UNITED STATES ENVIRONMENTAL PROTECTION
REGION VII
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101

IN THE MATTER OF:

The United States Department
of Energy's Weldon Spring Site,
St. Charles, Missouri

Docket No. CERCLA-VII-85-F-0057

FIRST AMENDED FEDERAL FACILITY AGREEMENT

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PRELIMINARY STATEMENT

A. The United States Environmental Protection Agency, Region VII, and the United States Department of Energy have mutually agreed to amend the Federal Facility Compliance Agreement entered into with respect to the Weldon Spring Site as provided in Section XIII, Paragraph A, of that Agreement. These amendments are made, in part, to reflect changes made in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 by the Superfund Amendments and Reauthorization Act of 1986.

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

I. JURISDICTION

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

A. The U.S. Environmental Protection Agency (U.S. EPA), Region 7, enters into those portions of this Agreement that relate to the remedial investigation/feasibility study (RI/FS) pursuant to Section 120(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9620(e)(1), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499 (hereinafter jointly referred to as CERCLA/SARA or CERCLA) and Sections 6001, 3008(h) and 3004(u) and (v) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6961, 6928(h), 6924(u)

and (v), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) (hereinafter jointly referred to as RCRA/HSWA or RCRA) and Executive Order 12580;

B. U.S. EPA, Region 7, enters into those portions of this Agreement that relate to operable unit remedial actions and final remedial actions pursuant to Section 120(e)(2) of CERCLA/SARA, Sections 6001, 3008(h) and 3004(u) and (v) of RCRA and Executive Order 12580;

C. The United States Department of Energy (DOE) enters into those portions of this Agreement that relate to the RI/FS pursuant to Section 120(e)(1) of CERCLA, Sections 6001, 3008(h) and 3004(u) and (v) of RCRA, and Executive Order 12580, the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, and the Atomic Energy Act of 1954 (AEA), as amended, 42 U.S.C. § 2201; and

D. DOE enters into those portions of this Agreement that relate to response actions pursuant to Section 120(e)(2) of CERCLA/SARA, Sections 6001, 3004(u) and 3008(h) of RCRA, Executive Order 12580 and the AEA.

II. PARTIES

The parties to this Agreement are DOE and U.S. EPA (hereinafter "Parties"). The terms of this Agreement shall apply to and be binding upon the Parties and upon their successors and assigns. The undersigned representative of each of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to bind legally that party to it. DOE shall provide a copy of this Agreement to all contractors and subcontractors retained to perform work pursuant to this Agreement and to the present owner of any property upon which any work under this Agreement is performed, which is not owned by DOE or the United States.

III. SCOPE OF THE AGREEMENT

This Agreement covers all properties under the custody and accountability of the DOE located in St. Charles County, Missouri, approximately 30 miles east of St. Louis, Missouri, which are known collectively as the Weldon Spring Site, including the Quarry, the Chemical

Plant, the Raffinate Pits, and all other areas, whether under the custody and accountability of the DOE or not, contaminated by the migration of a hazardous substance, pollutant or contaminant from any of these properties. The Parties are aware that a portion of the Site may be covered by the limited grandfather provision of Section 120(b) of SARA, but have agreed to include the entire Site in this Agreement to expedite response activities at the Site.

IV. PURPOSE

A. The general purposes of this Agreement are to:

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

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

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

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

1. Identify Operable Unit Remedial Action (OURA) alternatives which are appropriate at the Site prior to the implementation of final remedial action(s) for the Site. OURA alternatives shall be identified and proposed to the Parties as early as possible prior to formal proposal of OURAs to U.S. EPA pursuant to CERCLA/SARA. This process is designed to promote cooperation among the Parties in identifying OURA alternatives prior to selection of final OURAs.

2. Establish requirements for the performance of a Remedial Investigation to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release and threatened release of hazardous substances, pollutants or contaminants at the Site and to establish requirements for the performance of a Feasibility Study for the Site to identify, evaluate, and select alternatives for the appropriate remedial

action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants or contaminants at the Site in accordance with CERCLA/SARA.

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

4. Implement the selected operable unit and final remedial action(s) in accordance with CERCLA.

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

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

V. DEFINITIONS

Except as otherwise explicitly stated herein, terms used in this Agreement which are defined in CERCLA, the NCP or RCRA shall have the meaning as defined in CERCLA, the NCP or RCRA. The following definitions shall apply for purposes of this Agreement:

A. "Agreement" means this Federal Facility Agreement, all attachments to this Agreement.

B. "ARAR" or "Applicable or Relevant and Appropriate Requirement" shall mean "legally applicable" or "relevant and appropriate" standards, requirements, criteria or limitations as those terms are used in CERCLA Section 121(d), 42 U.S.C. § 9621(d).

C. "Authorized representative" means a person designated to act on behalf of a Party to this Agreement, including, inter alia, contractors retained to perform work at or relating to the Site.

D. "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq.

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

F. "DOE" means the United States Department of Energy, its employees and authorized representatives.

G. "Emergency removals" means a removal action taken because of an imminent and substantial endangerment to human health or the environment which requires implementation of a response action in such a timely manner that consultation with EPA would be impractical.

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

I. "National Contingency Plan" or "NCP" means the implementing regulations for CERCLA found in Subpart F of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300.

J. "Operable Unit" means a discrete action that comprises an incremental step toward comprehensively addressing site problems.

K. "Remedial Design" or "RD" means the technical analysis and procedures which follow the selection of a remedial action and which result in a detailed set of plans and specifications for implementation of the remedial action.

L. "Remedial Investigation" or "RI" means that process undertaken to determine the nature and extent of the problem presented by the release of hazardous substances, pollutants, or contaminants at the Site, including sampling, monitoring and gathering of sufficient information to determine the necessity for remedial action and to support the evaluation of remedial alternatives.

M. "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, Pub. L. 98-616.

N. "Site" means the properties under the custody and accountability of DOE known as the Weldon Spring Site, including the Chemical Plant, the Raffinate Pits, and other areas contaminated by the migration of a hazardous substance, pollutant or contaminant from any of these properties.

O. "Submittal" means each document, report, schedule, deliverable, work plan or other item to be submitted to U.S. EPA pursuant to this Agreement.

P. "U.S. EPA" or "EPA" means the United States Environmental Protection Agency, its employees and authorized representatives.

Q. "Written Notice of Position" means a written statement by a Party of its position with respect to any matter about which any other Party may initiate dispute resolution pursuant to Part XXIII of this Agreement.

VI. STATUTORY COMPLIANCE/RCRA CERCLA INTEGRATION

A. The Parties intend to integrate DOE's CERCLA response obligations and RCRA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes, pollutants or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will be deemed to achieve compliance with CERCLA, 42 U.S.C. § 9601 et seq.; to satisfy corrective action requirements of section 3004(u) and (v) of RCRA, 42 U.S.C. §§ 6924(u) and (v), for a RCRA permit, and Section 3008(h), 42 U.S.C. § 6928(h), for interim status facilities; and to meet or exceed all applicable or relevant and appropriate Federal and State laws and regulations, to the extent required by Section 121 of CERCLA, 42 U.S.C. § 9621 and applicable state law.

