EM U.S. Department of Energy
Office Of Environmental Management

Fernald Environmental Management Project Consent Agreement as Amended Under CERCLA Sections 120 and 106 (a), September 20, 1991

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:	)	
	)	
U.S. DEPARTMENT OF ENERGY	)	CONSENT AGREEMENT AS
FEED MATERIALS PRODUCTION CENTER	)	AMENDED
FERNALD, OHIO	)	UNDER CERCLA SECTIONS
	)	120 AND 106(a)
	)	
OH6 890 008 976	)	Administrative
	)	Docket Number: V-W-90-C-057

CONSENT AGREEMENT

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Consent Agreement

WHEREAS, on July 18, 1986, the United States Department of Energy (U.S. DOE) entered into a Federal Facilities Compliance Agreement (FFCA) with the United States Environmental Protection Agency (U.S. EPA) providing for a Remedial Investigation/Feasibility Study (RI/FS) and remedial action to study and clean up releases and threatened releases of hazardous substances at and from the Feed Materials Production Center (FMPC);

WHEREAS, on December 2, 1988, the State of Ohio and U.S. DOE entered into a Consent Decree providing for the abatement of water pollution and hazardous waste violations at and from the FMPC;

WHEREAS, in that Consent Decree, the State of Ohio reserved its rights to apply to the Court to bring any further action under Ohio law, to the extent provided by State and Federal law, to compel further cleanup of the facility in the event that Ohio is not fully satisfied by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) cleanup performed pursuant to the July 18, 1986, FFCA;

WHEREAS, on November 21, 1989, (54 Federal Register 48184) the FMPC was included on the National Priorities List (NPL);

WHEREAS, on June 29, 1990, U.S. EPA and U.S. DOE entered into a Consent Agreement (the 1990 Consent Agreement) which amended the provisions relating to the completion of the RI/FS and remedial action of the FFCA of July 18, 1986, to meet the requirements of Section 120 of CERCLA for any facility on the NPL;

WHEREAS, on May 14, 1991, U.S. EPA and U.S. DOE entered into a dispute resolution agreement

regarding certain alleged violations of the 1990 Consent Agreement a copy of which is included in the Administrative Record;

WHEREAS, pursuant to the dispute resolution agreement, without admitting any liability and in order to resolve the dispute, U.S. DOE agreed to the assessment of a monetary penalty in the amount of $100,000 to be paid from funds authorized and appropriated for that specific purpose in accordance with Section XVII of this Agreement and agreed to expend an additional $150,000 to conduct supplemental environmental projects at or in the vicinity of Fernald;

WHEREAS, pursuant to the dispute resolution agreement, U.S. EPA and U.S. DOE agreed to amend certain terms of the 1990 Consent Agreement including the provisions relating to schedules for the completion of the RI/FS for the five operable units;

WHEREAS, the schedules contained in this amendment are based upon discussions and negotiations between U.S. EPA and U.S. DOE in consultation with the State of Ohio; U.S. DOE believes that its submission to U.S. EPA in August 1991, represents the detailed scope of work to accomplish the schedules contained in this amendment; however, U.S. EPA has not approved or validated this submission;

WHEREAS, it is the intent of the Parties to this amended Agreement (the Agreement) that work done and data generated pursuant to the terms of the July 18, 1986, FFCA and the 1990 Consent Agreement prior to the effective date of this amendment be retained and utilized as elements of the RI/FS to the maximum extent feasible without violating applicable or relevant and appropriate laws, regulations, or guidelines and without risking significant technical errors;

WHEREAS, the Parties acknowledge that U.S. DOE is in the process of conducting the work to be performed under the terms of this Agreement, U.S. DOE need not halt currently ongoing work but shall be obligated to modify or supplement work previously done to produce a final product that passes U.S. EPA review set forth herein;

NOW, THEREFORE, based an the information available to the Parties on the effective date of this Agreement, and without trial or adjudication of any issues of fact or law, the parties agree to continue to implement the FFCA of July 18, 1986, and the 1990 Consent Agreement with amended provisions as follows:

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I. Jurisdiction

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

A. U.S. EPA, Region V, enters into those portions of this Agreement that relate to the completion of RI/FS and remedial design/remedial action (RD/RA) for U.S. DOE'S FMPC in Fernald, Ohio, 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, Pub. L. 99-499 (CERCLA); Sections 6001, 3008 (h), 3004 (u) and 3004 (v) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§6961, 6928(h), 6924(u), and 6924(v), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) (hereinafter jointly referred to as RCRA); and Executive Order 12580;

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

C. U.S. EPA, Region V, enters into those portions of this Agreement that relate to removal actions pursuant to Sections 106(a) and 120(a)(1) of CERCLA, 42 U.S.C. §§9606(a) and 9620(a)(1); Sections 6001, 3008(h), 3004(u), and 3004(v) of RCRA, 42 U.S.C. §§6961, 6928(h), 6924(u), and 6924(v); and Executive Order 12580. The authority of the President to order response actions under Section 106(a) of CERCLA, 42 U.S.C. §9606(a) has been delegated to the Administrator of U.S. EPA, with the concurrence of the Attorney General, by Executive Order 12580;

D. U.S. DOE enters into those portions of this Agreement that relate to the RI/FS pursuant to Section 120(e) (1) of CERCLA, 42 U.S.C. §9620(e) (1); Sections 6001, 3008(h), 3004(u) and 3004(v) of RCRA, 42 U.S.C. §§ 6961, 6928 (h), 6924 (u), and 6924 (v); Executive Order 12580; the National Environmental Policy Act, 42 U.S.C. §4321; and the Atomic Energy Act of 1954 (AEA) as amended, 42 U.S.C. § 2011;

E. U.S. DOE enters into those portions of this Agreement that relate to remedial actions pursuant to Section 120(e)(2) of CERCLA, 42 U.S.C. §9620(e)(2); Sections 600l, 3008(h), 3004(u), and 3004(v) of RCRA, 42 U.S.C. §§6961, 6928(h), 6924(u), and 6924(v); Executive Order 12580; and AEA;

F. U.S. DOE enters into those portions of this Agreement that relate to removal actions pursuant to Sections 104, 106(a), and 120(a)(1) of CERCLA, 42 U.S.C. §§96O4, 9606(a), and 9620(a)(1); Sections 6001, 3008(h), 3004(u), and 3004(v) of RCRA, 42 U.S.C. §§6961, 6928(h), 6924(u), and 6924(v); Executive Order 12580; and AEA;

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II. Parties

The Parties to this Agreement are U.S. EPA and U.S. DOE. The terms of this Agreement shall apply to U.S. DOE, its officers, successors in office, agents, contractors, subsequent owners, and all operators of the FMPC in Fernald, Ohio. U.S. DOE shall notify its employees of the existence of this Agreement. U.S. DOE agrees to give notice of this Agreement to any subsequent owner and/or operator prior to the transfer of ownership or the obligation of a new contractor/operator and shall simultaneously notify U.S. EPA of any such change or transfer.

