OU and this Agreement, pursuant to Section 12.

7.2.3 If the final Recommendation on Necessary Work - Miscellaneous Areas OU requires the performance of additional RI work, DOI shall perform or arrange for the performance of the additional RI work to adequately assess the condition of the study sites which are determined to require additional work.

7.2.4 DOI shall submit the RI Report, if additional RI work is determined to be necessary, incorporating the results of all site investigation activities. The RI Report shall contain a risk assessment and an assessment as to whether an FS is necessary.

7.2.5 If determined to be necessary in either the Recommendation on Necessary Work or the RI Report, DOI shall submit an FS Report for this OU.

7.2.6 DOI shall submit and publish a Proposed Plan and a ROD. If it is determined that no further response action is required for this OU, the Proposed Plan and ROD shall so specify, and the work specified in Subsections 7.2.8 through 7.2.10 shall be deemed to be satisfied.

7.2.7 DOI may enter into negotiations with other entities to perform any RD or RA work required by the ROD and this Agreement, pursuant to Section 12.

7.2.8 DOI shall ensure the implementation and completion of any Remedial Action selected in the ROD. DOI shall perform or arrange for the performance of any necessary RD. The RD may include predesign activities which will assist in designing the selected remedy.

7.2.9 DOI shall conduct or arrange for the performance of any RA required for this OU in accordance with the final RD documents.

7.2.10 DOI shall ensure the conduct of all necessary long-term monitoring, operation and maintenance in accordance with the Operation and Maintenance Plan.

7.3 DOI shall be the Lead Department for the PCB Areas OU, and shall perform the following work:

7.3.1 USEPA and DOI have reached a settlement with Schlumberger Industries, Inc., pursuant to Section 122 of CERCLA and consistent with Section 12. The terms of the settlement have been incorporated in a Consent Decree which requires Schlumberger to conduct the RD and RA (except long term operation and maintenance) for the PCB Areas OU. DOI shall assist USEPA in the implementation and enforcement of the Consent Decree. DOI and USEPA recognize that the technical requirements of Illinois Administrative Code (IAC) Parts 810-815 are not ARARs for the development and operation of the on-site landfill required by the ROD for the PCB Areas. DOI and USEPA further recognize that those requirements may be ARARs for the development and operation of any landfill required by any future RODs at the NPL Site. In addition, the standards of IAC parts 810-815 may ensure that the landfill will be more protective. In light of these factors, DOI and USEPA will give great weight to those requirements in the review of the RD for the PCB Areas.

7.3.2 DOI shall conduct all necessary long-term monitoring,

operation and maintenance in accordance with the Operation and Maintenance Plan.

7.4 DOI shall be the Lead Department for the Metals Areas OU. As the Lead Department, DOI shall: (1) submit the documents applicable to each phase of the work for consultation in accordance with Section 11; (2) carry out the required work in accordance with the final documents; (3) meet the deadlines provided in and established pursuant to Section 30 for each phase of the work; and (4) perform the following work:

7.4.1. DOI shall ensure the implementation and completion of the remedial action selected in the ROD for this OU, provided as Attachment 1.

7.4.2 DOI shall perform or arrange for the performance of the RD. The RD may include predesign activities which will assist in designing the selected remedy. For the purposes of this Agreement, the Parties recognize that the technical requirements of IAC Parts 810-815 are not ARARs for the development and operation of the on-site landfill required by the Metals Areas ROD. DOI, USEPA and IEPA also recognize that the substantive requirements of 35 IAC Parts 810-815 would have been ARARs for the development and operation of the landfill if the Metals Areas ROD had been signed after the effective date of 35 IAC 810-815. Compliance with the substantive technical requirements of IAC Parts 810-815 may be more protective, might allow greater flexibility in future remedy selections, and could result in long-term cost savings. For these reasons, DOI agrees

it shall submit an RD for the Metals Areas OU that conforms to the technical requirements of IAC Parts 810-815 to the maximum extent practicable.

7.4.3 DOI shall conduct or arrange for the performance of any RA required for this OU, in accordance with the final RD documents.

7.4.4 DOI shall ensure the conduct of all necessary long-term monitoring, operation and maintenance in accordance with the Operation and Maintenance Plan.

7.4.5 DOI may enter into negotiations with other entities to perform any RA work or long term operation and maintenance required by the ROD and this Agreement, pursuant to Section 12.

7.4.6 DOI has completed some of the work required by this Section prior to the effective date of this Agreement. All documents submitted for the Metals Areas OU prior to the effective date of this Agreement shall be deemed to have satisfied the requirements of this Agreement so long as DOI has complied with Section 11 procedures for consultation on the documents, including Dispute Resolution procedures of Section 15. IEPA reserves the right to comment on pre-design work during review of the RD/RA work plan and/or the conceptual (30%) design. IEPA reserves its rights to invoke Section 15 with respect to the RD/RA workplan or the conceptual (30%) design. All work performed under a document so finalized shall be deemed to have satisfied the requirements of this Agreement so long as DOI has completely implemented the final document.

7.5 Additional Work:

7.5.1 At any time during the effective dates of this Agreement, if the Parties identify in writing areas on the NPL Site, other than those identified in the operable units listed in Section 5, where a release or threatened release of a hazardous substance, hazardous waste, pollutant or contaminant could adversely impact public health or the environment, the Lead Department, as determined in accordance with Subsection 7.5.4, shall assure that additional work shall be performed on those areas. The need for additional work shall be subject to the dispute resolution provisions of Section 15. Any additional work shall include the submittal of all necessary documents applicable to each phase of the work, performance of the required work in accordance with the final documents, and establishment of schedules pursuant to Subsection 30.1.6. The additional work may include, as appropriate: completion of an RI/FS; preparation of a Proposed Plan and ROD; completion of an RD; performance of the RA; and performance of O&M.

7.5.2 The additional work shall include any releases from RCRA interim status or permitted facilities on the Refuge that must be addressed pursuant to RCRA corrective action authorities (40 CFR 264.100, Sections 3008(h) and 3004(u) and (v) of RCRA), if DOI is legally required to perform such work. This Section in no way affects the liability of private party contractors or lessees at the Refuge.

7.5.3 If the additional work will be a removal, such work

will be consistent with the purposes set forth in Part 6, and performed in accordance with CERCLA.

7.5.4 For any such new study areas discovered on the Refuge, DOI or DA may, within thirty (30) days of discovery of the area, recommend in writing to the other Parties whether any of these study areas should be included in the Miscellaneous Areas OU, or should be included in the Explosive/Munitions Manufacturing Areas OU, or whether a new OU should be designated, and if so, who should be the Lead Department. Within sixty (60) days of receipt of such recommendation, DOI and DA must issue written positions on the recommendation. In the event of disagreement between DOI and DA, the dispute resolution mechanism of the MOA may be employed and DOI shall be the Lead Department pending the outcome. In the event that both DOI and DA agree upon the recommendation or after dispute resolution in accordance with the MOA, it shall then be submitted to the other Parties for consultation in accordance with Section 11. The decision resulting from completion of consultation, including any dispute resolution, shall be deemed to be incorporated into this Agreement. The procedures in this Subsection 7.5.4 shall also be used in regard to any recommendation by DOI or DA to transfer responsibility as Lead Department for existing portions of the Explosive/Munitions Manufacturing Areas OU, the Metals Areas OU, or the Miscellaneous Areas OU to one or the other of those OUs.

8. REMEDIAL INVESTIGATION

8.0 All RI work shall meet the purposes set forth in Section

6 of this Agreement, Section 120(e)(1) of CERCLA and the requirements of 40 C.F.R. 300.430. The Lead Department agrees that it shall develop, implement and report upon an RI of specific OUs at the NPL Site which may include information collected prior to the effective date of this Agreement and in accordance with the requirements and schedules set forth in this Agreement.

9. FEASIBILITY STUDY

9.0 All FS work shall meet the purposes set forth in Section 6 of this Agreement, Section 120(e)(1) of CERCLA and the requirements of 40 C.F.R. 300.430. The Lead Department agrees that it shall design, propose, undertake and report upon an FS for specific OUs at the NPL Site in accordance with the requirements and schedules set forth in this Agreement.

10. REMEDIAL ACTION SELECTION AND IMPLEMENTATION

10.1 Following completion of the RI and the FS, or the existence of sufficient information in the Administrative Record to support a remedy decision, the Lead Department shall, after consultation with the other Parties, publish its Proposed Plan (proposed remedial action alternative(s)) for public review and comment, including the opportunity for a public meeting in accordance with Section 117 of CERCLA. The proposed remedial action alternative(s) in the Proposed Plan shall be selected in accordance with 40 C.F.R. §300.430 and Section 121 of CERCLA. Following public comment on the Proposed Plan, the Lead Department shall submit a ROD containing its proposed remedial

action selection to the other Parties for consultation in accordance with Section 11. USEPA and the Lead Department shall, then select a remedial action for the OU by signing or concurring with the ROD resulting from consultation in accordance with Section 11, and the Lead Department shall publish the final ROD. IEPA shall be afforded the opportunity to concur or not concur with the remedial action selection in the final ROD. The authorities of the Lead Department to select the remedial action shall be those provided in CERCLA and DERP and Executive Order 12580.

10.2 Following final selection of a remedy (publishing the ROD), the Lead Department shall propose and submit documents to ensure the design and implementation of the selected remedial action, including appropriate timetables and schedules, to the other Parties. Following consultation with the other Parties, the Lead Department shall ensure the implementation of the remedial action(s) in accordance with the requirements and time schedules set forth in such documents.

11. CONSULTATION

11.1 Applicability: The provisions of this Section establish the procedures that shall be used by USEPA, DOI, DA and IEPA to provide the Parties with appropriate notice, review, comment, and response to comments regarding RI/FS and RD/RA documents (also referred to as reports), specified herein as either primary or secondary documents. In accordance with Section 120 of CERCLA, 10 U.S.C. §2705, and this Agreement, the Lead Department will

normally be responsible for issuing primary and secondary documents to the other Parties. As of the effective date of this Agreement, all draft and final reports for any deliverable document identified herein shall be prepared, distributed and subject to dispute in accordance with Subsections 11.2 through 11.10. The designation of a document as "draft" or "final" is solely for purposes of consultation with the Parties 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.

11.2 General Process for RI/FS and RD/RA Documents:

11.2.1 Primary documents include those reports that are major, discrete portions of RI/FS or RD/RA activities. Primary documents are initially issued by the Lead Department in draft subject to review and comment by all other Parties. Following receipt of comments on a particular draft primary document, the Lead Department will respond to the comments received and issue a draft final primary document subject to dispute resolution. The draft final primary document will become the final primary document either thirty (30) days after issuance if dispute resolution is not invoked or as modified by decision of the dispute resolution process.

11.2.2 Secondary documents include those reports that are discrete portions of primary documents and are typically input or feeder documents. Secondary documents are issued by the Lead

Department in draft subject to review and comment by all other Parties. Although the Lead Department will respond to comments received, the draft secondary documents may be finalized in the context of the corresponding primary documents. A secondary document may be disputed at the time the corresponding draft final primary document is issued.