B. Based upon the foregoing, the Parties intend that any remedial action selected, implemented and completed under this Agreement will be protective of human health and the environment such that remediation of releases covered by this agreement shall obviate the need for further corrective action under RCRA (i.e., no further corrective action shall be required).

C. If a permit is issued to DOE for on-going hazardous waste management activities at the Site, U.S. EPA shall reference and incorporate any appropriate provisions, including appropriate schedules (and the provision for extension of such schedules), of this Agreement into such permit. The Parties intend that the judicial review of any permit conditions which reference this Agreement shall, to the extent authorized by law, only be reviewed under the provisions of CERCLA.

VII. FINDINGS AND CONCLUSIONS

The following facts form the basis of this Agreement.

A. The Weldon Spring Site, including the Weldon Spring Quarry (hereinafter Quarry), Raffinate Pits, and Chemical Plant, located in St. Charles County, Missouri, constitutes a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9). The location of the site and the specific areas of the site addressed above are shown on Attachment A, hereto.

B. Hazardous substances, pollutants, and contaminants, within the meaning of Sections 101(14) and 101(33), of CERCLA, 42 U.S.C. §§ 101(14) and 101(33), are present at and have been disposed of at the Site.

C. Ground water samples collected from monitoring wells adjacent to the Quarry have been found to contain nitroaromatic compounds and uranium above background concentrations.

D. Uranium is present in surface waters and soils adjacent to the Quarry above background levels.

E. Polychlorinated biphenyls (PCBs), thorium, uranium, radium, trinitrotoluene (TNT) process wastes and dinitrotoluene (DNT) process wastes are present in the Quarry.

F. Radionuclides have been detected in the ground water adjacent to the Raffinate Pits above background concentrations.

G. Nitroaromatic compounds and nitrates and sulfates above background concentrations have been detected in the ground water in the area of the Chemical Plant and Raffinate Pits.

H. The Raffinate Pits contain approximately 220,000 cubic yards of raffinate sludge and slag resulting primarily from the refining of uranium ore concentrates with thorium-230 being the predominate radionuclide in the pit wastes.

I. Many of the buildings and structures in the Chemical Plant area contain asbestos and are contaminated with uranium from past uranium processing operations.

J. Uranium is present at levels above background concentrations in surface water in the Chemical Plant and Raffinate Pits area and in some locations which receive surface water run-off from this area.

K. Nitroaromatic compounds, radionuclides, and other contaminants are present in soils in the area of the Chemical Plant and Raffinate Pits.

L. Radionuclides are present above background concentrations in the soil at the Site.

M. The principal nitroaromatic compounds associated with the Site are 2,4-DNT, 2,6-DNT and TNT.

N. Radionuclides in general and uranium specifically may cause various adverse environmental impacts and public health effects upon exposure or ingestion.

O. 2,4-DNT, asbestos, PCBs, and radionuclides are each listed as hazardous substances pursuant to Section 102 of CERCLA, 42. U.S.C. § 9602.

P. There have been releases of hazardous substances, pollutants, and contaminants into the environment at and from the site within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22) and continued such releases are threatened.

Q. On July 1, 1987, the Quarry was included on the National Priorities List (NPL), 40 C.F.R. Part 300, Appendix B, developed pursuant to Section 105(a)(8)(B), 42 U.S.C. § 9605(a)(8)(B). In July 1989, the NPL listing was expanded to include the Raffinate Pits and Chemical Plant area.

R. As of the effective date of this Agreement, three operable units have been designated by DOE for this Site, which are the Chemical Plant Site and Raffinate Pit Areas operable unit, the Quarry Bulk Waste operable unit, and the Quarry Residuals operable unit. Other operable

units may be designated by DOE during the course of the remaining response activities at the Site. As of the effective date of this Agreement, DOE has completed a number of activities related to response actions for these operable units, including preparation of the documents listed in Section XI.A. of this Agreement.

VIII. DETERMINATIONS

Based upon the foregoing findings and conclusions, the Parties have made the following determinations.

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

B. There has been a release and there is a threatened release of hazardous substances into the environment as defined at Section 101(22) of CERCLA, 42 U.S.C. § 9601(22) at the Site;

C. The Site is under the jurisdiction, custody or control of DOE.

D. The actions required to be taken pursuant to this Agreement are necessary to protect the public health and welfare and the environment and are consistent with the National Contingency Plan; and,

E. The schedule for completing the actions required by this Agreement complies with the requirements of Section 120(e) of CERCLA, 42 U.S.C. § 9620(e).

IX. AGREEMENT

It is hereby agreed by the Parties that DOE shall conduct each of the following activities in accordance with the schedule set forth in Part X hereof:

A. Remedial Investigation and Feasibility Study

1. DOE shall conduct the Remedial Investigation and Feasibility Study activities called for in Section XI of this Agreement in accordance with the guidelines set forth in the document entitled "Guidance For Conducting Remedial Investigations and Feasibility Studies Under CERCLA", Interim Final U.S. EPA Publication (October 1988), or more recent version thereof as EPA shall make available to DOE during the course of the RI/FS. Any disagreement as

to the appropriateness of using any such guidance which changes during the course of work in progress shall be resolved in accordance with the dispute resolution procedures of Part XXIII of this Agreement. The Remedial Investigation shall include, inter alia, the design, and implementation of a monitoring program to define the extent and nature of soil contamination and ground water contamination at the Site and the extent and nature of releases of hazardous substances from the Site.

2. DOE shall implement the previously approved RI and FS work plans in accordance with the schedule established in Part XI of this Agreement.

3. The RI shall be coordinated with the FS such that both activities are completed in a timely and cost effective manner.

B. Operable Unit Remedial Actions

1. In accordance with Part XI of this Agreement, DOE shall propose deadlines for the completion of Operable Unit Work Plans for any Operable Unit currently anticipated. These work plans shall be reviewed in accordance with Part X of this Agreement.

2. All Operable Units undertaken pursuant to this Agreement shall comply with all NCP requirements and EPA guidelines applicable to such actions.

3. All requirements for remedial action selection and implementation pursuant to this Agreement shall apply to the selection and implementation of Operable Unit remedial actions, including the preparation of an Operable Unit Feasibility Study and Record of Decision for all Operable Unit remedial actions.

C. Remedial Action Selection

1. At such time as a Feasibility Study report, including an Operable Unit Feasibility Study report, becomes final in accordance with Part X of this Agreement, DOE shall publish a proposed plan for public review and comment in accordance with Part XXXI.

2. Within one hundred fifty (150) days of completion of the public comment period on the proposed plan, DOE shall submit its proposed Record of Decision (ROD), including its response to all significant comments received from the public during the public comment

period (Responsiveness Summary), to EPA. The proposed ROD and Responsiveness Summary shall be written in accordance with the guidance document entitled "The Proposed Plan and the Record of Decision," OSWER Directive No. 9355.3-02 (March 1988), or more recent version thereof as EPA shall make available to DOE. Any disagreement as to the appropriateness of using any such guidance which changes during the course of work in progress shall be resolved in accordance with the dispute resolution procedures of Part XXIII of this Agreement. The Administrator of EPA shall, in consultation with DOE pursuant to Part X, make the final selection of the remedial action for the Site. The remedial action selected by the Administrator shall be final and is not subject to dispute resolution under Part XXIII.