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III. Definitions

Except as noted below or otherwise explicitly stated, the definitions provided in CERCLA and RCRA shall control the meaning of the terms used in this Agreement. In addition:

A. "Agreement" shall refer to this document and shall include all amendments and attachments to this document. All such attachments shall be incorporated into this Agreement and made an integral and enforceable part of this document.

B. "Authorized representative" may include a Party's contractors acting in any capacity, including advisory capacity.

C. "Baseline Risk Assessment" shall mean the studies undertaken for each of Operable Units (OUs) 1-5 to characterize the current and potential threats to human health and the environment that may be posed by contaminants within those operable units, as further described in Section X. Each Baseline Risk Assessment shall provide a framework for developing risk information necessary to assist in developing remedial alternatives, and shall consider the risks which currently exist at the Site, if no further response actions or institutional controls are applied.

D. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499.

E. Comprehensive Response Action Risk Evaluation. The Comprehensive Response Action Risk Evaluation shall be included as an appendix to the FS for each of OUs 1-5. The Comprehensive Response Action Risk Evaluation shall evaluate the risks associated with the alternatives proposed in the FS in the context of the risks posed by the Site as a whole. The Site risks shall be estimated based upon the risks associated with the remedial actions selected at other OUs, or where no remedial action has been selected, upon the risks associated with the Leading Remedial Alternative. The Comprehensive Response Action Risk Evaluation is further described in Section X.

F. "Comprehensive Site-Wide Operable Unit" shall mean the site-wide evaluation of remedial response actions to ensure that those actions are protective of human health and the environment. The Comprehensive Site-Wide Operable Unit shall include a Remedial Investigation/Projected Residual Risk Assessment Report, a Proposed Plan and Record of Decision (ROD) which provide that no additional action is necessary to achieve protectiveness, or if necessary, a Site-Wide Feasibility Study, Proposed Plan and ROD. The Comprehensive Site-Wide Operable Unit is further described in Section X.

G. "Days" shall mean calendar days, unless business days are specified. Any submittal or written statement of dispute that under the terms of this Agreement would be due on a Saturday, Sunday, or legal holiday shall be due on the following business day.

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

I. "FMPC" shall mean the Feed Materials Production Center, which was renamed the Fernald Environmental Management Project on August 23, 1991.

J. "Leading Remedial Alternative" shall mean the remedial alternative which, based upon all available data and best professional judgement, consistent with CERCLA, is the most likely to be selected as the response action for an OU. The Leading Remedial Alternative does not represent the pre-selection of a remedy and shall be used only for the purpose of estimating and evaluating the risk presented by the entire Site during the FS/Comprehensive Response Action Risk Evaluations for OUs 1-5. The Leading Remedial Alternative shall be modified as necessary to reflect new data and information and shall in no way prescribe or restrict the selection of the remedy for the OU 1-5

RODs.

K. "Operable Unit" shall mean a discrete action that comprises an incremental step toward comprehensively addressing Site problems.

L. "RCRA" shall mean the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*, as amended by the Hazardous and Solid Waste Amendments of 1984, Pub. L. 98-616.

M. "RD/RA Work Plan" shall mean the combined Remedial Design Work Plan (RD Work Plan) and Remedial Action Work Plan (RA Work Plan) for each of Operable Units 1-5, and the Comprehensive Site-Wide Operable Unit, if necessary, that provide for implementation of the remedial design, remedial action, and operation and maintenance of the remedial action for that Operable Unit at the Site, as submitted by U.S. DOE and approved by U.S. EPA pursuant to Section XI of this Agreement.

N. "Remedial Investigation" or "RI" for each of OUs 1-5, shall mean the investigation conducted to fully determine the nature and extent of the release or threat of release of hazardous substances, pollutants, contaminants, or hazardous constituents, and to gather necessary data to support the Feasibility Studies for OUs each of 1-5 and the risk assessments.

O. "Site" shall include all areas within the property boundary of FMPC and any other areas that received or potentially received released hazardous substances, pollutants, contaminants, or hazardous constituents. The term shall have the same meaning as "facility" as defined by Section 101 (9) of CERCLA, 42 U.S.C. §9601(9).

P. "Site-Wide Characterization Report" shall mean a one-time summary of site characterization data and a Preliminary Baseline Risk Assessment which characterizes the current and potential threats to human health and the environment that may be posed by contaminants at the entire Site. The Preliminary Baseline Risk Assessment shall consider the risks which currently exist at the Site, if no further response actions or institutional controls are applied. The report will include the Leading Remedial Alternative, based upon best professional judgement, for each of OUs 1-5. The Site-Wide Characterization Report is more fully described in Section X.

Q. "Site-Wide Feasibility Study (Site-Wide FS)" shall mean a study undertaken in the event U.S. EPA determines that further remedial actions are necessary to ensure protection of human health and the environment as documented in the Site-Wide RI/Projected Residual RA. This study shall fully evaluate and develop remedial action alternatives which, in conjunction with the remedial and removal actions previously taken or selected at the Site, ensure that response actions are protective of human health and the environment. The Site-Wide FS is more fully described in Section X.