11.3 Primary Documents:

11.3.1 The Lead Department shall complete and transmit draft reports for the following primary documents to the other Parties for review and comment in accordance with the provisions of this Section and Section 7:

11.3.1.1 Entire Site

a. Public Involvement and Response Plan

b. Interim Close Out Report for Long Term Response Actions (if necessary)

c. Site Close Out Report

11.3.1.2 Explosive/Munitions Manufacturing Areas OU

a. RI Schedule and amendment

b. RI Work Plan, or scope of work prepared for procurement of these services (which includes the substantive requirements of an RI Work Plan)

c. RI Sampling and Analysis Plan (SAP), including a Quality Assurance Project Plan (QAPP) and a Field Sampling Plan (FSP), or a Chemical Data Acquisition Plan (CDAP) (which includes the substantive requirements of the SAP);

d. RI Health & Safety Plan (HSP) or Site Safety and Health Plan (SSHP);

e. RI Report, including a Risk Assessment and an assessment of the need to prepare an FS

f. ROD; Schedule

g. FS Report

h. Proposed Plan

i. Record of Decision

j. RD Schedule

k. RD Work Plan, or scope of work prepared for procurement of design services (which includes the substantive requirements of an RD Work Plan)

l. Final (100%) Remedial Design

m. RA Schedule

n. RA Work Plan or scope of work prepared for procurement of remedial action services (which includes the substantive requirements of an RA Work Plan)

o. SAP for RA, including a QAPP and Construction Quality Control Plan, or a CDAP (which includes the substantive requirements of the SAP)

p. HSP or SSHP for RA

q. Contingency Plan for emergency response during RA (this may be incorporated in another primary document, but should be identified in the document)

r. Operation and Maintenance Plan

s. OU Close Out Report

11.3.1.3 Miscellaneous Areas OU

a. Recommendation on Necessary Work - Miscellaneous Areas OU

b. RI Schedule

c. RI Work Plan, or scope of work prepared for procurement of these services (which includes the substantive requirements of an RI Work Plan)

d. RI SAP

e. RI HSP or SSHP

f. RI Report, including a Risk Assessment and an

assessment of the need to prepare an FS

g. ROD Schedule

h. FS Report

i. Proposed Plan

j. Record of Decision

k. RD Schedule

l. RD Work Plan, or scope of work prepared for procurement of design services (which includes the substantive requirements of an RD Work Plan)

m. Final (100%) Remedial Design

n. RA Schedule

o. RA Work Plan or scope of work prepared for procurement of remedial action services (which includes the substantive requirements of an RA Work Plan)

p. RA SAP

q. HSP or SSHP for RA

r. Contingency Plan for emergency response during RA (this may be incorporated in another primary document, but should be identified in the document)

s. Operation and Maintenance Plan

t. OU Close Out Report

11.3.1.4 PCB Areas OU

a. Operation and Maintenance Plan

b. OU Close Out Report

11.3.1.5 Metals Areas OU

a. RD Schedule

b. RD Work Plan, or scope of work prepared for procurement of design services (which includes the substantive requirements of an RD Work Plan)

c. Final (100%) Remedial Design

d. RA Schedule

e. RA Work Plan or scope of work prepared for procurement of remedial action services (which includes the substantive requirements of an RA Work Plan)

f. SAP for RA, including a QAPP and Construction Quality Control Plan, or a CDAP (which includes the substantive requirements of the SAP)

g. HSP or SSHP for RA

h. Contingency Plan for emergency response during RA (this may be incorporated in another primary document, but should be identified in the document)

i. Operation and Maintenance Plan

j. OU Close Out Report

11.3.1.6 Additional Work Areas

If any area on the NPL Site is subject to additional work pursuant to Subsection 7.5, all of the necessary primary documents listed in Subsection 11.3.1.2(a) through (s) shall be submitted for the new area.

11.3.2 Only the draft final reports for the primary documents identified above shall be subject to dispute resolution. The Lead Department shall complete and transmit draft primary documents in accordance with the timetables and deadlines established in Section 30.

11.4 Secondary Documents:

11.4.1 The Lead Department shall complete and transmit draft reports for the following secondary documents to the other Parties for review and comment in accordance with the provisions of this Section and Section 7:

a. RI Technical Memoranda

b. Treatability Studies

c. Sampling and Data Results

d. Predesign Scope of Services or Work Plan

e. Report of Predesign Work Results

f. Preliminary Remedial Design

g. Intermediate Remedial Design

h. Prefinal Remedial Design

i. Prefinal Inspection Report

11.4.2 Although the reviewing Parties may comment on the draft reports of the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by Subsection 11.2. Target dates shall be established for the completion and transmission of draft secondary reports pursuant to Section 30.

11.5 Meeting of the Project Managers on Development of Reports: The Project Managers shall confer approximately every thirty (30) days and shall meet as needed, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the NPL Site and on the primary and secondary documents. Prior to preparing any draft report specified in Subsections 11.3 and 11.4, the Project Managers shall discuss the report results in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft report.

11.6 Identification and Determination of Potential ARARs:

11.6.1 For those primary reports or secondary documents

that consist of or include ARAR determinations, prior to the issuance of a draft report, the Project Managers shall identify, propose, and explain to the best of their ability, all potential ARARs pertinent to the report being addressed. At that time, the IEPA shall identify all potential State ARARs as required by CERCLA Section 121(d)(2)(A)(ii), 42 U.S.C. §9621(d)(2)(A)(ii), and the NCP, which are pertinent to the report being addressed and shall explain them. Draft ARAR determinations shall be prepared by the Lead Department in accordance with Section 121(d)(2) of CERCLA, the NCP and pertinent guidance issued by USEPA that is consistent with CERCLA and the NCP.

11.6.2 In identifying potential ARARs, the Parties recognize that actual ARARs can be identified only on a site-specific basis and that ARARs depend on the specific hazardous substances, hazardous wastes, pollutants and contaminants at a site, the particular actions proposed as a remedy and the characteristics of a site. The Parties recognize that ARAR identification is necessarily an iterative process and that potential ARARs must be re-examined throughout the RI/FS process until a ROD is issued.

11.7 Review and Comment on Draft Reports:

11.7.1 The Lead Department shall complete and transmit each draft primary document to the other Parties on or before the corresponding deadline established for the issuance of the report. The Lead Department shall complete and transmit the draft secondary document in accordance with the target dates

established for the issuance of such reports established pursuant to Section 30.

11.7.2 Unless the Parties mutually agree to another time period, all draft reports shall be subject to a thirty (30) day period for review and comment. Review of any document by the Parties may concern all aspects of the report (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP, DERP, this Agreement, any pertinent guidance or policy promulgated by the USEPA, and applicable State law. Comments shall be provided with adequate specificity so that the Lead Department may respond to the comment and, if appropriate, make changes to the draft report. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of the Lead Department, the commenting Party shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy reports, any of the reviewing Parties may extend the thirty (30) day comment period for an additional twenty (20) days by written notice to the Lead Department prior to the end of the thirty (30) day period. On or before the close of the comment period, the reviewing Parties shall transmit by next day mail their written comments to the other Parties.

11.7.3 Representatives of the Lead Department shall make themselves readily available to the other Parties during the comment period for purposes of informally responding to questions

and comments on draft reports. Oral comments made during such discussions need not be the subject of a written response by the Lead Department.

11.7.4 In commenting on a draft report which contains a proposed ARAR determination, the reviewing Parties shall include a reasoned statement of whether they object to any portion of the proposed ARAR determination. To the extent that any reviewing Party does object, it shall explain the basis for its objection in detail and shall identify any ARARs which it believes were not properly addressed in the proposed ARAR determination.

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

11.7.6 The Lead Department may extend the thirty (30) day period for either responding to comments on a draft report or for

issuing the draft final primary report for an additional twenty (20) days by providing notice to the other Parties. In appropriate circumstances, this time period may be further extended in accordance with Section 31, Extensions.

11.8 Availability of Dispute Resolution for Draft Final Primary Documents:

11.8.1 Dispute resolution shall be available to the Parties for draft final primary reports as set forth in Section 15.

11.8.2 When dispute resolution is invoked on a draft final primary report, work may be stopped in accordance with the procedures set forth in Section 15, Dispute Resolution.

11.9 Finalization of Reports: The draft final primary report shall serve as the final primary report if no Party invokes dispute resolution regarding the document or, if invoked, at completion of the dispute resolution process should the Lead Department's position be sustained. If the determination of the Lead Department is not sustained in the dispute resolution process, the Lead Department shall prepare, within not more than thirty-five (35) days, a revision of the draft final report which conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Section 31, Extensions.

11.10 Subsequent Modifications of Final Reports:

11.10.1 Following finalization of any primary report pursuant to Section 11.9, any Party may seek to modify the report, including seeking additional field work, pilot studies,

computer modeling or other supporting technical work, only as provided in Subsections 11.10.2 and 11.10.3.

11.10.2 Any Party may seek to modify a report after finalization if it determines, based on 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 how the request is based on new information.

11.10.3 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 report shall be required only upon a showing that:

11.10.3.1 The requested modification is based on significant new information; and,

11.10.3.2 The requested modification could be of significant assistance in evaluating impacts on the public health or the environment, in evaluating the selection of remedial alternatives, in implementing a selected remedy, or in protecting human health and the environment.

11.10.4 Nothing in this Section shall alter any Party's ability to request the performance of additional work which was not contemplated by this Agreement. The Lead Department's

obligation to perform such work must be established by either a modification of a report or document or by amendment to this Agreement.

12. WORK PERFORMED BY OTHER ENTITIES

12.1 USEPA after discussion with the other Parties may provide that the work required by Section 7 be performed by entities other than the Parties to this Agreement, pursuant to CERCLA Section 120(e)(6) and Executive Order 12580, §§2(j)(1) and (2), 4(d)(1), and 4(e).

12.2 If USEPA utilizes the authorities of CERCLA 106(a) or 122 to compel, or consent to, work performed pursuant to Subsection 12.1, it shall first confer with all Parties to this Agreement. Draft and final orders or agreements with other entities shall be submitted to all Parties for an opportunity to review and comment.

12.3 The Lead Department may provide that the work required by Section 7 be performed by entities other than the Parties to this Agreement.

12.4 If the Lead Department utilizes its authorities to compel, or consent to, work performed pursuant to Subsection 12.3, it shall first confer with all Parties to this Agreement. Draft and final orders or agreements with other entities shall be submitted to all Parties for an opportunity to review and comment. No order or agreement shall be sufficient to meet the requirements of this Agreement unless it has the concurrence of USEPA and the Lead Department.

12.5 Any work required by Section 7 which is performed by another entity must be in compliance with the terms and conditions of this Agreement. Such entity does not thereby become a Party to this Agreement. A copy of this Agreement shall be provided to any other entity that will perform such work.

12.6 If any order or agreement requiring another entity to perform work, pursuant to Subsections 12.1 or 12.3, modifies the work to be performed, schedules, or any final document prepared pursuant to this Agreement, such modification must be in accordance with Subsection 11.10, and Sections 26 and 31.

13. OVERSIGHT OF OTHER ENTITIES' WORK

13.1 If work will be performed by other entities pursuant to Subsections 12.1 and 12.2, oversight of the work will be in accordance with any order or agreement pursuant to CERCLA Sections 106(a) or 122.

13.2 If work will be performed by other entities pursuant to Subsections 12.3 and 12.4, oversight of the work will be the responsibility of the Lead Department.

14. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

14.1 The Parties intend to integrate DOI's CERCLA response obligations and RCRA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes, pollutants or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will be deemed to achieve compliance with CERCLA; to satisfy the corrective action

requirements of Sections 3004(u) and (v) of RCRA, 42 U.S.C. §6924(u) and (v), for a RCRA permit, and Section 3008(h), 42 U.S.C. §6928(h), for interim status facilities; and to meet or exceed all Federal and State ARARs, to the extent required by Section 121 of CERCLA, 42 U.S.C. §9621.

14.2 The Parties intend to integrate DA's CERCLA response obligations, DERP obligations, and to the extent applicable, RCRA corrective action obligations, which relate to the release(s) of hazardous substances, hazardous wastes, pollutants or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will be deemed to achieve compliance with CERCLA; to satisfy the provisions and terms of DERP, 10 U.S.C §2701(a)(3); to satisfy any applicable provisions of Sections 3004(u) and (v) of RCRA, 42 U.S.C. §6924(u) and (v), for a RCRA permit, and Section 3008(h), 42 U.S.C. §6928(h), for interim status facilities; and to meet or exceed all Federal and State ARARs, to the extent required by Section 121 of CERCLA, 42 U.S.C. §9621.