3. Within fifteen (15) months of receipt of written notice of final remedy selection by EPA, DOE shall commence substantial continuous physical onsite remedial action at the Site.

4. DOE shall implement the remedial action in accordance with the provisions, time schedule, standards and specifications set forth in this Agreement and the approved Remedial Action Work Plan.

5. DOE shall provide for public participation in accordance with Part XXXI prior to commencement of any remedial action.

D. Removal Actions

1. Any removal actions undertaken by DOE at the site shall be conducted in a manner consistent with CERCLA, the NCP, and EPA removal guidance; including provisions for timely notice and consultation with EPA.

2. For all removal actions except emergency removals, prior to undertaking the action, DOE shall advise EPA, in writing, as to the basis for the action, the nature of the action, the expected time period during which the action will be implemented, and the impact, if any on any remedial action contemplated at the Site. For emergency removals, DOE shall provide as much advance notice as the circumstances leading to the removal action allow.

3. Prior to the initiation of any removal action, which is not an emergency removal, DOE shall provide EPA adequate opportunity for timely review and comment on any such proposed removal action. Following consideration of EPA comments, DOE shall provide to EPA a written response to those comments, as soon as practicable. DOE determination as to the necessity for taking emergency removal action shall not be subject to Parts XXIII and XXIV of this agreement.

4. Upon completion of a removal action, DOE shall provide to EPA, in writing, notification of the completion of the removal action and a description of the action taken.

5. Designation of Operable Units for the purpose of selecting and implementing an Operable Unit remedial action shall not limit DOE's authority to conduct removal actions.

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

X. CONSULTATION WITH U.S. EPA

Review and Comment Process for Draft and Final Documents

A. Applicability

1. The provisions of this Part establish the procedures that shall be used by DOE and U.S. EPA to provide the Parties with appropriate notice, review, comment, and response to comments regarding RI/FS and RD/RA documents, specified herein as either primary or secondary documents. In accordance with Section 120 of CERCLA and 10 U.S.C. § 2705, DOE will normally be responsible for issuing primary and secondary documents to U.S. EPA. As of the effective date of this Agreement, all draft and final reports for any deliverable document identified herein shall be prepared, distributed and subject to dispute in accordance with Paragraphs B through J, below.

2. The designation of a document as "draft" or "final" is solely for purposes of consultation with U.S. EPA in accordance with this Part. 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.

B. General Process for RI/FS and RD/RA Documents

1. Primary documents include those documents that are major, discrete portions of RI/FS or RD/RA activities. Primary documents are initially issued by DOE in draft subject to review and comment by U.S. EPA. Following receipt of comments on a particular draft primary document, DOE 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 30 days after the period established for review of a draft final document if dispute resolution is not invoked or as modified by decision of the dispute resolution process.

2. Secondary documents include those reports that are discrete portions of the primary documents and are typically input or feeder documents. Secondary documents are issued by DOE in draft subject to review and comment by U.S. EPA. Although DOE 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.

C. Primary Documents

1. DOE shall complete and transmit, for each operable unit, drafts of the following primary documents to U.S. EPA for review and comment in accordance with the provisions of this Part:

a. RI/FS Work Plan, including Sampling and Analysis Plan, Data Quality Objectives, Site Management Plan, QAPP and a schedule for submittal of all primary and secondary documents associated with that operable unit;

b. Baseline Risk Assessment;

c. RI Report;

d. FS Report;

e. Proposed Plan;

f. Record of Decision;

g. Remedial Design Work Plan, including:

i. a detailed description of the design activities associated with the remedy selected in the record of decision, tied to design criteria;

ii. a design schedule;

iii. post-ROD primary documents;

iv. deadlines for completion of those primary documents;

v. post-ROD secondary documents; and

vi. target dates for completion of those secondary documents;

h. Final Design Submittal; and

i. Remedial Action Work Plan, including detailed description of activities, construction schedule, and construction team.

j. Community Relations Plan.

k. Construction Completion Report; and

l. Operation and Maintenance Plan.

2. Only the draft final versions of the primary documents identified above shall be subject to dispute resolution. DOE shall complete and transmit draft primary documents in accordance with the timetable and deadlines established in Part XI of this Agreement.

D. Secondary Documents

1. DOE shall complete and transmit drafts of the following secondary documents to U.S. EPA for review and comment in accordance with the provisions of this Part:

a. The following pre-record of decision documents shall be submitted to EPA for each operable unit, other than the Quarry Bulk Waste operable unit, in accordance with the target dates established:

i. Preliminary Analysis of Alternatives;

ii. Post-screening Investigation Work Plan, including Sampling and Analysis Plan, Data Quality Objectives, and QAPP, to be developed in the event data gaps are discovered during the

feasibility study process which preclude effective completion of the feasibility study;

iii. Post-screening Investigation Report, to be prepared if a post-screening investigation is conducted.

b. DOE shall identify in the remedial design work plan for each operable unit those post-record of decision documents set forth below which DOE believes is appropriate to that operable unit and shall propose a target date for each:

i. Pre-design Work Plan, including Sampling and Analysis Plan, Data Quality Objectives, and QAPP;

ii. Pre-design Investigation Report;

iii. Treatability Studies;

iv. Remedial Design QAPP;

v. Contingency Plan;

vi. Preliminary Design Submittal(s);

vii. Construction Quality Control Plan;

viii. Construction Progress Reports;

ix. Pre-final Inspection Report.

2. Although U.S. EPA may comment on the drafts of the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by Paragraph B hereof. During the course of implementing the actions required pursuant to this Agreement, the Parties may identify additional secondary documents. Target dates will be established for completion of draft reports for these additional secondary documents.

E. Meetings of the Project Managers on Development of Reports

The Project Managers shall meet approximately every 60 days, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the Site on the primary and secondary documents. Prior to preparing any draft document specified in

Paragraphs C and D above, the Project Managers shall meet to discuss the document 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 document.

F. Identification and Determination of Potential ARARs

1. For those primary or secondary documents that consist of or include ARAR determinations, prior to the issuance of a draft document, the Project Managers shall meet to identify and propose, to the best of their ability, all potential ARARs pertinent to the document being addressed. Draft ARAR determinations shall be prepared by DOE in accordance with Section 121(d)(2) of CERCLA, the NCP and pertinent guidance issued by U.S. EPA and the State of Missouri, which is not inconsistent with CERCLA and the NCP.

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, 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 reexamined throughout the RI/FS process until a ROD is issued.

G. Review and Comment on Draft Documents

1. DOE shall complete and transmit each draft primary document to U.S. EPA on or before the corresponding deadline established for the issuance of the document. DOE shall complete and transmit the draft secondary document in accordance with the target dates established for the issuance of such reports established pursuant to Part XI of this Agreement.