R. "Site-Wide Remedial Investigation/Projected Residual Risk Assessment Report (Site-Wide RI/Projected Residual RA Report)" shall mean the report prepared following finalization of the RODs for OUs 1-5. The Site-Wide RI shall incorporate by reference all data collected pursuant to the RIs for OUs 1-5 or the removal actions, and shall summarize any data collected after finalization of the OUs 1-5 RODs. The Site-Wide RI shall also gather any additional sampling data if necessary to support the Site-Wide Feasibility Study. Additionally, this report shall evaluate all risk which is anticipated to remain at the Site following the implementation of the selected response actions. The Site-Wide RI/Projected Residual Risk Assessment is more fully described in Section X.

S. "Site-Wide Residual Risk Assessment Report" shall mean the study conducted after

implementation of all response actions at the Site in order to fully evaluate the residual risk presented by the Site following implementation of the response actions, if required, and as more fully described in Section XI.D.

T. "Submittal" shall mean any document, report, schedule, deliverable, work plan, or other item to be submitted to U.S. EPA pursuant to this Agreement.

U. "U.S. DOE" shall mean the United States Department of Energy.

V. "U.S. EPA" shall mean the United States Environmental Protection Agency.

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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 that appropriate response action(s) are 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, the National Contingency Plan (NCP), U.S. EPA CERCLA guidance and policy, RCRA, and U.S. EPA 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. Establish requirements for conducting the removal actions identified or to be identified in Section IX consistent with the purposes of this Agreement and in a manner consistent with the NCP.

2. Establish requirements for the performance of an RI to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release and threatened release of hazardous substances, pollutants, contaminants, or hazardous constituents at the Site; and establish requirements for the performance of an FS 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, contaminants, and hazardous constituents at the Site in accordance with CERCLA.

3. Establish requirements for the performance of a Site-Wide RI/Projected Residual RA to determine fully the nature and extent of the threat to the public health or welfare or the environment anticipated to remain at the Site, including risks associated with more than one operable unit, following the selection of response actions for OUs 1-5, and establish requirements for the performance of a Site-Wide FS, if necessary, to identify, evaluate and select alternatives for appropriate remedial actions to ensure that response actions at the Site are protective of human health and the environment.

4. 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, contaminants, and hazardous constituents mandated by CERCLA.

5. Implement the selected removal action(s) and remedial action(s) in accordance with CERCLA.

6. Assure compliance with Federal and State hazardous waste laws and regulations for matters covered by this Agreement.

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V. Scope

Under this Agreement, U.S. DOE agrees that it shall:

A. Conduct the removal actions for the Site in accordance with the timetables and requirements set forth in Section IX of this Agreement. The removal actions shall meet the purposes set forth in Section IV of this Agreement.

B. For each of Operable Units 1-5 at the Site, conduct and report upon an RI and Baseline Risk Assessment in accordance with the timetables and requirements set forth in Section X of this Agreement. The RI and Baseline Risk Assessment shall meet the purposes set forth in Section IV of this Agreement.

C. For each of Operable Unit 1-5 at the Site, conduct, develop, and report upon an FS in accordance with the timetables and requirements set forth in Section X of this Agreement. The FS shall meet the purposes set forth in Section IV of this agreement.

D. Following completion of the RI, Baseline Risk Assessment, FS for each of Operable Units 1-5, publish its Proposed Plan for public review and comment in accordance with the requirements set forth in Section X of this Agreement.

E. For each of Operable Units 1-5 at the Site, submit its proposed draft Record of Decision (ROD) to U.S. EPA in accordance with the time schedule set forth in Section X of this Agreement.

F. For the Comprehensive Site-Wide Operable Unit, conduct and report upon a Site-Wide RI/Projected Residual RA in accordance with the timetables and requirements set forth in Section X of this Agreement. The Site-Wide RI/Projected Residual RA shall meet the purposes set forth in Section IV of this Agreement. In the event U.S. EPA determines that the Site-Wide RI/Projected Residual RA indicates that the selected response actions are protective of human health and the environment, as required by CERCLA, the NCP and applicable U.S. EPA policy and guidance, then DOE shall publish a Proposed Plan. This plan shall provide that no further action is necessary to achieve protection of human health and the environment; the plan shall be provided for public review and comment after which U.S. DOE shall submit a proposed draft ROD in accordance with the requirements of Section X of this Agreement. In the event U.S. EPA determines that the Site-Wide RI/Projected Residual RA indicates that the selected response actions are not protective of human health and the environment as required by CERCLA, the NCP, and applicable U.S. EPA policy and guidance, then U.S. DOE shall conduct and report upon a Site-Wide FS and shall publish a Proposed

Plan which describes a remedial alternative which ensures that response actions at the Site are protective of human health and the environment. This plan shall be submitted for public review and comment in accordance with the requirements of Section X of this Agreement. The Site-Wide FS shall meet the purposes set forth in Section IV of this Agreement.

G. Following finalization of the ROD for each of Operable Units 1-5, and the Comprehensive Site-Wide Operable Unit, if necessary, as set forth in Section X of this Agreement, develop and submit a RD/RA work plan for design and implementation of the selected remedial action(s) in accordance with Section XI of this Agreement.

H. Following review and approval by U.S. EPA of the RD/RA work plan for each of Operable Units 1-5, and the Comprehensive Site-Wide Operable Unit, if necessary, implement the remedial action(s) in accordance with Section XI of this Agreement.

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VI. Notice of Action

U.S. EPA gave notice of issuance of the 1990 Consent Agreement to the State of Ohio, prior to finalization of that agreement.

U.S. EPA has given notice of amendment of this Agreement to the State of Ohio.

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VII. Findings of Fact/Conclusions and Determinations of Law

A. For the purposes of this Agreement, the following constitutes a summary of the facts upon which this Agreement is based. None of the facts related herein shall be considered admissions by any Party. This section contains findings of facts by U.S. EPA, and shall not be used by any person related or unrelated to this Agreement for purposes other than determining the basis of this Agreement.

1. The Feed Materials Production Center (FMPC) is located at 7400 Willey Road, Fernald, Ohio 45030 (mailing address: P.O. Box 398705, Cincinnati, Ohio 45239-8705) and is an industrial facility owned by the United States and operated by Westinghouse Materials Company of Ohio (Westinghouse) under a management and operating contract that began January 1, 1986. The facility began operating in 1952. Between the years of 1952 and 1985, FMPC was operated by National Lead of Ohio, Inc. under contract with U.S. DOE. The facility is located approximately twenty miles northwest of downtown Cincinnati, Ohio. FMPC production operations cover approximately 136 acres in the center of a 1,050-acre site.