14.3 Based upon the foregoing, the Parties intend that any remedial action selected, implemented and completed under this Agreement shall be deemed by the Parties to be protective of human health and the environment such that remediation of releases covered by this Agreement shall obviate the need for further corrective action under RCRA or the DERP. The Parties agree that with respect to releases of hazardous waste covered by

this Agreement, RCRA shall be considered an ARAR pursuant to Section 121 of CERCLA.

14.4 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 on-going hazardous waste management activities at the Site may require the issuance of permits (e.g. RCRA Facility operating permits) under Federal and State laws. This Agreement does not affect the requirements, if any, to obtain such permits. However, if a permit is issued to DOI for on-going hazardous waste management activities at the Site, the Party issuing the permit 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 occur under the provisions of CERCLA.

14.5 Nothing in this Agreement shall alter the authority of DOI or DA with respect to removal actions conducted pursuant to Section 104 of CERCLA, 42 U.S.C. §9604 or DERP.

15. DISPUTE RESOLUTION

15.1 Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Section shall apply. All Parties to this Agreement shall make reasonable efforts to informally resolve all disputes at the Project Manager or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this Section shall be implemented to resolve a dispute.

15.2 Within thirty (30) days after: (1) issuance of a draft final primary document pursuant to Section 11, 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 information the disputing Party is relying upon to support its position.

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

15.4 The Dispute Resolution Committee (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. USEPA's representative on the DRC is the Waste Management Division Director of USEPA's Region V. IEPA's representative on the DRC is the Deputy Division Manager of the Division of Land Pollution Control. DOI's representative on the DRC is the Regional Director, U.S. Fish and Wildlife Service, Region III. DA's representative on the DRC is the District Engineer, Omaha District, U.S. Army Corps of Engineers. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Section 17, Notification.

15.5 Following elevation of a dispute to the DRC, the DRC shall have twenty-one (21) days to unanimously resolve the dispute and issue a written decision, signed by all committee members. 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 within seven (7) days after the close of the twenty-one (21) day resolution period to the Senior Executive Committee (SEC) for resolution.

15.6 The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. USEPA's representative on the SEC is the Regional Administrator of USEPA's Region V. IEPA's representative on the SEC is the

Director of the IEPA. DOI's representative on the SEC is the Deputy Assistant Secretary of the Interior for Policy, Management and Budget. DA's representative on the SEC is the Deputy Assistant Secretary of the Army for Environment, Safety, and Occupational Health. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision, signed by all committee members. If unanimous resolution of the dispute is not reached within twenty-one (21) days, USEPA's Regional Administrator shall issue a written position on the dispute. Any other Party may, within twenty-one (21) days of the Regional Administrator's issuance of USEPA's position, issue a written notice elevating the dispute to the Administrator of USEPA 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 escalation period, that Party shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.

15.7 Upon escalation of a dispute to the Administrator of USEPA pursuant to Subsection 15.5, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the USEPA Administrator shall meet and confer with the Departments' secretariat representatives and the Director of the IEPA to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide DOI, DA and IEPA with a written final

decision setting forth resolution of the dispute. The duties of the Administrator under this Section shall not be delegated.

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

15.9 When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Hazardous Waste Division Director for USEPA's Region V requests, in writing, that work related to the dispute be stopped because, in USEPA's and IEPA's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. To the extent possible, USEPA and IEPA shall give the Lead Department prior notification that a work stoppage request is forthcoming. After stoppage of work, if the Lead Department believes that the work stoppage is inappropriate or may have potential significant adverse impacts, it may meet with the USEPA Division Director and the IEPA Deputy Division

Manager to discuss the work stoppage. Following this meeting, and further consideration of the issues, the USEPA Division Director will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the USEPA 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 disputing Party.

15.10 Within thirty-five (35) days of resolution of a dispute pursuant to the procedures specified in this Section, the Lead Department shall incorporate the resolution and final determination into the appropriate plan, schedule or procedures.

15.11 Resolution of a dispute pursuant to this Section of the Agreement constitutes a final resolution of such 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.

16. REPORTING

16.1 DOI and DA agree they shall submit to the other Parties monthly written progress reports which describe the actions which each has taken during the previous month to implement the requirements of this Agreement. Progress reports shall also describe the activities scheduled to be taken during the upcoming month. Progress reports shall be submitted by the thirtieth (30) day of each month following the effective date of this Agreement. The progress reports shall include a statement of the manner and extent to which the requirements and time schedules set out in

the primary and secondary documents are being met as well as identify any anticipated delays in meeting time schedules, the reason(s) for the delay and actions taken to prevent or mitigate the delay.

16.2 Notice: Final documents prepared pursuant to Section 11 shall include timelines for RI, EOU, or RA work and treatability studies, where appropriate. During the preparation of such documents, the Parties shall agree to, and so designate, certain scheduled activities as "major activities". Major activities shall include, but not be limited to: initiation of RI, EOU, or RA field activities; certain sampling activities; initiation of specific construction, excavation or treatment tasks required during RA; treatability studies; pre-final and final RA inspections; and scheduled operation and maintenance tasks required after completion of the RA. The Lead Department shall notify all other Parties at least seven (7) days prior to the initiation of a major activity, as defined by this Subsection, or as soon as practicable. This Notice may be oral (with timely written confirmation), and may be included in other Notices and Reports provided pursuant to this Agreement.

17. NOTIFICATION

17.0 Unless otherwise specified in this Agreement or agreed to by the Parties, any primary document provided pursuant to a schedule or deadline identified in or developed under this Agreement shall be hand delivered or sent by a next-day delivery service. Any submittal or written statement of dispute that

under the terms of this Agreement would be due on a Saturday, Sunday or Federal or State holiday shall be due on the following business day. Subject to written notification of change by a Party, they will be addressed or hand delivered to:

U.S. Environmental Protection Agency, Region V
Office of Superfund, 5HS-11
Attn: Crab Orchard Project Manager (IL/IN Section)
230 S. Dearborn Street
Chicago, Illinois 60604

Illinois Environmental Protection Agency
Attn: Crab Orchard Project Manager
Division of Land Pollution Control
Federal Sites Management Unit
2200 Churchill Road
P.O. Box 19276
Springfield, Illinois 62794-9276

U.S. Army Corps of Engineers
Omaha District
215 N. 17th Street
Attn: CEMRO-ED-ED
Omaha, Nebraska 68102

U.S. Fish and Wildlife Service
Marion, Illinois Suboffice
Attn: Crab Orchard Project Manager
Crab Orchard National Wildlife Refuge
Rural Route #3, Box 328
Marion, Illinois 62959

All routine correspondence may be sent via regular mail to the above-named addresses.

18. PROJECT MANAGERS

18.1 The Parties shall each designate a Project Manager and Alternate (hereinafter jointly referred to as Project Manager) for the purpose of implementing this Agreement. Within ten (10) days of the effective date of this Agreement, the Parties shall notify each other of the name, address, telephone and telecopier numbers of its respective Project Manager. Any Party may change

its designated Project Manager by notifying the other Parties, in writing, within five days of the change. To the maximum extent possible, communications between the Parties concerning the terms and conditions of this Agreement shall be directed through the Project Managers as set forth in Section 17. Each Project Manager shall be responsible for assuring that all communications from the other Project Managers are appropriately disseminated and processed by the entities which the Project Manager represents.

18.2 Subject to the limitations set forth elsewhere in this Agreement, USEPA and IEPA Project Managers shall have the authority to:

18.2.1 Take samples, request split samples of DOI or DA samples and ensure that work is performed properly pursuant to this Agreement;

18.2.2 Observe all activities performed pursuant to this Agreement, take photographs and make such other reports on the progress of the work as the Project Manager deems appropriate;

18.2.3 Review records, files and documents relevant to this Agreement; and,

18.2.4 Subject to the limitations set forth elsewhere in this Agreement, the USEPA and IEPA Project Managers shall have the authority to direct the Lead Department Project Manager to stop work whenever the USEPA or IEPA Project Manager determines, after discussion with the Lead Department Project Manager, that activity(s) at the site may create an imminent and substantial

endangerment to public health or welfare or the environment. USEPA or IEPA shall state the basis for the work stoppage at the time it is directed and within 24 hours of directing a work stoppage, present the reasons therefore, in writing, to the Lead Department. Within 72 hours of a written request by the Lead Department for review of any directed work stoppage, the USEPA Division Director or the IEPA Deputy Division Manager and USEPA Division Director, acting jointly, shall determine, in writing, whether continued work stoppage is necessary to protect public health, welfare, and the environment and possible measures to abate or mitigate the danger. The determination to continue to stop work shall be subject to dispute resolution under Section 15.

18.3 Any Project Manager may recommend and request field modifications to the work to be performed pursuant to this Agreement, or changes in techniques, procedures or design utilized in carrying out this Agreement, which are necessary to the completion of the project. Any field modifications proposed under this Section by any Party must be approved by all Project Managers to be effective. If agreement cannot be reached on the proposed additional work or modification to work, dispute resolution under Section 15 may be invoked. The burden of proving the need for the modification shall rest on the Party requesting it. Within five (5) business days after agreement regarding a modification made pursuant to this Section, the Project Manager who requested the modification shall prepare a

memorandum detailing the modification and the reasons therefore and shall provide a copy of the memorandum to the other Project Managers. Initial agreement may be oral to be followed by timely written confirmation.

18.4 The Lead Department Project Manager or authorized representative shall be reasonably available to supervise work performed at the Refuge during implementation of the work performed pursuant to this Agreement. Each Project Manager shall make him or herself available to the other Project Managers for the pendency of this Agreement. The absence of the USEPA and/or IEPA Project Managers from the NPL Site shall not be cause for work stoppage.

19. AVAILABILITY OF INFORMATION

19.1 Quality assured results of sampling, tests or other data generated by any Party, or on its behalf, with respect to the implementation of this Agreement, shall be made available to the other Parties as soon as they become available. Raw data or results shall be provided upon specific request as soon as they become available. The results of quality assurance tests beyond that required by the QAPP guidance conducted by or on behalf of USACE shall be provided to the other Parties within sixty (60) days after a complete data package of sampling results has been submitted for a distinct phase of sampling or tests.

19.2 At the request of any other Project Manager, the Party taking the sample shall allow split or duplicate samples to be taken by the requesting Party during sample collection conducted

during the implementation of this Agreement. The results of all such testing shall be provided to all Parties as soon as they become available. Notice of the initiation of a series of sampling activities shall be in accordance with Section 16.2.

19.3 Copies of all final documents required by Section 11 and data results generated pursuant to this Agreement shall be maintained at the Refuge pursuant to Subsection 41.5. DA shall provide copies of all final documents required by Section 11 and data results it generates to DOI for maintenance at the Refuge. Such documents and data, subject to Federal laws, shall be available for review, inspection or copying by USEPA, DA and IEPA, at any reasonable time. The USEPA, DA and IEPA Project Managers shall attempt to notify DOI's Project Manager in advance of inspection of information.

20. RETENTION OF RECORDS

20.0 Each Party shall retain, during the pendency of this Agreement and for a minimum of ten (10) years after termination of this Agreement at least one copy of all records and documents, other than intermediate drafts, in its possession, custody, or control which relate to the performance of this Agreement, including, but not limited to, documents reflecting the results of any sampling, test, or other data or information generated or acquired by a Party with respect to the NPL Site, and all documents pertaining to its own or any other person's liability for response action or costs under CERCLA. After the ten (10) year period of document retention, each Party shall notify the

other Parties at least forty-five (45) calendar days prior to the destruction of any such documents. Upon request and subject to the access limitations in Sections 21 and 25, the requested Party shall make available such records or documents or copies of any such records or documents to the requesting Party.