2. Unless the Parties mutually agree to another time period, all draft documents shall be subject to a 60-day period for review and comment. Review of any document by the U.S. EPA may concern all aspects of the document (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP and any pertinent guidance or policy promulgated by the U.S. EPA. Comments by the U.S. EPA shall be provided with adequate specificity so that DOE may respond to the

comment and, if appropriate, make changes to the draft document. In cases involving complex or unusually lengthy documents, U.S. EPA may extend the 60-day comment period for an additional 20 days by written notice to DOE prior to the end of the 60-day period. On or before the close of the comment period, U.S. EPA shall transmit their written comments to DOE.

3. Representatives of DOE shall make themselves readily available to U.S. EPA, through the Project Managers, during the comment period for purposes of informally responding to questions and comments on draft documents. Oral comments made during such discussions need not be the subject of a written response by DOE on the close of the comment period.

4. In commenting on a draft document which contains a proposed ARAR determination, U.S. EPA shall include a reasoned statement of whether they object to any portion of the proposed ARAR determination. To the extent that U.S. EPA 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.

5. Following the close of the comment period for a draft document, DOE shall give full consideration to all written comments on the draft document submitted during the comment period. Within 60 days of the close of the comment period on a draft secondary document, DOE shall transmit to U.S. EPA its written response to comments received within the comment period. Within 60 days of the close of the comment period on a draft primary document, DOE shall transmit to U.S. EPA a draft final primary document, which shall include DOE's response to all written comments received within the comment period. While the resulting draft final document shall be the responsibility of DOE, it shall be the product of consensus to the maximum extent possible.

6. DOE may extend the 60-day period for either responding to comments on a draft document or for issuing the draft final primary document for an additional 20 days by providing notice to U.S. EPA. In appropriate circumstances, this time period may be further extended in accordance with Part XXI hereof.

7. DOE intends to transmit to the Missouri Department of Natural Resources (MDNR) a copy of each primary and secondary document which is transmitted to the U.S. EPA for review and comment at the time it is transmitted to U.S. EPA. DOE shall request that MDNR advise it in writing within 30 days of receipt whether it intends to comment on the document and whether MDNR anticipates that additional time beyond the 60-day review period provided for EPA review and comment will be necessary for it to complete its review. If MDNR advises DOE that additional time beyond EPA's 60-day review time will be necessary for its review and DOE concurs, DOE may propose an extension of the schedule in accordance with Section XXI (Extensions) of this Agreement.

H. Availability of Dispute Resolution for Draft Final Primary Documents

1. Dispute resolution shall be available to the Parties for draft final primary documents as set forth in Part XXIII.

2. When dispute resolution is invoked on a draft primary document, work may be stopped in accordance with the procedures set forth in Part XXIII regarding dispute resolution.

I. Finalization of Documents

The draft final primary document shall serve as the final primary document if no party invokes dispute resolution regarding the document or, if invoked, at completion of the dispute resolution process should DOE's position be sustained. If DOE's determination is not sustained in the dispute resolution process, DOE shall prepare, within not more than 35 days, a revision of the draft final document which conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Part XXI hereof.

J. Subsequent Modifications of Final Documents

Following finalization of any primary document pursuant to Paragraph I, above, U.S. EPA and DOE may seek to modify the document, including seeking additional field work, pilot

studies, computer modeling or other supporting technical work, only as provided in Paragraphs 1 and 2 below.

1. U.S. EPA or DOE may seek to modify a document after finalization if it determines, based on new information (i.e., information that became available, or conditions that became known, after the document was finalized) that the requested modification is necessary. U.S. EPA or DOE may seek such a modification by submitting a concise written request to the Project Manager of the other Party. The request shall specify the nature of the requested modification and how the request is based on new information.

2. In the event that a consensus is not reached by the Project Managers on the need for a modification, either U.S. EPA or DOE may invoke dispute resolution to determine if such modification shall be conducted. Modification of a report shall be required only upon a showing that:

a. the requested modification is based on significant new information, and

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

3. Nothing in this Subpart shall alter U.S. EPA's ability to request the performance of additional work pursuant to Part XII of this agreement (Additional Work) which does not constitute modification of a final document.

XI. DEADLINES

A. The following primary documents have already been submitted and approved by EPA:

1. Chemical Plant Site and Raffinate Pit remedial investigation and feasibility study:

a. Remedial Investigation/Feasibility Study Work Plan, including Sampling and Analysis Plan, Site Management Plan and Quality Assurance Project Plan, and

b. Community Relations Plan.

2. Quarry Bulk Waste Operable Unit:

a. Baseline Risk Assessment;

b. Operable Unit Remedial Investigation Report;

c. Operable Unit Feasibility Study Report;

d. Operable Unit Proposed Plan; and

e. Quarry Bulk Waste Operable Unit Record of Decision.

B. The following deadlines have been established for completion of work at the Site for the Chemical Plant and Raffinate Pit:

1. Draft Record of Decision submitted to EPA for review-- ~~May 30~~ SEPT. 30 jl 12/4/91, 1992; and

2. Final Record of Decision-- ~~March 5~~ MAY 30 jl 12/4/91, 1993.

C. Within thirty (30) days of issuance of the Record of Decision, DOE shall propose deadlines for submittal of the Remedial Design Work Plan to EPA.

These deadlines shall be proposed, finalized and published utilizing the same procedures set forth in Paragraph B, above.

D. The deadlines set forth in this Part, or to be established as set forth in this Part, may be extended pursuant to Part XXI of this Agreement. 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.

XII. ADDITIONAL WORK OR MODIFICATION TO WORK

A. In the event that the U.S. EPA determines that additional work or modification to work, including remedial investigatory work, is necessary to accomplish the objectives of this Agreement, notification shall be provided to DOE. DOE agrees, subject to the dispute resolution procedures set forth in Part XXIII, hereof, to implement all such work.

B. Any additional work or modification to work approved pursuant to Subpart A shall be completed in accordance with the standards, specifications, and schedule determined or approved

by U.S. EPA. If any additional work or modification to work will adversely affect work scheduled or will require significant revisions to an approved Work Plan, the U.S. EPA shall be notified immediately of the situation followed by a written explanation within five (5) business days of the initial notification.

XIII. CREATION OF DANGER

In the event the U.S. EPA determines that activities conducted pursuant to this Agreement, or any other circumstances or activities, may present an imminent and substantial endangerment to the public health or welfare or the environment, the U.S. EPA may order DOE to stop further implementation of work under this Agreement for such period of time as necessary to abate the danger. Within one week of any order to stop work, EPA will provide, in writing, a statement of the basis for the stop work order. Any disagreement as to the appropriateness of an order to stop work under this provision shall be subject to the dispute resolution provisions of Part XXIII of this Agreement. However, even if DOE invokes dispute resolution, DOE shall immediately comply with the stop work order and continue in compliance with the order until either the order is lifted or the matter is resolved by dispute resolution. U.S. EPA may direct DOE to stop further implementation of this Agreement for such period of time as needed to abate the danger.