2. The Site is defined as all areas within the property boundary of the FMPC and any other areas that received or potentially received released hazardous substances, pollutants, contaminants, or hazardous constituents from the FMPC.

3. FMPC's primary function has been the production of metallic uranium fuel elements, target cores, and other uranium products for use in weapons production reactors and other programs operated for U.S. DOE. Historically thorium was also processed and is currently being stored at the facility. As a result of these processes, the plant has generated both radioactive and non-

radioactive hazardous waste.

4. On November 21, 1989, (54 Federal Register 48184) the FMPC was included on the NPL.

B. On the basis of results of testing and analysis and the review of files and records by U.S. EPA and the Ohio Environmental Protection Agency (OEPA), U.S. EPA has determined that:

1. Hazardous substances, pollutants, or contaminants as defined in Section 101(14) and (33) of CERCLA, 42 U.S.C. §9601(14) and (33), and hazardous constituents as listed in Appendix VIII to 40 Code of Federal Regulations (CFR) Part 261 and Appendix IX to 40 CFR Part 264 have been released at and from the facility within the meaning of Sections 101(22), 104, 106, and 107 of CERCLA, 42 U.S.C. §§ 9601(22), 9604, 9606 and 9607.

2. FMPC constitutes a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. §9601(9), and Section 3008(h) of RCRA, 42 U.S.C. §6928(h).

3. U.S. DOE is a person as defined by Section 101(21) of CERCLA, 42 U.S.C. §9601(21).

4. U.S. DOE is the owner of the FMPC as defined by Section 9601(9) and 107(a)(1) of CERCLA, 42 U.S.C. §§9601(9) and 107(a)(1).

5. With respect to those releases and threatened releases identified in Paragraph B.1 above, U.S. DOE is a responsible person within the meaning of Section 107 of CERCLA, 42 U.S.C. § 9607.

6. FMPC is an existing hazardous waste management facility as defined under 40 CFR 260.10 and Section 3004 and 3005 of RCRA, U.S.C §§6924 and 6925.

7. Any response measures to be taken pursuant to this Agreement are reasonable and necessary to protect public health or welfare or the environment.

8. The determinations necessary for the issuance of an order under Section 1O6(a) of CERCLA have been made, and U.S. DOE commits to undertake the work outlined in this Agreement without contest.

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VIII. Statutory Compliance/RCRA-CERCLA Integration

A. The Parties intend to integrate into this comprehensive Agreement U.S. DOE's CERCLA response obligations and RCRA corrective action obligations that relate to the release(s) of hazardous substances, pollutants, contaminants, or hazardous constituents covered by this 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 the corrective action requirements of Sections 3004(u) and 3004(v) of RCRA, 42 U.S.C. §§6924(u) and 6924(v) for a RCRA permit, and Section 3008(h) of RCRA, 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. However, this Agreement is not a RCRA permit.

B. Based upon the foregoing, the Parties intend that any removal or remedial action(s) 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. The Parties agree that with respect to releases of hazardous waste and hazardous constituents covered by this Agreement, RCRA shall be considered an applicable or relevant and appropriate requirement (ARAR) pursuant to Section 121 of CERCLA.

C. If a RCRA permit is issued to U.S. DOE for on-going hazardous waste management activities at the facility, 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.

D. Except for the provisions specifically set forth herein, this Agreement shall not alter U.S. DOE's authority with respect to removal actions conducted pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

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IX. Removal Actions

A. U.S. DOE shall develop and perform the following removal actions in accordance with the provisions of this section to abate, minimize, stabilize, mitigate, or eliminate the release or threat of release of hazardous substances, pollutants, contaminants, or hazardous constituents at or from FMPC in accordance with the schedules outlined below:

1. Removal Number 1: Contaminated Water Under FMPC Buildings

   U.S. DOE has submitted to U.S. EPA for approval a work plan for work to be performed in removing the contaminated water from under Plant 6. U.S. DOE has received approval for implementation of this work plan. Upon receipt of notice from U.S. EPA, U.S. DOE shall submit to U.S. EPA for approval a work plan for the further removal of additional contaminated water from under that or any other FMPC building in accordance with schedules specified by U. S. EPA in the notice.

2. Removal Number 2: Waste Pit Area Run-off Control

   On or before May 30, 1990, U.S. DOE shall submit to U.S. EPA for approval an Engineering Evaluation/Cost Analysis (EE/CA) to evaluate removal alternatives to address contaminated waste pit area runoff. At the same time, U.S. DOE shall make the EE/CA available for public comment in accordance with the NCP. Within thirty (30) days of U.S. EPA approval of the EE/CA or within thirty (30) days of the close of the public comment period, whichever is later, U.S. DOE shall submit to U.S. EPA for approval in accordance with Paragraph C. of this Section a work plan for the work to be performed in completing the selected alternative(s).

3. Removal Number 3: South Groundwater Contamination Plume

U.S. DOE is preparing an EE/CA to evaluate removal alternatives for the south groundwater contamination plume. Among the alternatives that are being evaluated are: (1) an underwater collection system, the location of which will be established after additional data is collected regarding the magnitude and extent of groundwater contamination; and (2) an alternate water supply for users of contaminated groundwater.

By December 15, 1989, U.S. DOE shall submit to U.S. EPA for review and approval a proposal for the additional monitoring of wells to further evaluate the south groundwater contamination site. This proposal is subject to the review and approval process outlined in Paragraph C of this Section. U.S. DOE shall include in this proposal a schedule for installation of the wells for submission of data to U.S. EPA. U.S. DOE shall implement the approved proposal in accordance with the schedule contained herein. This proposal shall provide for additional groundwater monitoring in the event U.S. EPA determines that additional data are necessary upon its evaluation of the data submitted pursuant to the approved proposal.