21. ACCESS

21.1 Without limitation on any authority conferred on USEPA or IEPA by statute or regulation, USEPA, IEPA, and/or their authorized representatives, shall have the authority to enter the Refuge at all reasonable times, after attempting to provide reasonable notice, for purposes consistent with this Agreement. Such authority shall include, but not be limited to:

21.1.1 Inspecting records, operating logs, contracts and other documents relevant to implementation of this Agreement, provided, however, that this shall not include attorney work product nor, in the case of authorized representatives, procurement records containing information which would impair the competitiveness of the contractor;

21.1.2 Reviewing the progress of DOI or DA and their contractors or lessees in implementing this Agreement;

21.1.3 Conducting such tests as the USEPA or IEPA Project Managers deem necessary; and,

21.1.4 Verifying the reports and data submitted to the Agencies by DOI or DA.

21.2 DOI shall honor all reasonable requests for such access by USEPA and IEPA conditioned only upon presentation of proper

credentials. DOI shall provide an escort whenever USEPA and IEPA require access to restricted areas for purposes consistent with the provisions of this Agreement. USEPA and IEPA shall provide reasonable notice to the DOI Project Manager to request any escorts.

21.3 Without limitation on any authority conferred on DA by statute or regulation, DA and/or its authorized representatives and contractors shall have the authority to enter the Refuge at all reasonable times, after attempting to provide reasonable notice, for purposes consistent with this Agreement. Such authority shall include, but not be limited to:

21.3.1 Conducting any actions necessary to the conduct of work that is the obligation of DA, pursuant to this Agreement.

21.3.2 Inspecting records, operating logs, contracts and other documents relevant to implementation of this Agreement, or the conduct of work by DA, pursuant to this Agreement, provided, however, that this shall not include attorney work product nor, in the case of authorized representatives, procurement records containing information which would impair the competitiveness of the contractor; and,

21.3.3 Conducting such tests, inspections, operations, monitoring and maintenance as required by this Agreement, and as necessary to ensure the long term integrity and protectiveness of on-going or completed work.

21.4 To the extent that access is required to areas of the NPL Site presently owned by or leased to parties other than DOI,

DOI agrees to exercise its authorities to obtain access pursuant to Section 104(e) of CERCLA or any other legal authority from the present owners or lessees within thirty (30) calendar days after the need for such access is identified by any of the Parties. Any access agreement obtained by DOI shall provide for reasonable access by USEPA, DA, and IEPA, and/or their authorized representatives. To the extent that activities pursuant to this Agreement must be carried out on other than DOI property, DOI shall notify USEPA, DA and IEPA of such necessity within the thirty (30) day period set forth above. DOI shall use its best efforts to obtain access agreements from the property owners and/or lessors or lessees which shall provide reasonable access to USEPA, DA and IEPA and/or their authorized representatives. The access agreements shall also provide that the owners of any property where monitoring wells, pumping wells, treatment facilities or other response actions may be located shall notify USEPA, DOI, DA, and IEPA by certified mail, return receipt requested, at least thirty (30) days prior to any conveyance, of the property owners intent to convey any interest in the property and of the provisions made for the continued operation of the monitoring wells, treatment facilities, or other response actions installed pursuant to this Agreement. In the event that DOI is unable to obtain such access agreements, DOI shall notify USEPA, DA and IEPA, within the thirty (30) day period set forth above, regarding both the lack of agreements and the efforts to obtain such access agreements.

22. FIVE YEAR REVIEW

22.1 Pursuant to Section 121(c) of CERCLA and the NCP and in accordance with this Agreement, the Parties agree that they will review the remedial action for each operable unit undertaken pursuant to this Agreement no less often than every five (5) years after its initiation to assure that human health and the environment are being protected by the remedial action being implemented. Remedial action at the NPL Site undertaken pursuant to a Consent Decree under Section 122 of CERCLA shall be reviewed solely in accordance with the Consent Decree.

22.2 If, after such review, it is the judgment of USEPA, in consultation with the other Parties, that additional action or modification of the remedial action at an OU is necessary in accordance with Section 104 or 106 of CERCLA, the Lead Department for such OU shall implement such additional or modified action. Any dispute of the determination by USEPA under this Section shall be resolved under Section 15, Dispute Resolution.

23. OTHER CLAIMS

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

at, taken to, or taken from the Refuge.

23.2 Nothing in this Agreement shall restrict DOI's right to assert any claims against PRPs or other entities not party to this Agreement, including, but not limited to, damages for injuries to natural resources under the trusteeship of DOI and any costs incurred by DOI acting in accordance with this Agreement. Any claims by DOI against DA relating to the NPL Site shall be dealt with under the MOA.

23.3 USEPA shall attempt to assist DOI and DA in identifying and collecting federal expenses from or arranging for work by potentially responsible parties.

24. DOI AND DA MEMORANDUM OF AGREEMENT

24.0 DOI and DA have entered into a Memorandum of Agreement (MOA) relating to the division of work on the NPL Site between DOI and DA and establishing procedures for the resolution of issues between these two Departments not covered by this Agreement.

25. CONFIDENTIAL INFORMATION

25.1 DOI or DA may assert a confidentiality claim covering all or part of the information requested under this Agreement. Analytical data that has met Quality Assurance/Quality Control standards shall not be claimed as confidential by DOI or DA. Information determined to be confidential by USEPA pursuant to 40 C.F.R. Part 2 shall be afforded the protection specified therein.

25.2 Any Party may withhold from release to any other Party records which are subject to the Privacy Act, 5 U.S.C. §552a,

classified for national security, subject to the attorney-client privilege, attorney work product, or procurement sensitive. All other records related to this Agreement or the NPL Site shall be freely released between the Parties upon request or according to the provisions of this Agreement, subject only to restrictions against their release to other persons or entities. Release between any of the Parties to this Agreement shall not be deemed to be a release to the public and shall not act as a waiver of any basis for objections to release to any entity not a Party to this Agreement.

25.3 A release of records not part of the Administrative Record to any federal Party under this Agreement shall not have the effect of transferring authority or responsibility for responding to requests for release of records to persons or entities which are not federal Parties to this Agreement. The federal Party which creates or originally takes possession of records shall have the sole authority to respond to requests for release of such records. This includes, but is not limited to, requests under the Freedom of Information Act, 5 U.S.C. §552b. If any federal Party receives a request for the release of records of another federal Party, the request shall be transferred to that Party for reply and the requestor shall be notified of the referral.

25.4 Any Party may assert a claim of confidentiality as to any document submitted to IEPA by marking the document as such. If IEPA receives a request for the release of a document marked

confidential, IEPA shall notify the Party that submitted the document. IEPA shall provide that Party an opportunity to object to the release of the requested document. IEPA shall determine in accordance with the Illinois Freedom of Information Act whether the document can be released. IEPA shall notify the submitting Party in advance of release if it determines that it will release the document.

26. AMENDMENT OF AGREEMENT

26.0 This Agreement can be amended or modified solely upon written consent of all Parties. Such amendments or modifications shall have as the effective date that date on which they are signed by all Parties and notice thereof is provided to each signatory pursuant to Section 17, Notification.

27. COVENANT NOT TO SUE/RESERVATION OF RIGHTS

27.1 In consideration for DOI's compliance with this Agreement, and based on the information known to the Parties on the effective date of this Agreement, USEPA, DA and IEPA agree that compliance with this Agreement shall stand in lieu of any administrative, legal and equitable remedies against DOI available to them regarding the currently known release or threatened release of hazardous substances including hazardous wastes, pollutants or contaminants at the NPL Site which are covered by this Agreement; except that nothing in this Agreement shall preclude the USEPA or IEPA from exercising any administrative, legal and equitable remedies available to them to require additional response actions by DOI in the event that:

(1) conditions previously unknown or undetected by USEPA or IEPA arise or are discovered at the Site; or (2) USEPA or IEPA receives additional information not previously available concerning the premises which they employed in reaching this Agreement, and the implementation of the requirements of this Agreement are no longer protective of public health or the environment.

27.2 In consideration for DA's compliance with this Agreement, and based on the information known to the Parties on the effective date of this Agreement, USEPA, DOI and IEPA agree that the compliance with this Agreement shall stand in lieu of any administrative, legal and equitable remedies against DA available to them regarding the currently known release or threatened release of hazardous substances including hazardous wastes, pollutants or contaminants at the NPL Site which are covered by this Agreement; except that nothing in this Agreement shall preclude the USEPA or IEPA from exercising any administrative, legal and equitable remedies available to them to require additional response actions by DA in the event that: (1) conditions previously unknown or undetected by USEPA or IEPA arise or are discovered at the Site; or (2) USEPA or IEPA receives additional information not previously available concerning the premises which they employed in reaching this Agreement, and the implementation of the requirements of this Agreement are no longer protective of public health or the environment.

27.3 Subject to Section 14, Statutory Compliance/RCRA-CERCLA Integration, this Agreement shall not restrict any Party from taking any legal or response action for any matter not specifically part of the work covered by this Agreement.

27.4 Notwithstanding this Section, or any Section of this Agreement, the State of Illinois may obtain judicial review of any future final decision of USEPA on selection of a final remedial action, and may invoke its authority under CERCLA Sections 121(e)(2) and 121(f).

27.5 DA is not bound by any factual assertions made in the RODs at Attachments 1 and 2 that are contrary to the provisions of this Agreement.

28. ENFORCEABILITY

28.1 The Parties agree that:

28.1.1 Upon the effective date of this Agreement, any standard, regulation, condition, requirement or order which has become effective under CERCLA and is incorporated into this Agreement is enforceable by any person pursuant to Section 310(a) of CERCLA, and any violation of such standard, regulation, condition, requirement or order will be subject to civil penalties under Sections 310(c) and 109 of CERCLA;

28.1.2 All timetables or deadlines associated with the development, implementation and completion of the RI/FS shall be enforceable by any person pursuant to Section 310(a) of CERCLA, and any violation of such timetables or deadlines will be subject to civil penalties under Sections 310(c) and 109 of CERCLA;

28.1.3 All terms and conditions of this Agreement which relate to remedial actions, including corresponding timetables, deadlines or schedules, and all work associated with the remedial actions, shall be enforceable by any person pursuant to Section 310(a) of CERCLA, and any violation of such terms or conditions will be subject to civil penalties under Sections 310(c) and 109 of CERCLA; and,

28.1.4 Any final resolution of a dispute pursuant to Section 15, Dispute Resolution, which establishes a term, condition, timetable, deadline or schedule shall be enforceable by any person pursuant to Section 310(a) of CERCLA, and any violation of such term, condition, timetable, deadline or schedule will be subject to civil penalties under Sections 310(c) and 109 of CERCLA.

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

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

29. STIPULATED PENALTIES

29.1 In the event that the Lead Department fails to submit a primary document (as defined in Section 11, Consultation) to the other Parties pursuant to the appropriate timetable or deadline in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement which

relates to a remedial action, USEPA, or USEPA and IEPA acting jointly, may assess a stipulated penalty against the Lead Department. A stipulated penalty may be assessed in an amount not to exceed $5,000 for the first week (or part thereof), and $10,000 for each additional week (or part thereof) for which a failure set forth in this Subsection occurs.

29.2 Upon determining that the Lead Department has failed in a manner set forth in Subsection 29.1, USEPA shall so notify the Lead Department in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the Lead Department shall have fifteen (15) days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. The Lead Department shall not be liable for the stipulated penalty assessed by USEPA, or USEPA and IEPA, when acting jointly, if the failure is determined, through the dispute resolution process, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.

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

29.3.1 The facility responsible for the failure;

29.3.2 A statement of the facts and circumstances giving rise to the failure;

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

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

29.3.5 The total dollar amount of the stipulated penalty assessed for the particular failure.

29.4 Stipulated penalties assessed pursuant to this Section shall be payable to the Hazardous Substance Superfund and only in the manner and to the extent expressly provided for in Acts authorizing funds for, and appropriations to, the Department of the Interior or the Department of Defense, as the case may be.