XIV. REPORTING

A. Throughout the course of these activities, DOE shall submit to U.S. EPA quarterly progress reports, which shall include, at a minimum, the following:

1. A description of the actions completed during the quarter towards compliance with this Agreement;

2. A description of all actions scheduled for completion during the quarter which were not completed along with a statement indicating why such actions were not completed and an anticipated completion date;

3. Copies of all data and sampling and test results which have passed the quality assurance and quality control standards, agreed to by the parties to this Agreement, received by DOE during the quarter; and,

4. A description of the actions which are scheduled for the following quarter.

B. These quarterly reports shall be due on or before the thirtieth (30) day of the month following the quarter for which the report is submitted. During periods of extended field activities (e.g., two (2) quarters or more), DOE shall provide monthly progress reports which will include the data identified above. These monthly reports shall be submitted by the tenth (10) day of each month following initial mobilization and revert to quarterly reporting the month following demobilization.

C. EPA reserve the right to make reasonable requests for raw data and all other laboratory deliverables at any time during the project.

XV. MONITORING AND QUALITY ASSURANCE

A. DOE shall use Quality Assurance, Quality Control (QA/QC) and chain-of-custody procedures during all field investigation, monitoring, sample collection, and laboratory analysis activities in accordance with U.S. EPA guidance.

B. DOE shall use the quality assurance, quality control, and chain of custody procedures specified in the Quality Assurance Project Plan as approved by U.S. EPA for all sample collection and analysis performed pursuant to this Agreement.

C. All laboratories analyzing samples pursuant to this Agreement shall perform, at DOE's expense, analyses of samples provided by U.S. EPA to demonstrate the quality of each such laboratory's analytical data.

D. DOE shall ensure that U.S. EPA representatives are allowed access, for auditing purposes, to all laboratories and personnel utilized by DOE for sample collection and analysis and other field work.

XVI. SAMPLING AND DATA/DOCUMENT AVAILABILITY

A. DOE shall make available to U.S. EPA all quality-assured results of sampling, tests and other data collection, including quality assurance documentation obtained by it, or on its behalf, with respect to the implementation of this Agreement as part of the progress reports submitted pursuant Part XIV, hereof.

B. At the request of U.S. EPA, DOE shall allow the Party making the request to collect split or duplicate samples of all samples collected pursuant to this Agreement. To the maximum extent practicable, DOE shall notify U.S. EPA at least twenty (20) business days prior to any sample collection. If it is not possible to provide twenty (20) business days advance notice, DOE shall provide as much notice as possible that samples will be collected. U.S. EPA shall make all quality-assured results available to DOE within thirty (30) days of receipt of such results.

XVII. CONFIDENTIAL BUSINESS INFORMATION

A. DOE may assert a business confidentiality claim covering all or part of the information submitted pursuant to this Agreement. Analytical data shall not be claimed as confidential by DOE. The information covered by such a claim will be disclosed by U.S. EPA only to the extent and by the procedures specified in 40 C.F.R. Part 2, Subpart B. Such a claim may be made by placing on or attaching to the information, at the time it is submitted to U.S. EPA, a cover sheet, stamped or typed legend or other suitable form of notice employing language such as "trade secret," "proprietary," or "company confidential." Allegedly confidential portions of otherwise nonconfidential documents should be clearly identified and may be submitted separately to facilitate identification and handling by U.S. EPA. If confidential treatment is sought only until a certain date or occurrence of a certain event, the notice should so stated. If no such claim accompanies the information when it is received by U.S. EPA, it may be made available to the public without further notice to DOE. Information determined to be confidential by U.S. EPA pursuant to 40 C.F.R. Part 2 shall be afforded the protection specified therein.

B. Information, records, or other documents produced by DOE as classified within the meaning of and in conformance with the Atomic Energy Act of 1954, as amended, shall not be

available to the public. In addition, these data, documents, records, or files which could otherwise be withheld pursuant to the Freedom of Information Act (FOIA), 5 U.S.C., Subsection 552(a), unless expressly authorized for release by the originating party, shall be handled in accordance with those regulations. Other affected parties (e.g., remedial action contractors, PRPs, etc.) may assert a confidentiality claim covering all or part of any information requested under this Agreement. Such claims will be afforded the same protection pursuant to 40 C.F.R. Part 2 as provided by DOE.

XVIII. PROJECT MANAGERS

A. The following individuals are designated as the Project Manager for the respective Party:

1. For U.S. EPA:

Daniel R. Wall
Waste Management Division
U.S. Environmental Protection Agency
Region VII
726 Minnesota Avenue
Kansas City, Kansas 66101

Telephone number (913) 551-7710

2. For DOE:

Jerry S. Van Fossen
Deputy Project Manager
U.S. Department of Energy
Weldon Spring Remedial Action Project Office
7295 Highway 94 South
St. Charles, Missouri 63303

Telephone number (314) 441-8978

B. All verbal notices and written documents, including, but not limited to written notices, reports, plans, and schedules, requested or required to be submitted pursuant to this Agreement shall be directed to the designated Project Managers. To the maximum extent possible, all communications between the Parties concerning the terms and conditions of this Agreement shall be directed through the Project Managers.

C. The U.S. EPA Project Manager and designee shall have the authority to:

1. take samples, request split samples of DOE samples and ensure that work is performed properly and pursuant to U.S. EPA protocols as well as pursuant to the Attachments and plans incorporated into this Agreement;

2. observe all activities performed pursuant to this agreement, take photographs and make such other reports on the progress of the work as the Project Manager deems appropriate;

3. review records, files and documents relevant to this agreement; and,

4. recommend and request minor field modifications to the work to be performed pursuant to this Agreement, or in techniques, procedures or design utilized in carrying out this Agreement, which are necessary to the completion of the project.

D. The Project Manager for DOE or his authorized designated representative shall be physically present on the site or reasonably available to supervise work performed at the site during implementation of the work performed pursuant to this Agreement and shall make himself available to U.S. EPA for the pendency of this Agreement. The U.S. EPA Project Manager need not be present at the Site and his absence from the Site shall not be cause for work stoppage.

E. Either Party may change its designated contact by providing written notice to the other Party of the change.

XIX. ACCESS

A. DOE shall provide access to U.S. EPA to all property upon which any activities are being conducted or have been conducted pursuant to this Agreement such that U.S. EPA and its Authorized Representatives are able to enter and move freely about such property at all reasonable times for the purposes related to activities conducted pursuant to this Agreement, including, inter alia, the following:

1. Inspecting and copying records, files, photographs, operating logs, contracts and other documents relating to this response action;

2. Reviewing the status of activities being conducted pursuant to this Agreement;

3. Collecting such samples or conducting such tests as U.S. EPA determines are necessary or desirable to monitor compliance with the terms of this Agreement or to protect the public health, welfare, or the environment;

4. Using sound, optical or other types of recording equipment to record activities which have been or are being conducted pursuant to this Agreement; and,

5. Verifying data and other information submitted by DOE pursuant to this Agreement.

B. DOE shall advise EPA as to any areas on the Site which it has designated as restricted access, based upon worker health and safety considerations. For those portions of the Site which have been so designated as of the effective date of this Agreement, DOE shall notify EPA, in writing, within thirty (30) days of the effective date of this Agreement. For any portions of the Site which are so designated after the effective date of the Agreement, DOE shall notify EPA verbally at the time of an inspection as to any designations since the prior inspection and, in writing, within ten days of the designation.