On or before April 15, 1990, U.S. DOE shall submit the EE/CA that evaluates removal alternatives for the south groundwater contamination plume to U.S. EPA for review and approval in accordance with Paragraph C of this Section. At the same time, U.S. DOE shall make the EE/CA available for public comment in accordance with the NCP. In the event that a groundwater collection system is among any alternatives selected, U.S. DOE shall submit to U.S. EPA, within ninety (90) days of notification that no additional groundwater data is required to support this removal, a work plan for implementation of that alternative. In the event that an alternate water supply or any other removal alternative is selected, U.S. DOE shall submit within thirty (30) days of U.S. EPA's approval, or within thirty (30) days of the close of public comment period whichever is later, a work plan for implementation of that alternative. The work plan(s) shall include schedules for completion of design, commencement of construction, and completion of construction.

4. Removal Number 4: Silos 1 and 2

On or before August 1, 1990, U.S. DOE shall submit to U.S. EPA for approval, an EE/CA for a removal action for silos 1 and 2. At the same time, U.S. DOE shall make the EE/CA available for public comment in accordance with the NCP. As part of this EE/CA, U.S. DOE shall include the evaluation of the feasibility of construction of a protective structure enclosing silos 1 and 2. Within thirty (30) days of U.S. EPA approval of the EE/CA, or within thirty (30) days of the close of the comment period whichever is later, U.S. DOE shall submit to U.S. EPA for approval a work plan for the implementation of the selected removal action.

B. The work plans required by this section shall provide a concise description of the activities to be undertaken to comply with the requirements of this Agreement. The work plans shall also contain but not be limited to the following: 1) a health and safety plan; 2) a sampling and analysis plan; 3) a quality assurance plan; and 4) a schedule for the completion of the work to be performed.

C. Except as otherwise set forth in this section, any work plan, EE/CA or proposal to be submitted pursuant to this section is subject to U.S. EPA review and modification, approval, or disapproval in consultation with the State. Any modification of any work plan, EE/CA or proposal shall be consistent with the purposes of this Agreement, CERCLA, the NCP, and U.S. EPA guidance and policy documents. Within thirty (30) days of receipt of any work plan, EE/CA or proposal, U.S. EPA

shall notify U.S. DOE in writing, of modification, approval, or disapproval of the work plan, EE/CA or proposal or any part thereof. Upon receipt of U.S. EPA's written notification of modification or disapproval of any work plan, EE/CA, or proposal, U.S. DOE shall submit a revised work plan, EE/CA or proposal within thirty (30) days of receipt of such notice. In the event subsequent disapproval of any work plan, EE/CA or proposal cannot be resolved by informal means, the dispute resolution process of Section XIV shall be invoked. Within five (5) days of U.S. EPA's approval, U.S. DOE shall commence implementation of the approved work plan or proposal in accordance with the requirements and time schedules set forth in the approved work plan or proposal. The fully approved work plans, EE/CAs and proposals required under this Section shall be incorporated into and made an enforceable part of this Agreement.

D. All work undertaken by U.S. DOE pursuant to this section shall be performed in conformance with the requirements of this Agreement, CERCLA, the NCP, and U.S. EPA guidance and policies. Except as provided for in Section 121 of CERCLA, U.S. DOE shall be responsible for obtaining all applicable State or local permits that are necessary for the performance of any work under this Agreement.

E. All materials removed from the Site shall be disposed of or treated at facilities operating in compliance with applicable provisions RCRA, the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.*, and other Federal and State requirements, including U.S. EPA's Off-Site Policy (Revised Procedures for Planning and Implementing Off-Site Response Actions - Interim Policy, from J. Winston Porter dated November 13, 1987). Permit requirements for such off-site disposal are given in Section XIII, Paragraphs C and D.

F. To expeditiously minimize the potential risks to human health and the environment, U.S. DOE shall propose and implement additional removal actions. Prior to amendment of this Agreement, U.S. DOE initiated the following removal actions: K-65 Decant Tank (Removal #5); Exposed materials at Pit 6 (Removal #6); and Plant 1 Pad (Removal #7). Removal Actions 1-7 shall be referred to as Phase I. U.S. DOE shall identify removal actions in additional phases, as necessary information regarding the Site becomes available.

1. Phase II consists of removal actions identified as of the date of this amended Agreement. U.S. DOE shall submit removal action work plans, or other appropriate documentation, for the following activities in accordance with the schedules provided below:

    a. Inactive Flyash Pile Control (Removal #8): 8/15/91

    b. Removal of Waste Inventories (Removal #9)

        (1) Current Low Level Waste Management Procedures: 8/30/91

        (2) Thorium Management Procedures

            A. Overpacked and Ready to Ship: 8/30/91

            B. To Be Overpacked: 10/01/91

    c. Active Flyash Pile Controls (Removal #10)

(1) Submit Letter Report for Survey of Electrical Utility Practices for Applicability: 9/27/91

(2) Submit Work Plan: 3/02/92

d. Pit 5 Experimental Treatment Facility (Removal #11): 10/30/91

e. Safe Shutdown (Removal #12): Submit Current Work Procedures to U.S. EPA on 10/31/91

f. Plant 1 Ore Silos (Removal #13): 1/10/92

g. Contaminated Soils Adjacent to Sewage Treatment Plant Incinerator (Removal #14): 1/23/92

h. Scrap Metal Piles (Removal #15): 1/31/92

i. Collect Uncontrolled Production Area Runoff -- Northeast (Removal #16): 3/02/92

j. Improved Storage of Soil and Debris (Removal #17): 3/25/92

k. Control Exposed Material in Pit 5 (Removal #18): 3/30/92

In addition to the removal actions listed above, U.S. DOE has agreed to participate in the provision of public drinking water to residents impacted by the south groundwater contamination plume.

2. Phase III. On or before January 15, 1992, U.S. DOE shall identify and submit a list of additional removal actions and a schedule for submitting work plans, or other appropriate documentation for such actions. This list shall include, but shall not be limited to: Safe Shutdown, Updated Procedures (Removal #12), Low Level Waste Management, Updated Procedures (Removal #9), and Plant 7 Dismantling (Removal #19). If the Removal Actions identified by U.S. DOE are approved by U.S. EPA, then U.S. DOE shall submit work plans, or other appropriate documentation, in accordance with the approved schedules.