29.5 Payments made pursuant to Subsection 29.4 shall be made to the order of the Hazardous Substance Superfund and forwarded to U.S. Environmental Protection Agency, Superfund Accounting, P.O. Box 371003M, Pittsburgh, Pennsylvania 15251, Attn: Superfund Collection Office. Copies of all payments to USEPA shall be provided to the USEPA Project Manager.

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

29.7 This section shall not affect DOI's or DA's ability to obtain an extension of a timetable, deadline or schedule pursuant to Section 31, Extensions.

29.8 Nothing in this agreement shall be construed to render

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

30. DEADLINES

30.1 The following deadlines have been established, pursuant to the statutory requirements of Section 120(e)(1) of CERCLA and in conjunction with IEPA, for the submittal of documents pursuant to this Agreement. In order for a deadline to be met, the document must be submitted on or before the due date and must comport with the specifications for such document in Section 7 and the NCP.

30.1.1 Entire Site

30.1.1.1 Within ninety (90) days of the effective date of this Agreement, DOI shall submit the Public Involvement and Response Plan.

30.1.1.2 No later than ninety (90) days before DOI intends to proceed with the deletion process, DOI shall submit the Site Close Out Report.

30.1.2 Explosive/Munitions Manufacturing Areas OU

30.1.2.1 Within thirty (30) days of the effective date of this Agreement, DA shall submit an RI Schedule for the Explosive/Munitions Manufacturing Areas OU, which shall establish deadlines for the submission of the following documents:

a. RI Work Plan for the Phase I field work (if not previously submitted);

b. RI SAP or CDAP (if not previously submitted);

c. RI HSP or SSHP (if not previously submitted); and

d. RI technical memorandum reporting upon the first phase of RI field work and discussing the need for a second phase of field work.

30.1.2.2 Concurrently with the RI Phase I technical memorandum, DA shall submit an amended RI Schedule for the submission of field work, which shall establish deadlines for the submission of the following primary documents:

a. RI Work Plan or scope of work for the procurement of services for Phase II work;

b. Addendum to RI SAP or CDAP, if necessary;

c. Addendum to RI HSP or SSHP, if necessary; and

d. RI Report, including a Risk Assessment and an assessment of the need to prepare an FS.

30.1.2.3 Concurrently with the submission of the RI Report, DA shall submit a ROD Schedule which shall establish deadlines for the submission of the following primary documents:

a. FS Report, if necessary;

b. Proposed Plan; and

c. Record of Decision.

30.1.2.4 Within thirty (30) days of the date the ROD becomes final, DA shall submit, if necessary, an RD Schedule for the Explosive/Munitions Manufacturing Areas OU, which shall establish deadlines for the performance of any necessary remedial design, and submission of the following primary documents:

a. RD Work Plan or scope of work for the procurement of design services; and

b. Final (100%) Remedial Design.

30.1.2.5 Concurrently with the submission of the Final (100%) Remedial Design, DA shall submit the RA Schedule for the

OU which shall establish deadlines for the implementation and completion of any required remedial action, and submission of the following primary documents.

a. RA Work Plan or scope of work for procurement of remedial action services;

b. RA SAP or CDAP;

c. Contingency Plan;

d. Operation and Maintenance Plan; and

e. OU Close Out Report.

30.1.3 Metals Areas OU

30.1.3.1 Within thirty (30) days of the effective date of this Agreement, DOI shall submit the RD Schedule for the Metals Areas OU, which shall establish deadlines for the submission of the following primary documents:

a. RD Work Plan or scope of work for the procurement of design services (if not previously submitted); and

b. Final (100%) Remedial Design.

30.1.3.2 Concurrently with the submission of the Final (100%) Remedial Design, DOI shall submit the RA Schedule for the OU which shall establish deadlines for the implementation and completion of the remedial action, and submission of the following primary documents.

a. RA Work Plan or scope of work for procurement of remedial action services;

b. RA SAP or CDAP;

c. Contingency Plan;

d. Operation and Maintenance Plan

e. OU Close Out Report

30.1.4 PCB Areas OU

Within one hundred and eighty (180) days of entry of the Consent Decree for RD/RA pertaining to the PCB Areas OU, DOI shall submit an RA Schedule for the PCB Areas OU, which shall propose deadlines for the submission of the following primary documents:

a. Operation and Maintenance Plan

b. OU Closeout Report

30.1.5 Miscellaneous Areas OU

30.1.5.1 Within one hundred and eighty (180) days of the effective date of this Agreement, DOI shall submit the Recommendation on Necessary Work - Miscellaneous Areas OU.

30.1.5.2 If additional RI work is determined to be necessary for this OU, DOI shall submit an RI Schedule for the areas of the OU which require additional RI work. The RI Schedule shall be submitted concurrently with the Recommendation on Necessary Work, and shall establish deadlines for the submission of the following primary documents:

a. RI Work Plan or scope of work for the procurement of RI services;

b. RI SAP or CDAP;

c. RI HSP or SSHP; and

d. RI Report, including a Risk Assessment and an assessment of the need to prepare an FS.

30.1.5.3 Concurrently with the submission of the RI Report or concurrently with the Recommendation on Necessary Work, whichever is later, DOI shall submit a ROD Schedule which shall

establish deadlines for the submission of the following primary documents:

a. FS Report, if necessary;

b. Proposed Plan; and

c. Record of Decision.

30.1.5.4 Within thirty (30) days of the date the ROD becomes final, if remedial action is required for any of the study sites comprising the Miscellaneous Areas OU, DOI shall submit an RD Schedule for such work, which shall establish deadlines for the performance of any necessary remedial design, and submission of the following primary documents:

a. RD Work Plan or scope of work for the procurement of design services; and

b. Final (100%) Remedial Design.

30.1.5.5 Concurrent with the submission of the Final (100%) Remedial Design, DOI shall submit the RA Schedule for the OU which shall establish deadlines for the implementation and completion of the remedial action, and submission of the following primary documents.

a. RA Work Plan or scope of work for procurement of remedial action services;

b. RA SAP or CDAP;

c. Contingency Plan;

d. Operation and Maintenance Plan

e. OU Close Out Report

30.1.6 Within sixty (60) days of the determination of the need for additional work pursuant to Subsection 7.5, the Lead

Department shall submit a schedule to begin the necessary work, including timetables for schedules for additional necessary work.

30.2 Within thirty (30) days of receipt of proposed schedules provided under Subsection 30.1, the Parties shall review and provide comments to the Lead Department regarding the proposed deadlines. Within thirty (30) days following receipt of the comments, the Lead Department shall, as appropriate, make revisions and reissue the proposal. The Parties shall confer as necessary to discuss and finalize the proposed deadlines. If the Parties agree on proposed deadlines, the finalized deadlines shall be incorporated into the appropriate Work Plans. If the Parties fail to agree within thirty (30) days of receipt of the Lead Department's revisions on the proposed deadlines, the matter shall immediately be submitted for dispute resolution pursuant to Section 15 of this Agreement.

30.3 The final deadlines established pursuant to this Section shall be published by USEPA.

30.4 The deadlines set forth in this Section, or to be established as set forth in this Section, may be extended pursuant to Section 31, Extensions. The Parties recognize that one possible basis for extension of the deadlines for completion of the Remedial Investigation and Feasibility Study Reports is the identification of significant new site conditions during the performance of the remedial investigation.

31. EXTENSIONS

31.1 Either a timetable and deadline or a schedule shall be

extended upon receipt of a timely request for extension and when good cause exists for the requested extension. Any request for extension by the Lead Department shall be submitted in writing to all Parties and shall specify:

31.1.1 The timetable and deadline or the schedule that is sought to be extended;

31.1.2 The length of the extension sought;

31.1.3 The good cause(s) for the extension; and,

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

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

31.2.1 An event of force majeure;

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

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

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

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

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

assessed and may accrue from the date of the original timetable, deadline or schedule, if applicable. 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.

32. FORCE MAJEURE

32.0 A Force Majeure shall mean any event arising from causes beyond the control of a Party that causes a delay in or prevents the performance of any obligation under this Agreement, including, but not limited to, acts of God; fire; 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 Lead Department; 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 Lead Department shall have made timely request for such funds as part of the budgetary process as set forth in Section 33. A Force Majeure shall also include any strike or other labor

31.4 Within seven (7) days of receipt of a request for an extension of a timetable and deadline or a schedule, the other Parties shall advise the requesting Party in writing of their respective position on the request. Any failure by the other Parties to respond within the seven (7) day period shall be deemed to constitute concurrence in the request for extension. If any of the other Parties does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

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

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

31.7 A timely and good faith request for an extension shall toll any assessment of stipulated penalties or application for judicial enforcement of the affected timetable and deadline or schedule until a decision is reached on whether the requested extension will be approved. If dispute resolution is invoked and the requested extension is denied, stipulated penalties may be

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.

33. FUNDING

33.1 It is the expectation of the Parties to this Agreement that all obligations of DOI and DA arising under this Agreement will be fully funded. Such funds are expected to be obtained by DOI from other PRPs and from Congress through appropriations. Such funds are expected to be obtained by DA from the Defense Environmental Restoration Account (DERA). If funding is not obtained from other PRPs in accordance with the schedules set forth in this Agreement, DOI agrees to seek all necessary funding from Congress through the DOI budgetary process to fulfill its obligations under this Agreement. DA agrees to seek sufficient funding through the DOD budgetary process to fulfill its obligations under this Agreement.

33.2 In accordance with Section 120(e)(5)(B) of CERCLA, 42 U.S.C. §9620(e)(5)(B), DOI and DA shall include in their annual reports to Congress the specific cost estimates and budgetary proposals associated with the implementation of this Agreement.

33.3 Any requirement for the payment or obligation of funds, including stipulated penalties, by DOI or DA 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.

33.4 If appropriated funds are not available to fulfill DOI's or DA's obligations under this Agreement, USEPA and IEPA reserve the right to initiate an action against any other person not a Party to this Agreement or to take any response action which would be appropriate absent this Agreement.

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

34. PERMITS

34.1 The Parties recognize that under Sections 121(d) and 121(e)(1) of CERCLA, 42 U.S.C. §§9621(d) and 9621(e)(1), and the NCP, portions of the response actions called for by this

Agreement and conducted entirely on the NPL Site are exempted from the procedural requirement to obtain a federal, state, or local permit but must satisfy all Federal and State ARARs which would have been included in any such permit.

34.2 When the Lead Department proposes a response action to be conducted entirely on the NPL Site, which in the absence of Section 121(e)(1) of CERCLA and the NCP would require a federal, or state or local permit, the Lead Department shall include in a Primary Document:

34.2.1 Identification of each permit which would otherwise be required;

34.2.2 Identification of the ARARs which would have had to have been met to obtain each such permit;

34.2.3 Explanation of how the response action proposed will meet the ARARs identified in Subsection 34.2.2.

34.3 Subsection 34.1 is not intended to relieve the Lead Department from the requirement(s) of obtaining a permit whenever it proposes a response action involving remedial activities conducted completely or partially off the NPL Site.

34.4 The Lead Department shall notify the other Parties in writing of any permits required for off-site activities as soon as it becomes aware of the requirements. Upon request, the Lead Department shall provide the other Parties copies of all such permit applications and other documents related to the permit process.

35. REMOVALS

35.1 Notwithstanding any other provision of this Agreement, the USEPA retains the right, consistent with Executive Order 12580, §§2(e)(1) and (g), and 10 U.S.C. §2705, to conduct a removal action to abate an imminent and substantial endangerment to human health or the environment from the release or threat of release of hazardous substances, hazardous wastes, pollutants or contaminants at or from the Refuge. Such actions may be conducted at any time, either before or after the issuance of a ROD.