C. DOE may provide an escort to accompany EPA during any inspections conducted by EPA pursuant to this Agreement. DOE agrees to provide and EPA agrees to have its inspectors attend a safety briefing for EPA inspectors prior to the EPA inspectors' conducting an inspection within any portions of the Site designated as limited access pursuant to Paragraph XIX.B., above, without a DOE escort. This safety briefing shall only be required once for each inspector and shall be of approximately 2 hours duration.

D. Within thirty (30) days of the effective date of this Agreement DOE shall provide U.S. EPA a listing of all properties, including a description of the property and the name and address of the owner and any lessees of the property, to which access is required to perform any activities under this agreement but which is not owned or leased by DOE. DOE shall use all available authorities, including authorities under Section 104(e) of CERCLA, to obtain access necessary to conduct activities under this Agreement. Access shall be obtained to these

properties in time so as not to have lack of access delay completion of any activity performed under this Agreement.

E. With respect to property not owned or leased by DOE, upon which monitoring wells, pumping wells, treatment facilities or other response actions are to be located, the access agreements shall also provide that no conveyance of title, easement, or other interest in the property shall be consummated without provisions for the continued operation of such wells, treatment facilities, or other response actions on the property. The access agreements shall also provide that the owners of any site or of any property where monitoring wells, pumping wells, treatment facilities or other response actions are located shall notify DOE and the U.S. EPA by certified mail, at least thirty (30) days prior to any conveyance, of the property owner's intent to convey any interest in the property and of the provisions made for the continued operation of the monitoring wells, treatment facilities, or other response actions installed pursuant to this Agreement.

F. In the event DOE is unable to obtain voluntary access in a timely manner, it shall notify U.S. EPA as to the steps being taken to secure such access.

XX. RECORD PRESERVATION

DOE shall, without regard to any document retention policy to the contrary, preserve during the duration of this Agreement and for a minimum of ten (10) years after its termination, all records and documents in its possession, custody or control which relate in any way to hazardous substances generated, stored, treated or disposed of on the site, the release or threatened release of hazardous substances from the site or work performed pursuant to this Agreement. After this ten-year period has lapsed, DOE shall notify U.S. EPA at least sixty (60) calendar days prior to the destruction of any such document. DOE shall, as directed by U.S. EPA, either provide to U.S. EPA the documents or copies of such documents or retain them for an additional time period specified by U.S. EPA.

XXI. EXTENSIONS

A. 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 either Party shall be submitted in writing and shall specify:

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

2. The length of the extension sought;

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

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

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

1. An event of Force Majeure;

2. A delay caused by another party's failure to meet any requirement of this agreement;

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

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,

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

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

D. Within seven days of receipt of a request for an extension of a timetable and deadline or a schedule, U.S. EPA shall advise DOE in writing of its respective position on the request. Any failure by U.S. EPA to respond within the seven-day period shall be deemed to constitute concurrence in the request for extension. If U.S. EPA does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

E. If there is consensus among the Parties that the requested extension is warranted, the affected timetable and deadline or schedule shall be extended 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.

F. Within seven days of receipt of a statement of nonconcurrence with the requested extension, DOE may invoke dispute resolution.

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

XXII. FORCE MAJEURE

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

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

XXIII. RESOLUTION OF DISPUTES

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

B. Within thirty (30) days after: (1) the period established for review of a draft final primary document pursuant to Part X of this Agreement, 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.

C. 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.

D. If an agreement cannot be reached on any issue within the informal dispute resolution period, the Disputing Party shall forward the written statement of dispute to the Dispute Resolution Committee (DRC), thereby elevating the dispute to the DRC for resolution.

E. The DRC will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one

individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (SES or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The U.S. EPA representative on the DRC is the Waste Management Division Director of U.S. EPA's Region VII. DOE's designated member is the DOE Weldon Spring Site Remedial Action Project (WSSRAP) Project Manager. 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 Part XVII (Notification).

F. Following elevation of a dispute to the DRC, the DRC shall have twenty-one (21) days to unanimously resolve the dispute and issue a written decision. If the DRC is unable to unanimously resolve the dispute within this twenty-one (21) day period the written statement of dispute shall be forwarded to the Senior Executive Committee (SEC) for resolution.

G. The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The U.S. EPA representative on the SEC is the Regional Administrator of U.S. EPA's Region VII. DOE's representative on the SEC is the DOE Oak Ridge Operations Manager. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision. If unanimous resolution of the dispute is not reached within twenty-one (21) days, U.S. EPA's Regional Administrator shall issue a written position on the dispute. DOE may, within twenty-one (21) days of the Regional Administrator's issuance of U.S. EPA's position, issue a written notice elevating the dispute to the Administrator of U.S. EPA for resolution in accordance with all applicable laws and procedures. In the event that DOE elects not to elevate the dispute to the Administrator within the designated twenty-one (21) day escalation period, DOE shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.

H. Upon escalation of a dispute to the Administrator of U.S. EPA pursuant to Subpart F, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the U.S. EPA Administrator shall meet and confer

with the Secretary of DOE to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide DOE with a written final decision setting forth resolution of the dispute.

I. The pendency of any dispute under this Part shall not affect DOE'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.

J. When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Superfund Branch Chief for U.S. EPA's Region VII requests, in writing that work related to the dispute be stopped because, in the U.S. EPA's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. To the extent possible, U.S. EPA shall give DOE prior notification that a work stoppage request is forthcoming. After stoppage of work, if DOE believes that the work stoppage is inappropriate or may have potential significant adverse impacts, DOE may meet with the Branch Chief to discuss the work stoppage. Following this meeting, and further consideration of the issues, the Branch Chief will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the Branch Chief 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 DOE.

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

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

XXIV. STIPULATED PENALTIES

A. In the event that DOE fails to submit a primary document to U.S. EPA pursuant to the appropriate timetable or deadline in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement which relates to an interim or final remedial action, U.S. EPA may assess a stipulated penalty against DOE. A stipulated penalty may be assessed in an amount not to exceed $5,000 for the first week (or part thereof), and $10,000 for each additional week (or part thereof) for which a failure set forth in this Paragraph occurs.

B. Upon determining that DOE has failed in a manner set forth in Paragraph A, U.S. EPA shall so notify DOE in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, DOE 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. DOE shall not be liable for the stipulated penalty assessed by U.S. EPA if the failure is determined, through the dispute resolution process, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.

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

1. The facility responsible for the failure;

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

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;

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

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

D. Stipulated penalties assessed pursuant to this Part shall be payable to the Hazardous Substances Response Trust Fund from funds authorized and appropriated for that specific purpose.