3. The phased approach to removals, as described in Sections IX.F.1 and 2 above, is intended to facilitate and expedite the identification and implementation of response actions at the Site. As response actions at the Site progress, U.S. DOE agrees to review annually the existing removal and remedial actions and the need for additional removal actions. On or before January 15, 1993, and every year thereafter until the RODs for OUs 1-5 are finalized, U.S. DOE shall provide information on its review to U.S. EPA for review and comment under Section IX.H, below. Nothing in this provision shall be interpreted to limit or restrict U.S. DOE's or U.S. EPA's statutory authorities under Sections 104, 106 or 120 of CERCLA. Nothing in this provision shall be interpreted to affect U.S. DOE's or U.S. EPA's rights or obligations to propose or conduct additional removal actions as described in Sections IX.G and H.

4. U.S. DOE shall perform and report upon a study detailing existing buildings and facilities that will be needed during remediation of the Site. This study shall also identify any new buildings

that need to be constructed and shall identify buildings which are no longer needed and can therefore be removed. This study is intended to allow for the systematic planning of removal actions in the production area under OUs 3 and 5. This study shall be prepared and submitted to U.S. EPA by January 15, 1993, and shall be reviewed on an annual basis and updated if necessary. Any updates shall be provided with the annual list of new removal actions described in Section IX.F.3 above.

G. Additional Removal Actions will be taken at the facility if:

1. U.S. DOE determines that a Removal Action is appropriate; or

2. U.S. EPA requests that a removal action be conducted and U.S. DOE agrees to perform such removal; or

3. Newly discovered or re-evaluated releases or potential releases of hazardous substances, pollutants, contaminants, or hazardous constituents at or from the Site present an imminent and substantial endangerment to human health or the environment.

H. Except as otherwise provided by this Section, prior to initiating removal activities, U.S. DOE shall notify U.S. EPA in writing by return receipt mail or hand delivery of its proposed removal action and allow U.S. EPA an adequate opportunity for timely review and comment. U.S. DOE notification shall contain adequate specificity to permit meaningful review and comment. An emergency removal action taken because of imminent and substantial endangerment to human health or the environment may be taken by U.S. DOE without following the notice and comment procedures of this Paragraph only if consultation would be impractical. U.S. DOE agrees to exercise its removal authority only in a manner that is consistent with the purposes of this Agreement, including the review and consultation provisions set forth herein. Nothing in this Section or any other part of this Agreement shall restrict U.S. EPA from taking any action authorized under Section 106 of CERCLA necessary to abate releases or potential releases of hazardous substances, pollutants, contaminants, or hazardous constituents at or from a facility that present an imminent and substantial endangerment to public health or welfare or the environment.

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X. Remedial Investigation and Feasibility Studies

A. Pursuant to the terms of the 1990 Consent Agreement, U.S. EPA and U.S. DOE agreed:

1. The RI/Preliminary FS work plan, including sampling analysis plan and quality assurance program plan (QAPP), has been approved by U.S. EPA. These documents, including all U.S. EPA-approved addenda and modifications to the work plan, are incorporated into and made an enforceable part of this Agreement are included as Attachment I.

2. U.S. EPA recognizes that U.S. DOE has submitted an FS plan to U.S. EPA for review. Within thirty (30) days of receipt of notice from U.S. EPA, U.S. DOE shall submit to U.S. EPA for approval, in consultation with the State, a revised FS work plan to identify the operable units as described in this Section. The revised FS work plan shall be considered a primary document and finalized in accordance with the provisions of Section XII of this Agreement. The revised FS work plan shall provide for the performance of an FS for each operable unit that meets

standards set forth in CERCLA, the NCP, and applicable U.S. EPA guidance and policy. The work plan shall contain a schedule for the completion of the FS report for each operable unit and provide for submittal by U.S. DOE of an Initial Screening of Alternatives Array no later than the date set forth in the schedule in Paragraph C of this Section.

B. U.S. DOE and U.S. EPA further agree:

1. No later than October 15, 1991, U.S. DOE shall submit a general RI/FS Work Plan addendum to U.S. EPA for review and approval. This addendum shall include a detailed scheme for development and completion of the OU 1-5 Baseline Risk Assessments and the general approach for the Site-Wide RI/Projected Residual Risk Assessment. This addendum shall also include the methodology, assumptions, models and parameters for establishing risk-based Remedial Action goals and completing all risk assessments, as provided by CERCLA, the NCP, and applicable U.S. EPA policy and guidance.

2. U.S. DOE has submitted RI/FS Work Plan addenda for the performance of treatability studies required for OUs 1,2, and 4. U.S. DOE shall submit an RI/FS Work Plan addendum for the performance of treatability studies for OU 5 no later than April 17, 1992. U.S. DOE shall submit addenda proposing additional treatability studies, including treatability studies for OU 3, if determined to be necessary by U.S. EPA, in a timely manner as necessary to ensure compliance with the schedules contained in this Agreement. All work plans shall explain the purpose of the treatability studies and shall include a level of study sufficient to evaluate the various treatment options during the detailed analysis of alternatives.

C. For completion of the RI/FS and implementation of the remedial actions, the Site has been divided into five operable units and a Comprehensive Site-Wide Operable Unit ("the Operable Units") as identified below. U.S. DOE shall finalize in accordance with Section XII of this Agreement, the listed draft primary documents for each operable unit in accordance with the requirements of this Agreement, CERCLA, the NCP, applicable U.S. EPA guidance and policy, and schedules set forth below:

1. Operable Unit 1: Waste Pit Area. Waste pits 1-6, clearwell, burnpit, berms, liners and soil within the operable unit boundary as approved in the RI/FS work plan addendum.

    a. Initial Screening of Alternatives: January 4, 1991;

    b. RI Report/Baseline Risk Assessment: October 12, 1993;

    c. FS Report/Comprehensive Response Action Risk Evaluation: March 7, 1994:

    d. Proposed Plan: March 7, 1994;

    Proposed Draft Record of Decision: December 6, 1994.