35.2 USEPA shall provide the other Parties with adequate opportunity for timely review and comment after USEPA makes any proposal to carry out such removal actions and before USEPA initiates any such removal action. This opportunity for review and comment shall not apply if the removal action is in the nature of an emergency action taken because of imminent and substantial endangerment to human health or the environment and it is the determination of USEPA that consultation would be impractical. In such case, USEPA shall notify the other Parties in writing within forty-eight (48) hours of taking such action.

36. QUALITY ASSURANCE

36.1 DOI and DA shall use quality assurance, quality control, and chain of custody procedures throughout all field investigation, sample collection and laboratory analysis activities conducted pursuant to this Agreement. The Lead Department shall develop an OU or element specific Quality

Assurance Project Plan (QAPP), or Chemical Data Acquisition Plan (CDAP) which includes the substantive requirements of the QAPP, as necessary, for review in accordance with Section 11. The QAPP or CDAP shall be prepared in accordance with USEPA document QAMS-005/80 and applicable guidance as developed and provided by USEPA or with USACE regulations and guidance which are not inconsistent with and meet the substantive requirements of USEPA guidance.

36.2 DOI and DA shall ensure that any laboratory used for analysis for implementation of this Agreement is a participant in a quality assurance/quality control program consistent with USEPA guidance. The laboratory to be used for sample testing or analysis shall be specified in the QAPP or CDAP. The Lead Department may perform any additional quality assurance testing at any testing laboratory of its choice.

36.3 DOI and DA shall ensure that appropriate USEPA and IEPA personnel or their authorized representatives will be allowed reasonable access to any laboratory used by DOI or DA in implementing this Agreement. Such access shall be for the purpose of validating sample analyses, protocols and procedures required by this Agreement.

37. RECOVERY OF USEPA EXPENSES

37.0 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 from DOI and/or DA for CERCLA response costs incurred by EPA.

38. RECOVERY OF STATE EXPENSES FROM DOI

38.1 DOI agrees to request specific funding from Congress and to reimburse IEPA for the costs related to the implementation of the Agreement as provided for in this Section.

38.2 The amount of reimbursable costs payable by DOI to IEPA under this Agreement shall not exceed one (1) percent of the estimated total costs of the work that has been or will be performed by DOI pursuant to this Agreement, or a total of eighty-thousand dollars ($80,000), whichever is greater.

38.3 Estimates of DOI's project costs developed under this Agreement are provided solely for the purpose of calculating the amount of funding IEPA is eligible to recieve. DOI shall recalculate its estimated total project costs annually. Based on the revised annual estimate, or a determination that the amount of reimbursable costs provided for in Subsection 38.2 is insufficient to allow IEPA to meet its obligations under this Agreement, the amount of reimbursable costs for the subsequent years may be renegotiated. Any renegotiation of reimbursable costs shall be in accordance with any then existing agreement on the subject between DOI and the State of Illinois.

38.4 The need for renegotiation between DOI and IEPA of reimbursable costs may be subject to dispute resolution as set forth in Subsection 38.11. After renegotiation of the reimbursement costs, if DOI and IEPA are unable to reach agreement, they shall refer any unresolved issues to dispute resolution as set forth in Subsection 38.11.

38.5 Nothing in this Agreement constitutes a waiver of any claims by IEPA for costs expended prior to the effective date of this Agreement.

38.6 Reimbursable costs shall consist only of expenditures required to be made, and actually made, by IEPA to fulfill its participation under this Agreement. Such services shall include:

38.6.1 Timely technical review and substantive comment, including participation in DOI's technical review meetings, on reports or studies which DOI prepares in support of its response actions and submits to IEPA;

38.6.2 Identification and explanation of unique State requirements applicable to performing response actions, especially State ARARs;

38.6.3 Field inspections to ensure that investigations and cleanup activities that will be performed by DOI as Lead Department are implemented in accordance with this Agreement.

38.6.4 Support and assistance to DOI in the conduct of public participation activities in accordance with Federal and State requirements for public involvement; and,

38.6.5 Other services specified in this Agreement, or as agreed to by DOI and IEPA.

38.7 All reimbursable costs are subject to Section 33, Funding. Reimbursable costs must be reasonable; they shall not include payment for any activity for which IEPA receives payment or reimbursement from another agency of the United States Government, or any other entity; they shall not include interest;

they shall not include payment for anything violative of Federal or State statutes or regulations; and they must be allocable to the services provided in accordance with Subsection 38.6. Duplicative laboratory work by one State agency of that of another already reimbursed shall not be reimbursable. Travel expenses shall not exceed those expenses customarily allowed by the IEPA for reimbursement of travel expenses.

38.8 DOI agrees to submit the costs provided under Subsection 38.7 as part of its request for authorizations and appropriations in accordance with Section 33. DOI agrees to advise IEPA of the status of available funds as soon as the appropriations are enacted and final program allocations are made. IEPA shall submit annual invoices to DOI accounting for costs actually incurred under this Section for the reporting period. IEPA may submit semi-annual invoices provided IEPA gives DOI's project manager sixty (60) day notice prior to the submittal of the first semi-annual invoice. IEPA's invoices shall be accompanied by cost summaries and supported by documentation which meets federal auditing requirements. The documents shall set forth employee-hours and other expenses by operable unit and by major type of support service. The invoices shall be submitted no later than one hundred and eighty (180) days following the end of the period for which the expenses are claimed. Any costs incurred during a billing period not reflected in the invoice for that period shall be submitted with an itemized description of all expenses claimed and justification for untimely submittal. Within ninety (90)

days of receipt of an invoice, DOI shall pay the invoice or notify IEPA that it questions or disputes the invoice. The project managers shall confer to resolve the question or dispute. Any unresolved dispute shall be subject to dispute resolution as provided for in Subsection 38.11.

38.9 IEPA shall maintain adequate accounting records sufficient to identify all expenses related to this Agreement. IEPA agrees to maintain these financial records in accordance with Section 20. IEPA agrees to provide DOI or its designated representative reasonable access to all financial records for the purpose of audit during the period of record retention.

38.10 The Parties recognize that a necessity for effectuating sufficient funding for this Agreement is the provision by IEPA to DOI of timely and accurate estimates of reimbursable costs. Within thirty (30) days of the signing of this Agreement, IEPA shall provide DOI with cost estimates for all anticipated reimbursable expenses to be incurred for the remainder of the current Federal Government fiscal year and the following fiscal year. At least ninety (90) days before the expiration of the second and all subsequent fiscal years, IEPA shall provide DOI with cost estimates for all anticipated reimbursable expenses to be incurred during the following fiscal year. IEPA shall expeditiously notify DOI if it becomes aware that the cost estimates provided under this Section are no longer substantially accurate and provide in their place new cost estimates.

38.11 Section 15 notwithstanding, any dispute between IEPA

and DOI regarding the application of this Section or any matter this Section controls, including but not limited to allowability of expenses and caps on expenses for reimbursement shall be resolved in accordance with this Section.

38.11.1 The DOI and IEPA Project Managers shall be the primary points of contact to coordinate resolution of disputes under this Section.

38.11.2 If the DOI and IEPA Project Managers are unable to resolve a dispute, the matter shall be referred to the Chief, Office of Environmental Contaminants, DOI, and the Deputy Division Manager of Land Pollution Control, IEPA, as soon as practicable but in any event within five (5) working days.

38.11.3 Should the Chief, Office of Environmental Contaminants and the Deputy Division Manager be unable to resolve the dispute within ten (10) days, the matter shall be elevated to the Regional Director, FWS, Region 3, and the Director of the IEPA.

38.11.4 If DOI and IEPA are unable to resolve the issues in dispute through the dispute resolution process described in this Subsection, IEPA may withdraw as a Party to this Agreement by providing written notice of its withdrawal to each of the Parties. Such withdrawal by IEPA shall terminate IEPA's rights and obligations under this Agreement; provided, however, that any approvals or concurrences by IEPA under or pursuant to this Agreement prior to its withdrawal shall continue to have full force and effect as if IEPA were still a Party to this Agreement.

38.11.5 It is the intention of DOI and IEPA that all cost reimbursement disputes shall be resolved strictly in accordance with this Subsection; however, the use of informal dispute resolution is encouraged. In the event the Director of the IEPA and the Regional Director, FWS, Region 3, are unable to resolve a dispute, IEPA retains all of its legal and equitable remedies to recover its costs.

39. RECOVERY OF STATE EXPENSES FROM DA

39.0 The State of Illinois shall recover expenses it incurs in regard to DA at Crab Orchard National Wildlife Refuge consistent with the Defense/State Memorandum of Agreement dated January 23, 1990.

40. CONVEYANCE OF TITLE

40.0 No conveyance of title, easement, or other interest in the DOI property on which any containment system, treatment system, monitoring system or other response action(s) is installed or implemented pursuant to this Agreement shall be consummated by DOI without provision for continued maintenance of any such system or other response action(s). No conveyance of title, easement, or other interest in the DOI property shall occur without meeting the requirements of Section 120(h) of CERCLA, 42 U.S.C. §9620(h), and regulations issued thereunder. At least thirty (30) days prior to any conveyance, DOI shall notify the other Parties of the provisions made for the continued operation and maintenance of any response action or system installed or implemented pursuant to this Agreement. USEPA, DA

and IEPA will review any such proposed conveyance with regard to any effect it may have on the work to be performed pursuant to this Agreement. USEPA or IEPA review does not imply any authority to restrict property conveyance.

41. PUBLIC PARTICIPATION

41.1 The Parties agree that this Agreement and any subsequent proposed remedial action alternative(s) and subsequent plan(s) for remedial action at the NPL Site arising out of this Agreement shall comply with the administrative record and public participation requirements of CERCLA, including Section 117 of CERCLA, the NCP, and USEPA guidance on public participation and administrative records.

41.2 DOI shall develop a Public Involvement and Response Plan (PIRP) which responds to the need for an interactive relationship with all interested community elements, regarding activities and elements of work undertaken by both DOI and DA. The PIRP will delineate the respective roles in community relations of the Parties, and shall be implemented according to its terms. DOI agrees to develop and implement the PIRP in a manner consistent with Section 117 of CERCLA, the NCP, USEPA guidelines set forth in USEPA's Community Relations Handbook, and any modifications thereto.

41.3 The public participation requirements of this Agreement shall be implemented so as to meet the public participation requirements applicable to RCRA permits under 40 C.F.R. §124 and Section 7004 of RCRA, if RCRA is an ARAR for the action.

41.4 Any Party issuing a formal press release to the media regarding any of the work required by this Agreement shall advise the other Parties of such press release and the contents thereof, at least two (2) business days before the issuance of such press release and of any subsequent changes prior to release, unless the release is to provide the public with emergency information in which case the Party making the release shall provide it to the other Parties as soon as possible.

41.5 DOI agrees it shall take over and maintain the existing administrative record at or near the Refuge in accordance with Section 113(k) of CERCLA and Subpart I of the NCP, 40 C.F.R. §300.800 et seq. The administrative record shall be established and maintained in accordance with current and future USEPA policy and guidelines. A copy of each document placed in the administrative record subsequent to its transfer by USEPA to DOI will be provided to USEPA, DA and IEPA if not provided previously. The administrative record index developed by DOI shall be updated and supplied to USEPA, DA and IEPA on at least a quarterly basis. DA shall select and provide to DOI the records that will comprise the administrative record for the OU(s) for which DA is the Lead Department. Maintenance by DOI of that portion of the administrative record covering OU(s) for which DA is the Lead Department under this Agreement shall be addressed in the MOA between DOI and DA.

41.6 DOI agrees it shall follow the public participation requirements of CERCLA Section 113(k) and comply with any

guidance and/or regulations issued by USEPA with respect to such Section.