E. In no event shall this Part give rise to a stipulated penalty in excess of the amount set forth in Section 109 of CERCLA.

F. This Part shall not affect DOE's ability to obtain an extension of a timetable, deadline or schedule pursuant to Part XXI of this Agreement.

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

XXV. OTHER APPLICABLE LAWS

A. Except as otherwise provided in Part XXVIII, below, with regard to permits, all actions required to be taken pursuant to this Agreement shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations, including, but not limited to, any permitting or licensing requirements.

B. All reports, plans, specifications, and schedules submitted pursuant to this Agreement are, upon approval by EPA, incorporated into this Agreement. Any noncompliance with the such approved reports, plans, specifications, or schedules shall be considered a failure to achieve compliance with the requirements of this Agreement.

XXVI. RESERVATION OF RIGHTS

A. In consideration for DOE's compliance with this Agreement, and based on the information known to the Parties on the effective date of this Agreement, EPA and DOE agree that, except as provided below, compliance with this Agreement shall stand in lieu of any administrative, legal and equitable remedies against DOE available to EPA regarding currently

known releases or threatened releases of hazardous substances, including hazardous wastes, pollutants or contaminants, at the Site which are within the scope of this Agreement, which are the subject of the RI/FS(s) to be conducted pursuant to this Agreement and which will be adequately addressed by the remedial action(s) provided for under this Agreement. However, nothing in this Agreement shall preclude EPA from exercising any administrative, legal, or equitable remedies available to it in the event that:

1. Either conditions previously unknown or undetected by EPA arise or are discovered at the Site or EPA receives information not previously available concerning the premises it employed in reaching this Agreement; and

2. The implementation of the requirements of this Agreement are no longer protective of public health and the environment.

B. Notwithstanding compliance with the terms of this Agreement, DOE is not released from liability, if any, for any actions beyond the terms of this Agreement with respect to the Site. With respect to actions beyond the terms of this Agreement, EPA reserves the right to take any enforcement action pursuant to RCRA, CERCLA and/or any other available legal authority for relief including, but not limited to, injunctive relief, monetary penalties, and punitive damages for any violation of law.

C. EPA reserves such rights as it may have to undertake response action(s) to address the release or threat of release of hazardous substances from the Site at any time and, to the extent permitted by law, to seek reimbursement from DOE thereafter for such costs incurred.

D. In the event of any action by EPA under Paragraph A, of this section, DOE reserves all rights and defenses under law.

XXVII. OTHER CLAIMS

A. Nothing in this Agreement shall constitute or be construed as a bar or release from any claim, cause of action or demand in law or equity by or against any person, firm, partnership or corporation not a signatory to this Agreement for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling,

transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

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

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

D. Nothing in this Agreement shall be considered an admission by any Party with respect to any claim(s) by a person not a party to this Agreement, other than in a proceeding specified in Part XXXIII (Enforceability) of this Agreement, or with respect to any unrelated claim(s) by a Party.

XXVIII. PERMITS

A. As provided in Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), no Federal, State, or local permit shall be required for those portions of the response actions undertaken pursuant to this Agreement which are conducted entirely onsite. Such onsite response actions must satisfy all applicable or relevant and appropriate Federal and state standards, requirements, criteria, or limitations which would have been included in any such permit. For each response action proposed by DOE which in the absence of 121(e)(1) of CERCLA would require a permit, DOE shall include the following information in the Feasibility Study report:

1. The identity of each permit which would otherwise be required;

2. The standards, requirements, criteria, or limitations which would have had to have been met to obtain each such permit; and,

3. A description of how the proposed response action will meet the standards, requirements, criteria or limitations which would be included in each such permit.

B. DOE shall make timely and complete application or request for all permits, licenses or other authorizations necessary to implement those portions of any response actions required by this Agreement which are not conducted entirely onsite. Each work plan shall identify each such permit, license or authorization addressed therein by providing the following information:

1. The agency or instrumentality from wnom the permit, license or authorization must be sought and the agency or instrumentality which would grant or issue the permit, license or authorization if not the same as the one from which it must be sought;

2. The activity which would be the subject of the permit, license or authorization; and,

3. A description of the procedure to be followed in securing such permit, license or authorization, including the date by which an application must be filed and the anticipated duration of the permit, license or authorization.

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

D. If DOE submits proposed modifications prior to a final determination of any appeal taken on a permit needed to implement this Agreement, EPA may elect to delay review of the proposed modifications until after such final determination is entered.

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

F. Except as otherwise provided in this Agreement DOE shall comply with applicable State and Federal hazardous waste management requirements at the site.

XXIX. FIVE YEAR REVIEW

If a remedy is selected for the Site which results in any hazardous substances, pollutants or contaminants remaining at the Site, EPA shall, consistent with Section 121(c) of CERCLA, review the remedial action no less often than each five years after the initiation of the remedial action to assure that human health and the environment are being protected by the remedial action being implemented. If upon such review it is the judgment of EPA that additional action or modification of the remedial action is appropriate in accordance with Section 104 or 106 of CERCLA, EPA shall seek modification of the work pursuant to Paragraph X.J. or Part XII, or both, as appropriate.

XXX. RECOVERY OF U.S. EPA EXPENSES

U.S. EPA and DOE agree to amend this Agreement at a later date in accordance with any subsequent resolution of the currently contested issue of cost reimbursement.

XXXI. PUBLIC PARTICIPATION

A. DOE has developed a Community Relations Plan (CRP) which responds to the need for an interactive relationship with all interested community elements, regarding activities and elements of work undertaken by DOE. DOE agrees to review and, as necessary, revise periodically the CRP consistent with Section 117 of CERCLA, the NCP, U.S. EPA guidelines set forth in U.S. EPA's Community Relations Handbook, and any modifications thereto.

B. In accordance with Section 117 of CERCLA, 42 U.S.C. § 9617, before adoption of any plan for remedial action pursuant to this Agreement, DOE shall:

1. Publish in a local newspaper or newspapers of general circulation a notice and brief analysis of the proposed plan, including an explanation of the proposed plan and alternatives considered;

2. Make such plan available to the public; and,

3. Provide a reasonable opportunity for submission of written and oral comments and an opportunity for a public meeting at or near the facility regarding the proposed plan and any proposed findings under Section 121(d)(4) of CERCLA, 42 U.S.C. § 9621(d)(4).

C. Before commencement of any remedial action, DOE shall publish a notice of the final remedial action plan adopted and shall make available to the public the plan, a discussion of any significant changes and the reasons for the changes in the proposed plan, and a response to each significant comment, criticism, and new data submitted during the public comment on the proposed plan.

D. If the remedial action taken differs in any significant respects from the final plan which was adopted, DOE shall publish an explanation of the significant differences and the reasons such changes were made.

E. To the maximum extent practicable, prior to issuing a formal press release to the media regarding any of the work required by this Agreement, a Party shall advise the other Party of the press release and its content.