2. Operable Unit 2: Other Waste Units. Flyash piles, other south field disposal areas, lime sludge ponds, solid waste landfill, berms, liners, and soil within the operable unit boundary as approved in the RI/FS work plan addendum.

    a. Initial Screening of Alternatives: April 18, 1991;

b. RI Report/Baseline Risk Assessment: October 19, 1992;

c. FS Report/Comprehensive Response Action Risk Evaluation: March 15, 1993;

d. Proposed Plan: March 15, 1993;

Proposed Draft Record of Decision: December 10, 1993.

3. Operable Unit 3: Production Area. Production area and production-associated facilities and equipment (includes all above and below-grade improvements) including, but not limited to, all structures, equipment, utilities, drums, tanks, solid waste, waste, product, thorium, effluent lines, K-65 transfer line, wastewater treatment facilities, fire training facilities, scrap metals piles, feedstocks, and coal pile.

   a. RI/FS Work Plan Addendum: June 2, 1992;

   b. Initial Screening of Alternatives: March 28, 1995;

   c. RI Report/Baseline Risk Assessment: March 13, 1996;

   d. FS Report/Comprehensive Response Action Risk Evaluation: August 7, 1996;

   e. Proposed Plan: August 7, 1996;

   Proposed Draft Record of Decision: May 2, 1997.

4. Operable Unit 4: Silos 1-4. Silos 1, 2, 3, and 4, berms, decant tank system, and soil within the operable unit boundary as approved in the RI/FS work plan addendum.

   a. Initial Screening of Alternatives: October 31, 1990;

   b. RI Report/Baseline Risk Assessment: April 19, 1993;

   c. FS Report/Comprehensive Response Action Risk Evaluation September 10, 1993;

   d. Proposed Plan: September 10, 1993;

   Proposed Draft Record of Decision: June 10, 1994

5. Operable Unit 5: Environmental Media. Groundwater, surface water, soil not included in the definitions of OU #1-4, sediments, flora, and fauna.

   a. Initial Screening of Alternatives: April 16, 1993;

   b. RI Report/Baseline Risk Assessment*: June 24, 1994;

   c. FS Report/Comprehensive Response Action Risk Evaluation: November 16, 1994;

d. Proposed Plan: November 16, 1994;

Proposed Draft Record of Decision: August 2, 1995.

* The Site-Wide Ecological Assessment shall be included in the Baseline Risk Assessment for OU 5.

Comprehensive Site-Wide Operable Unit: An evaluation of remedies selected for OUs 1-5, above (including remedial and removal actions) to ensure that they are protective of human health and the environment on a site-wide basis, as required by CERCLA, the NCP and applicable U.S. EPA policy and guidance.

a. Site-Wide RI/Projected Residual Risk Assessment Work Plan Addendum: No later than six (6) months following signature of the ROD for OU 3;

b. Site-Wide RI/Projected Residual Risk Assessment Report: The Site-Wide RI/Projected Residual Risk Assessment Report shall be submitted in accordance with the schedule approved in the Work Plan Addendum above;

c. FS Report: if required by U.S. EPA, the FS Report shall be provided in accordance with the schedule approved in the Work Plan Addendum above.

d. Proposed Plan: The Proposed Plan shall be provided in accordance with the schedule approved in the Work Plan Addendum above.

Proposed Draft Record of Decision: The Proposed Draft ROD shall be provided in accordance with the schedule approved in the work Plan Addendum above.

D. For each of Operable Units 1-5 at the Site, U.S. DOE shall conduct and report upon an RI and Baseline Risk Assessment that shall be finalized as provided for by Section XII of this Agreement, and in accordance with the requirements and time schedules set forth in the approved RI work plan, as amended by this Agreement. Each Baseline Risk Assessment shall include a scenario evaluating current conditions at the Site, assuming no further response actions and no institutional controls for the OU under consideration and shall assume no additional contribution of risk from the other individual OUs. A Baseline Risk Assessment shall be incorporated into each OU RI Report.

E. For each of Operable Units 1-5 at the Site, U.S. DOE shall develop and submit to U.S. EPA an Initial Screening of Alternatives to be finalized in accordance with Section XII. For operable Units 1-5, U.S. DOE shall within five (5) days of submittal of the Initial Screening of Alternatives to U.S. EPA notify the State of Ohio and request the State to identify potential State ARARs within thirty (30) days or less of receipt of the Initial Screening of Alternatives in accordance with the requirements of Section 121 of CERCLA.

F. For each of Operable Units 1-5 at the Site, U.S. DOE shall undertake and report upon an FS that shall be finalized as set forth in Section XII and is in accordance with the requirements and time schedules set forth in the approved work plan. A Comprehensive Response Action Risk Evaluation shall be developed for each OU and included as an appendix to the applicable FS Reports. Each Comprehensive Response Action Risk Evaluation will evaluate the risk associated with the proposed

alternatives and factor in the cumulative residual risk associated with the other OUs. The purpose of this analysis is to evaluate the potential risk reduction from each proposed alternative in the context of the risk posed by the Site as a whole. The cumulative residual risk contribution from the other OUs will be estimated based upon the selected alternative, or the Leading Remedial Alternative. As described in Section X.1, below, the Site-Wide Characterization Report will initially present the Leading Remedial Alternative for each OU; however, the determination of the Leading Remedial Alternative shall be modified as necessary to reflect new information. Additionally, the cumulative residual risk contribution from other OUs shall be based upon data available at the time the FS is prepared. Where site-specific data are not available, residual risk will be estimated based upon best professional judgement, consistent with CERCLA. The FS Report will contain sufficient information within the text, or by reference, to support the development of the cumulative residual risk analysis. Each Comprehensive Response Action Risk Evaluation must consider the anticipated use of the Site immediately after implementation of response actions and consider future use scenarios.