42. PUBLIC COMMENT

42.1 Within fifteen (15) days of the date of the signature of USEPA, which will sign last, USEPA shall announce the availability of this Agreement to the public for review and comment. USEPA shall accept comments from the public for a period of forty-five (45) days after such announcement. At the end of the comment period, USEPA shall transmit to the other Parties all comments received during the comment period. All Parties shall review these comments and--

42.1.1 Determine that the Agreement should be made effective in its present form, in which case DOI, DA and IEPA shall be so notified in writing by USEPA, and the Agreement shall become effective on the date said notice is received; or,

42.1.2 Determine that modification of the Agreement is necessary, in which case the Parties will meet to discuss any necessary changes. Upon agreement of the Parties to any changes, the Agreement will be re-executed with the agreed to changes included.

42.2 In the event of significant revision or public comment, notice procedures of Sections 117 and 211 of CERCLA shall be followed and a responsiveness summary shall be published by the USEPA.

43. TERMINATION

43.0 The provisions of this Agreement shall be deemed satisfied upon receipt of written notice from USEPA, with concurrence of IEPA, that DOI and DA have demonstrated, to the satisfaction of USEPA and IEPA, that all of the terms of this Agreement have been completed. Upon such demonstration by DOI and DA, said written notice shall not be unreasonably withheld or delayed.

44. EFFECTIVE DATE

44.0 This Agreement is effective upon issuance of a notice to the Parties by USEPA following implementation of Section 42. The effective date shall be the date upon which the notice is received by the Parties.

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IT IS SO AGREED:

Ed Cassidy
Deputy Assistant Secretary of the Interior
for Policy, Management, and Budget
U.S. Department of the Interior

8-16-91
Date

Lewis D. Walker
Deputy Assistant Secretary of the Army
for Environment, Safety and
Occupational Health

9/6/91
Date

Valdas V. Adamkus
Regional Administrator
U.S. Environmental Protection Agency
Region V

9/13/91.
Date

Mary A. Gade
Director of the Environmental
Protection Agency
State of Illinois

9/10/91
Date

TABLE 1

STUDY SITES

Site Number	Name
3	Area 11 South Field
4	Area 11 North Field
5	Area 11 Acid Pond
7	D Area SE Drainage Channel
7A	D Area North Lawn
8	D Area Southwest Drainage Channel
9	P Area Northwest Drainage Channel
10	Waterworks North Drainage Channel
11	P Area Southeast Drainage Channel
11A	P Area North
12	Area 14 Impoundment
13	Area 14 Change House
14	Area 14 Solvent Storage Drainage Ditch
15	Area 7 Plating Pond
16	Area 7 Industrial Site
17	Job Corps Landfill
18	Area 13 Loading Platform
19	Area 13 Bunkers
20	D Area South Drainage Channel
21	Southeast Corner Field
22	Old Refuge Shop Drainage Pool
24	Pepsi-West Drainage Ditch
25	Crab Orchard Creek at Marion Landfill
26	Crab Orchard Creek Below Marion STP
27	Crab Orchard Creek Below 157 Dredge Area
28	Water Tower Landfill
29	Fire Station Landfill
30	Refuge Control
31	Munitions Control
32	Area 9 Landfill
33	Area 9 Building Complex
34	Crab Orchard Lake
35	Area 9 East Waterway

UNITED STATES DEPARTMENT OF THE INTERIOR

and

UNITED STATES DEPARTMENT OF THE ARMY

MEMORANDUM OF AGREEMENT

for

CRAB ORCHARD NATIONAL WILDLIFE REFUGE

WHEREAS:

The Crab Orchard National Wildlife Refuge is located near Carterville, Illinois, on property owned by the United States and under the jurisdiction and control of the United States Department of the Interior (DOI).

A portion of the Refuge was formerly under the jurisdiction and control of the United States Department of the Army (DA).

The United States Environmental Protection Agency (USEPA)

proposed the listing of the Refuge on the National Priorities List and finalized the listing of the site in 1987.

DOI, DA, USEPA and the Illinois Environmental Protection Agency (IEPA), contemporaneously with this Memorandum of Agreement (MOA), will enter into a federal facility agreement (FFA) under Section 120 of CERCLA, 42 U.S.C. §9620, providing for responsibility and procedures for response actions to be conducted on the NPL Site.

USEPA has designated four (4) Operable Units (OU) on the NPL Site, including the PCB Areas OU, the Metals Areas OU, the Explosive/Munitions Manufacturing Areas OU, and the Miscellaneous Areas OU. The limits of these four (4) OUs are further described in the FFA.

Pursuant to a request from DOI, DOI and DA have agreed that DA shall assume authority under Section 120 of CERCLA, Executive Order No. 12580, and the NCP as the lead agency (defined in 40 C.F.R. §300.5) for the Explosive/Munitions Manufacturing Areas OU in order to allow site response actions to proceed effectively and efficiently.

Neither DOI nor DA admits any liability under any law, regulation or policy for response actions on any portion of the NPL Site.

DOI and DA enter into this MOA under the authorities enumerated in Section 3 of the FFA and the Economy Act, 31 U.S.C. §1535.

NOW, THEREFORE, DOI and DA (the Agencies) hereby agree to the following provisions of this MOA:

1. **FEDERAL FACILITY AGREEMENT:** This MOA applies to the remedial actions being performed under the FFA as they relate to the OUs and any other study areas to which the FFA applies.

2. **DEFINITIONS:** The definitions provided in CERCLA, the NCP, and the FFA shall control the meaning of the terms used in this MOA unless clearly indicated otherwise in the text.

3. **LEAD DEPARTMENT RESPONSIBILITIES AND AUTHORITIES:**

3.1 DOI shall assume the responsibilities and authorities as the Lead Department under the FFA, with all the authorities of a lead agency under Section 120 of CERCLA, Executive Order 12580 and the NCP for the PCB Areas OU, the Metals Areas OU and the Miscellaneous Areas OU, including performing or arranging for the performance of all necessary or required response actions. This includes the authority to take

whatever enforcement actions are appropriate, or to enter into settlement agreements to the extent allowed by law with entities not party to this MOA or the FFA.

3.2 DA shall assume the responsibilities and authorities as the Lead Department under the FFA, with all the authorities of a lead agency under Section 120 of CERCLA, Executive Order 12580 and the NCP for the Explosive/Munitions Manufacturing Areas OU, including performing or arranging for the performance of all necessary or required response actions including long-term operation and maintenance. After completion of the installation or construction phase of the OU and finalization of the OU Closeout Report pursuant to Section 11 of the FFA, DA may, at its option, pay to DOI or to a third party the cost, adjusted to present day dollars, of the operation and maintenance for the OU and DOI shall assume the Lead Department responsibilities and authorities for long-term operation and maintenance for all of this OU; provided, however, that such assumption of responsibilities and authorities shall not extend to newly discovered contamination or significantly changed remedial requirements resulting from the five-year reviews conducted under Section 22 of the FFA or to failure of the remedy. The cost of operation and maintenence can be renegotiated at the time of and based upon the results of the five-year reviews conducted under Section 22 of the FFA. The authority of DA for this OU includes the authority to undertake enforcement actions or enter into settlement agreements to the

extent allowed by law with any entities not a party to this MOA or to the FFA. The authorities of DA for this OU shall be the same as for any active installation currently under the jurisdiction and control of DA, and the provisions of the DERP and implementing regulations shall apply to the activities of DA concerning this OU.

4. **NEW WORK:** If additional areas are identified on the Refuge which require response action under CERCLA as part of the NPL Site, DOI or DA may recommend, in writing, which agency shall act as the Lead Department under the FFA with responsibility for the response actions. This recommendation will be made according to the procedures established in Subsection 7.5.4 of the FFA. If DOI and DA do not agree in accordance with Subsection 7.5.4 of the FFA on which agency shall act as the Lead Department for any new study area, the matter shall be referred for dispute resolution in accordance with paragraph 10 of this MOA. If DA becomes the Lead Department under the FFA for any new study areas, then its authorities and responsibilities as the Lead Department will be the same as described above for the Explosive/Munitions Manufacturing Areas OU.

5. **TRANSFER OF WORK:** Subject to and in compliance with the provisions of Subsection 7.5.4 of the FFA, the following provisions shall govern the transfer of work between the Agencies, except that any areas or OUs for which work has been

arranged under a consent decree with a private party shall not be subject to transfer between the Agencies. Paragraph 9 of this MOA shall govern the resolution of claims between the Agencies for the work.

5.1 If, during the conduct of response actions on any OU, except those areas subject to a consent decree, DOI or DA determines that a preponderance of evidence exists that the other Agency is responsible for all or a portion of the study areas within the OU, the Agency shall present in writing all evidence not otherwise provided to the other Agency concerning responsibility for or allocation of liability for the area(s), including any known responsibility or liability of other persons or entities. DOI and DA shall then commence good faith negotiations to resolve the issue of such responsibility or allocation. Such responsibility or allocation shall be assigned between the two Agencies in accordance with the standards used to determine liability under Section 107 of CERCLA, 42 U.S.C. §9607. These negotiations shall be initiated between the Project Managers but may be referred to dispute resolution under paragraph 10 by either Agency after thirty (30) days. Pending resolution of these negotiations, the responsibilities and authorities to act as Lead Department as described above shall not shift, and the Agency acting as the Lead Department shall continue the ongoing work.

5.2 If, as a result of dispute resolution or negotiations conducted under paragraph 5.1, the Agencies agree

that DOI or DA should assume responsibility and authority for any portion of an OU where response action work is ongoing, and for which the other Agency has acted as the Lead Department under paragraph 3, above, then DOI and DA shall notify all Parties to the FFA, and the responsible Agency shall then assume all obligations and authority for further response actions under the FFA for the designated portion of the OU. Any agreement for the transfer of work responsibility shall be accomplished by an amendment to this MOA pursuant to paragraph 13, and the timing of the transfer shall be stated in the amendment. An assumption of responsibilities under this paragraph shall not be an admission of liability for any purposes concerning the affected area, and shall not affect the ability of the Agency accepting the responsibility to seek the performance of work, the recovery of costs, or the assessment of other damages from persons or entities not a party to this MOA or the FFA.

6. ADMINISTRATIVE RECORD: DOI agrees that it shall maintain the Administrative Record required by CERCLA and the NCP for the NPL Site at the Refuge. This includes maintenance of the Administrative Record for the Explosive/Munitions Manufacturing Areas OU. DA shall submit documents for the OUs for which it is the Lead Department to DOI for inclusion in the Administrative Record in a form which complies with the applicable provisions of the NCP and shall provide an index of the documents it submits. DOI shall prepare and be responsible for, and DA shall work with

and advise DOI in preparing, the Public Involvement and Response Plan for the NPL Site.

7. **PRP INVESTIGATION:**

7.1 DOI and DA have initiated and DA has contracted for a potentially responsible party (PRP) investigation to locate evidence and evaluate liability of all persons or entities concerning all of the NPL Site. DOI and DA shall continue and complete this investigation. DA has provided and shall continue to provide to DOI the opportunity for timely review and comment on all procurement scopes of work and draft reports developed pertaining to this PRP investigation. DA shall provide to DOI copies of all final reports of this investigation and one complete set of all records and documents collected for, or utilized in, the investigation, either in hard copy or electronic form, at the request of DOI. DOI shall receive all such reports and documents in confidence, as having been prepared on behalf of DA in anticipation of litigation. DOI shall not release any portion of any of the reports or supporting documents to any other person, entity or agency without the written advance permission of the U.S. Army Engineer District, Omaha legal office, for DA.