F. DOE agrees it shall establish and maintain an administrative record at or near the Site in accordance with Section 113(k) of CERCLA. The administrative record shall be established and maintained in accordance with current and future U.S. EPA policy and guidelines. A copy of each document placed in the administrative record will be provided to the U.S. EPA. The administrative record developed by DOE shall be routinely updated and copies of documents included within the Administrative Record shall be supplied to U.S. EPA on at least a quarterly basis. DOE shall maintain a current index of the documents in the administrative record and shall provide U.S. EPA copies of the current index along with each update of the administrative record.

G. DOE shall follow the public participation requirements of CERCLA Section 113(k) and comply with any guidance and/or regulations promulgated by U.S. EPA with respect to such Section.

XXXII. PUBLIC COMMENT

A. Within fifteen (15) days of the date of the acceptance of this Agreement, U.S. EPA shall announce the availability of this Agreement to the public for review and comment. U.S. EPA shall accept comments from the public for a period of thirty (30) days after such announcement. At the end of the comment period, U.S. EPA shall review all such comments and shall either:

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

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

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

C. In the event that modification of the Agreement is determined by U.S. EPA to be necessary pursuant to Paragraph A.2., above, within twenty (20) days of receipt of the revised Agreement, DOE reserves the right to withdraw from the Agreement. If DOE does not provide U.S. EPA with written notice of withdrawal from the Agreement within such twenty (20) day period, the Agreement, as modified, shall automatically become effective on the twenty-first (21) day, and U.S. EPA shall issue a notice to the Parties to that effect.

XXXIII. ENFORCEABILITY

A. The Parties agree that:

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 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;

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

3. all terms and conditions of this Agreement which relate to interim or final remedial actions, including corresponding timetables, deadlines or schedules, and all work associated with the interim or final remedial actions, shall be enforceable by any person pursuant to Section 310(c) 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,

4. Any final resolution of a dispute pursuant to Part XXIII of this Agreement which establishes a term, condition, timetable, deadline or schedule shall be enforceable by any person pursuant to Section 310(c) 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.

B. 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.

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

XXXIV. FUNDING

A. It is the expectation of the Parties to this Agreement that all obligations of DOE arising under this Agreement will be fully funded through Congressional appropriations. Consistent with Congressional limitations on future funding, DOE shall take all necessary steps and use its best efforts to obtain timely funding to meet its obligations under this Agreement, including but not limited to the submission of timely budget requests.

B. The purpose of this paragraph is to assure that the Parties adequately communicate and exchange information about funding concerns that affect the implementation of this Agreement.

1. U.S. EPA and DOE project managers shall meet periodically throughout each fiscal year to discuss projects being funded in the current fiscal year, the status of the current year projects, and events causing or expected to cause significant changes to any activity necessary to meet target dates, deadlines, and any other requirements under this Agreement. U.S. DOE shall provide information for these meetings that shows, to extent possible, projected and actual costs of accomplishing such activities.

2. U.S. EPA may comment annually on DOE cost estimates for the corresponding activities established under this Agreement for each budget year. The DOE will consider any comments received and include those comments along with these cost estimates in submittal sent from the DOE Weldon Spring Site to DOE-HQ for the relevant budget year.

3. In or about June of each year, DOE shall provide U.S. EPA with current five-year planning cost estimates based upon revision to DOE's Five-Year Plan. These estimates will be based on the Activity Data Sheets (ADS) level. This submission shall include a correlation of ADS with activities required under the Agreement.

4. U.S. DOE will provide to U.S. EPA a copy of the President's Budget Request to the Congress and sections of the DOE Congressional Budget Request pertaining to the Environmental Restoration and Waste Management Program. After the President has submitted the budget to Congress, DOE shall notify U.S. EPA in a timely manner of any differences between the estimates submitted in accordance with Subparagraph B.2 above and the actual dollars that were included in the President's budget submission to Congress.

5. Whenever DOE proposes a reprogramming, requests a supplemental appropriation, or intends to transfer funds in a manner that is likely to or will affect the ability of the DOE to conduct activities required under this Agreement, DOE shall notify U.S. EPA of its plans and, prior to such a transfer of funds or the submittal of the reprogramming or supplemental appropriation request to Congress, shall consult with them about the effect that such an action is likely to or will have on the activities required under this Agreement.

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

D. 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. DOE and U.S. EPA agree that any requirement for the payment or obligation of funds by DOE established by the terms of the Agreement shall be subject to the availability funds.

E. After appropriations have been received from the Congress, DOE and U.S. EPA Project Managers will review the level of available appropriated funds and the most recent estimated cost of conducting activities under this Agreement. If funding is requested as described in this Part, and if appropriated funds are not available to fulfill DOE's obligations under this Agreement, the Parties shall attempt to agree upon appropriate adjustments to the dates that require the payment or obligation of such funds. Subject to the terms of this Agreement, if no agreement on appropriate adjustments can be reached, U.S. EPA reserves the right to initiate any other action which would be appropriate absent this Agreement. Initiation of any such actions shall not release the Parties from their other obligations under this Agreement. Acceptance of this paragraph, however, does not constitute a waiver by DOE that its obligations under this Agreement are subject to the provision of the Anti-Deficiency Act, 31 U.S.C. § 1341. In any action by U.S. EPA to enforce any provision of this Agreement, DOE may raise as a defense that its failure or delay was caused by the unavailability of appropriated funds.

F. If appropriated funds are available to DOE's Office of Environmental Restoration [or other relevant DOE Offices to the extent they are responsible for implementing this Agreement] to fulfill DOE's obligations under this Agreement, DOE shall obligate the funds in amounts sufficient to support the requirements specified in this Agreement, unless otherwise directed by

the Congress or the President, or unless those requirements are modified in accordance with the provisions of this Agreement.

G. The participation by U.S. EPA under this Part is limited solely to the aforementioned and is in no way to be construed to allow U.S. EPA to become involved with the internal DOE budget process, nor to become involved in the federal budget process as it proceeds from DOE to the Office of Management and Budget and ultimately to Congress through the President's submittal. Nothing herein shall affect DOE's authority over its budgets and funding level submissions.

XXXV. AMENDMENT OF THE AGREEMENT

This Agreement may be amended by a written agreement of both parties hereto. No such amendment shall be final until signed by both Parties.

XXXVI. TERMINATION

The provisions of this Agreement shall be deemed satisfied and terminated upon receipt by DOE of written notice from U.S. EPA that DOE has demonstrated, to the satisfaction of the U.S. EPA , that all the terms of this Agreement, except for continuing obligations under Section XX (Record Preservation), Section XXVI (Reservation of Rights) and Section XXIX (Five Year Review), have been completed.

XXXVII. EFFECTIVE DATE

This Agreement is effective upon issuance of a notice to DOE by U.S. EPA following implementation of Section XXXII, above, of this Agreement.

IN WITNESS WHEREOF, the parties have affixed their signatures below:

For the United States Department of Energy:

12-4-91
Date

Joe La Grone
Manager, DOE Field Office Oak Ridge (OR)

For the United States Environmental Protection Agency, Region VII:

1-28-92
Date

Morris Kay
Regional Administrator
United States Environmental
Protection Agency
Region VII
Kansas City, Kansas