7.2 DOI shall reimburse DA for one-half of all contractor costs incurred by DA for the PRP investigation. DA has already obligated the basic cost of the contract for the performance of the PRP investigation. At the time this MOA is

signed, DOI shall reimburse DA for one-half of all sums disbursed on contracts for this investigation. DA shall submit a bill to DOI at Project Manager for Crab Orchard National Wildlife Refuge, Fish & Wildlife Enhancement, Marion Illinois Suboffice, Rural Route 3, Box 328, Marion, Illinois 62959, for this sum and DOI shall pay the bill within forty-five (45) days of its receipt. Thereafter, DA shall bill DOI no more often than monthly for one-half of all contract disbursements for the investigation work, and DOI shall pay each bill within forty-five (45) days of receipt of the bill. Payments by DOI shall be made to the Defense Environmental Restoration Account and mailed to Department of Defense, ATTN: Director, Environmental Restoration Program Office, 206 North Washington Street, Suite 100, Alexandria, Virginia 22314. DOI shall be allowed to review and copy all supporting documents for sums which are billed to it under this provision by DA, upon request of DOI. DA shall bear the expense of administering the contracts and all other DA agency costs relating to the PRP investigation.

8. **RECORDS:** DOI and DA shall cooperate with each other fully and shall provide records and information to each other according to the procedures in Section 25 of the FFA.

9. **CLAIMS:** The Agencies may submit claims for allocation or reimbursement of response costs from each other according to the following procedures:

9.1 Either Agency may submit an annual claim to the other Agency for any response costs it believes it is owed under this MOA, excluding those costs for PRP investigation expenses covered by paragraph 7, by providing a written claim to the other Agency not later than the 31st of January following the end of the fiscal year. All response costs for which reimbursement is requested and which were incurred in the preceding fiscal year shall be presented in a single submission. Except upon mutual agreement of the Agencies, any response costs incurred in a fiscal year which were not included in a request for reimbursement shall not be included in any succeeding year's request. If, at the conclusion of any annual cost review, both Agencies are determined to owe sums to the other, the amounts will be offset and a net amount will be established. Any amount found to be owed by DOI to DA shall be paid to the U.S. Department of Defense and mailed to Department of Defense, ATTN: Director, Environmental Restoration Program Office, 206 North Washington Street, Suite 100, Alexandria, Virginia 22314, and accompanied by a letter indicating it is a recovery payment to the DERA relating to the Crab Orchard National Wildlife Refuge Superfund Site. A copy of the payment instrument and cover letter shall be provided to the DA Project Manager. Any amount found to be owed by DA to DOI shall be paid to DOI at an address to be provided by DOI at a later date. Any issue concerning allocation or reimbursement of response costs for an OU, which has been decided under this paragraph 9 or the dispute resolution

provisions of paragraph 10, shall not be presented again by the claiming Agency under this MOA or otherwise unless a preponderence of evidence supports reopening allocation or reimbursement.

9.2 Any claim submitted under this paragraph must be based upon the standards used to determine liability under Section 107 of CERCLA, 42 U.S.C. §9607. It shall be accompanied by all supporting documentation organized in a logical manner and referenced in the claim. It shall include all evidence available which may be relevant to the allocation of liability, including contributions which should be made by persons or entities not a party to this MOA or the FFA. Unless a determination is made not to pursue a claim for recovery or contribution from another person or entity, the Agency which is then the Lead Department for the area concerned in the claim shall initiate and pursue the claim, with the cooperation of the other Agency, to completion, including requesting the assistance of EPA under Section 23 of the FFA. A final determination between the Agencies on allocation or reimbursement of response costs which are the subject of a claim to another person or entity shall be deferred until the recovery from or contribution by that person or entity is finally resolved.

9.3 The Agencies agree to undertake discussions in good faith on any such claims for response costs. Either DOI or DA may consult with the United States Department of Justice concerning cases which may be relevant to the positions taken on

liability of either Agency, as well as the liability of other entities. A decision of claims concerning an OU may result in (1) a percentage allocation of response costs to be applied to determine sums to be reimbursed for costs incurred in the past or to be incurred in the future, (2) a specific sum of past costs to be reimbursed, (3) a transfer of responsibility for future work under paragraph 5 of this MOA, or (4) any combination of these alternatives. It is the intent of the Agencies to resolve all claim issues between the Agencies concerning an OU in a single decision. If authorized officials of DOI and DA reach a decision under this paragraph, it shall then be reduced to a writing signed by the authorized officials.

9.4 Any claim for reimbursement of specific incurred response costs shall be accompanied by all documentation available to the claiming Agency reflecting the nature of the costs, the incurrence of the costs, and the relationship of the costs to a specific OU. Claims shall be only for reasonable, allocable and allowable response costs, and shall not include any administrative costs incurred by the claiming Agency in arranging for the activities required by the FFA or this MOA, or any Agency overhead or general and administrative expenses. The Agency receiving the claim shall be allowed access to the records of the claiming Agency for purposes of verifying the accuracy of the claim.

9.5 If a decision is made by the Agencies on allocation of costs between them for an OU, then the Lead

Department may thereafter present claims for reimbursement of specific incurred response costs relating to that OU. A claim for response costs incurred before the allocation decision may be presented with the claim for an allocation along with all required cost documentation, or it may be presented within six (6) months after the allocation decision. Claims for reimbursement of response costs incurred after the allocation decision may be presented on an annual basis for a fiscal year not later than the 31st of January following the end of a fiscal year. The amount to be reimbursed shall be calculated by applying the allocation percentages to the total accepted response costs.

9.6 At least one hundred and twenty (120) days before the expiration of each fiscal year, the Agencies will each provide to the other cost estimates for all expenses (including the claim it anticipates submitting under paragraph 9.1 of this MOA), reimbursable under this MOA, to be incurred during the upcoming fiscal year. Each Agency shall expeditiously notify the other Agency if it becomes aware that the cost estimates provided under this paragraph are no longer substantially accurate and provide in their place new cost estimates.

9.7 DOI reserves it rights to assert any claims against DA for natural resources damages.

10. DISPUTE RESOLUTION: Except for matters to which the Dispute Resolution Section, Section 15, of the FFA applies, if a

dispute arises under this MOA, the procedures of this paragraph shall apply.

10.1. DOI and DA agree to make reasonable efforts to informally resolve all disputes at the Project Manager or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this paragraph shall be implemented to resolve a dispute.

10.2 Within thirty (30) days after any action which leads to or generates a dispute, the disputing Agency shall submit to the other Agency a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, if any, the disputing Agency's position with respect to the dispute and the information the disputing Agency is relying upon to support its position.

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

10.4. The Dispute Resolution Committee (DRC) will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Agencies 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 MOA. DOI's representative on the DRC is the Director, Region III, U.S. Fish & Wildlife Service. DA's representative on the DRC is the District Engineer, Omaha District, U.S. Army Corps of Engineers. Written notice of any delegation of authority from an Agency's designated representative on the DRC shall be provided to the other Agency as soon as possible after any such delegation has been made.

10.5. Following elevation of a dispute to the DRC, the DRC shall have twenty-one (21) days to resolve the dispute by agreement and issue a written decision, signed by the representatives of both Agencies. If the DRC is unable to resolve the dispute by agreement of both Agencies within this twenty-one (21) day period, the written statement of dispute shall be forwarded within seven (7) days after the close of the twenty-one (21) day resolution period to the Senior Executive Committee (SEC) for resolution.

10.6. The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. DOI's representative on the SEC is the Deputy Assistant Secretary of Interior for Policy, Management and Budget. DA's representative on the SEC is the Deputy Assistant Secretary of the Army for Environment, Safety, and Occupational Health. The SEC members shall, as appropriate, confer, meet and exert their

best efforts to resolve the dispute and issue a timely written decision, signed by the representatives of both Agencies. If agreement on resolution of the dispute is not reached within twenty-one (21) days, a proposed decision concerning the dispute shall be issued by the SEC representative of the Agency for which the matter in dispute would involve acceptance of an additional liability, creation of an additional obligation, or recognition or exercise of an additional authority. This proposed decision shall be issued in writing by the official designated above for membership on the SEC, and shall not be delegated.

10.7. Within forty-five (45) days of issuance of the proposed decision pursuant to the procedures specified in this paragraph, the proposed decision shall be implemented as a resolution and final decision by the Agency with responsibility to implement the subject matter in issue, subject to elevation of a dispute under Executive Order 12088, Federal Compliance With Pollution Control Standards, or Executive Order 12146, Management of Federal Legal Resources, as modified by Executive Order 12608. Resolution of a dispute pursuant to this paragraph of the MOA constitutes a final resolution of such dispute arising under this MOA and the Agencies shall abide by all terms and conditions of any such final resolution. A copy of the final decision concerning a dispute which relates to the performance of work or other obligations under the FFA shall be provided to the Parties to the FFA within seven (7) days of issuance of the final written determination on the dispute.

11. **FUNDING:**

11.1 Any payments to be made under the provisions of this paragraph shall be made only to the extent allowed by law and only in the manner and to the extent expressly provided for in Acts authorizing funds for, and appropriations to, DOI or DA, as the case may be.

11.2 Any requirement for the payment or obligation of funds by DOI or DA established by the terms of this MOA shall be subject to the availability of appropriated funds. 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.

11.3 Funds authorized and appropriated annually by Congress under the DERA appropriation in the Department of Defense Appropriation Act and allocated by the Deputy Assistant Secretary of Defense (Environment) to DA will be the source of funds for DA's obligations required by this MOA consistent with Section 211 of SARA, 10 U.S.C. Chapter 160 (DERP). However, should the DERA appropriation be inadequate in any year to meet the total Army CERCLA implementation requirements, the DOD shall employ and DA shall follow a standardized DOD prioritization process which allocates that year's appropriations in a manner

which maximizes the protection of human health and the environment. A standardized DOD prioritization model shall be developed and utilized with the assistance of EPA and the states.

11.4 Funds authorized and appropriated by Congress as a line item for the Fish & Wildlife Service will be the source of DOI funding under this MOA.

12. PROJECT MANAGERS: DOI and DA shall each designate a Project Manager for the purpose of implementing this MOA. Either Agency may change its designated Project Manager by notifying the other Agency, in writing, within five (5) days of the change. To the maximum extent possible, communications between the Agencies concerning the terms and conditions of this MOA shall be directed through the Project Managers. As of the date of signature of this MOA, the addresses and the telephone numbers of the Project Managers for the Agencies to be utilized for all communications are as follows:

FOR DA:

U.S. Army Corps of Engineers Omaha District
215 North 17th Street
ATTN: CEMRO-ED-E
Omaha, Nebraska 68102-4978
Telephone (402) 221-7662
Telefax (402) 221-7777

FOR DOI:

Fish & Wildlife Service Marion Illinois Suboffice
ATTN: Crab Orchard Project Manager
Crab Orchard National Wildlife Refuge
Rural Route #3, Box 3[illegible]

Marion, Illinois 62959
Telephone 618-997-5491
Telefax 618-997-3344

13. **AMENDMENTS:** This MOA may be amended in writing and with the agreement of authorized representatives of both Agencies. The effective date of any such amendment shall be specified as a term of the amendment, except that no amendment will take effect until it is executed in writing by representatives of both Agencies who are authorized to bind their Agencies to the amendment to the MOA.

14. **TERMINATION:** This MOA will continue in full force and effect until terminated in a written agreement between DOI and DA or the latter of (1) deletion of the Refuge from the NPL or (2) completion of all Operation and Maintenance. The termination of this MOA shall act as a bar to the submission of further claims between DOI and DA relating to the conduct of response actions on the NPL Site.

15. **EFFECTIVE DATE:** This MOA shall be effective on the date of last signature by a representative of either DOI or DA or the effective date of the FFA, whichever occurs later. The Agencies each represent that the individuals who have signed this MOA on behalf of their Agency have the actual authority to represent their Agency for purposes of the matters addressed in

this MOA and that their execution shall be considered to be binding upon their Agency.

ON BEHALF OF THE UNITED STATES DEPARTMENT OF THE INTERIOR:

Ed Cassidy
Deputy Assistant Secretary
for Policy, Management & Budget
U.S. Department of the Interior

8-1-91
Date

ON BEHALF OF THE UNITED STATES DEPARTMENT OF THE ARMY:

Lewis D. Walker
Deputy Assistant Secretary of the Army
for Environment, Safety, and Occupational
Health

8/1/91
Date