G. Following finalization of the RI and FS Reports where required for each of Operable Units 1-5 and the Site-Wide Operable Unit, U.S. DOE shall, after consultation with U.S. EPA pursuant to Section XII, publish its Proposed Plan for public review and comment in accordance with CERCLA, the NCP, and applicable U.S. EPA policy and guidance. Within sixty (60) days following the close of the public comment period, U.S. DOE shall submit to U.S. EPA an initial draft responsiveness summary and a proposed draft ROD that considers comments received during the public comment period. In addition to requests under Section XVIII, U.S. DOE may request an additional thirty (30) days to prepare the initial draft responsiveness summary and proposed draft ROD if such extension does not delay the milestone deadline for submittal of the proposed draft ROD as provided in Section X.C. of this Agreement. This extension shall be provided at U.S. EPA's sole discretion and shall not be construed to limit U.S. DOE's or U.S. EPA's ability to request or grant extensions under Section XVIII of this Agreement. Within thirty (30) days of receipt of the draft responsiveness summary and proposed draft ROD, U.S. EPA, in consultation with the State, will review and approve or request U.S. DOE to modify the draft responsiveness summary and proposed draft ROD in accordance with U.S. EPA's comments. Within thirty (30) days of receipt of U.S. EPA's comments, U.S. DOE shall incorporate U.S. EPA's comments and submit a draft responsiveness summary and draft ROD to U.S. EPA for its approval or modification. In the event that U.S. EPA, in consultation with the State, approves the initial draft responsiveness summary and proposed draft ROD or the revised draft responsiveness summary and draft ROD, U.S. DOE will sign the final documents and transmit the ROD to U.S. EPA for signature within thirty (30) days of being notified of U.S. EPA's approval. In the event that U.S. EPA does not approve the revised draft responsiveness summary and draft ROD, U.S. EPA, in consultation with the State, shall modify these documents and sign the ROD. The ROD is final and effective upon signature by the Regional Administrator and not subject to dispute by U.S. DOE.

H. For the Comprehensive Site-Wide Operable Unit, U.S. DOE shall develop and submit to U.S. EPA a Site-Wide RI/Projected Residual RA to be finalized in accordance with Section XII. The Site-Wide RI shall incorporate by reference all data collected pursuant to the RIs for OUs 1-5 or the removal actions and shall summarize any data collected after finalization of the OU 1-5 RODs. The Site-Wide RI shall also gather any additional sampling data if necessary to support the Site-Wide Feasibility Study. The Projected Residual RA shall document all risk which is anticipated to remain at the Site following the implementation of the response actions embodied in the OU 1-5 RODs and the selected removal actions. The Projected Residual Risk Assessment shall be used to determine whether the previously selected response actions are protective of human health and the environment as required by CERCLA, the NCP and applicable U.S. EPA policy and guidance.

If, subject to dispute resolution under section XIV, U.S. EPA determines that the results of the Site-Wide RI/Projected Residual RA Report indicate that the selected removal and remedial alternatives for OUs 1-5 are protective of human health and the environment on a site-wide basis, consistent with CERCLA, the NCP and applicable U.S. EPA guidance and policy, an FS Report will not be required. In this case, the parties anticipate that a Proposed Plan and a ROD for the Comprehensive Site-Wide Operable Unit will recommend no further remedial action at the Site, in accordance with CERCLA, the NCP and applicable U.S. EPA guidance and policy. U.S. DOE shall publish the Proposed Plan and submit a proposed draft ROD in accordance with the procedures set forth in Section X.G.

If, subject to dispute resolution under Section XIV, U.S. EPA determines that the Site-Wide RI/Projected Residual Risk Assessment Report indicates that the selected removal and remedial actions for the individual OUs are not protective of human health and the environment on a site-wide basis, U.S. DOE shall submit an FS Report. In the event that an FS Report is necessary, within sixty (60) days after U.S. EPA's determination above, U.S. DOE shall submit an Initial Screening of Alternatives Report which lists additional remedial alternatives or modifications to selected alternatives for OUs 1-5 and a list of any action specific ARARs for the listed alternatives. The FS Report shall evaluate alternatives for reducing risk among the five operable units such that the response actions taken at the Site are protective of human health and the environment. The FS Report shall be submitted to U.S. EPA for review in accordance with the schedule provided herein. In the event an FS Report is necessary, then U.S. DOE shall develop a Proposed Plan which describes the selected remedial alternative. U.S. DOE shall publish this Proposed Plan and submit a proposed draft ROD in accordance with the procedures set forth in Section X.G.

I. On or before August 5, 1992, U.S. DOE shall submit a Site-Wide Characterization Report to U.S. EPA for review and finalization in accordance with Section XII. The report shall provide a one time summary of all site data available as of December 1, 1991. Based upon this data, and upon best professional judgement, U.S. DOE shall present Leading Remedial Alternatives for OUs 1-5. Additionally, this report shall contain a Preliminary Baseline Risk Assessment which characterizes the current and potential threats to human health and the environment that may be posed by contaminants at the entire Site. The Preliminary Baseline Risk Assessment shall consider the risks which currently exist at the Site, if no further response actions or institutional controls are applied.

J. All documents approved pursuant to this Section, are incorporated and made an enforceable part of this Agreement.

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XI Remedial Design/Remedial Action

A. Within sixty (60) days of finalization of the RODs for Operable Units 1-5 as set forth in Section X, U.S. DOE shall submit to U.S. EPA for approval in accordance with Section XII the work plan to accomplish the design of the remedial action for that Operable Unit ("the Remedial Design Work Plan" or "RD Work Plan"). Each RD Work Plan shall include, but not be limited to, a schedule for the implementation of the tasks required to complete the remedial design. In accordance with a deadline set forth in the approved RD Work Plans for Operable Units 1-5, U.S. DOE shall submit to U.S. EPA for approval, in accordance with Section XII, the remaining portion ("RA Work Plan") of the RD/RA Work Plan (the combined RD Work Plan and RA Work Plan), including but not limited to, the following project plans: (1) a sampling and analysis plan which includes quality assurance

project plan(s) and field sampling plan(s); (2) a health and safety/contingency plan; (3) a plan for satisfaction of permitting requirements; (4) a groundwater monitoring plan; and (5) an operations and maintenance plan. Each RD/RA Work Plan, including the RD Work plan, shall be developed by U.S. DOE in conformance with the ROD, the Statement of Work (SOW), U.S. EPA Remedial Design and Remedial Action guidance and policy applicable at the time of the final ROD date, and any additional guidance documents provided by U.S. EPA. Each RD/RA Work Plan shall also include a schedule for implementation of the RD/RA tasks and submittal of RD/RA reports.

B. In the event that the ROD for the Comprehensive Site-Wide Operable Unit requires further remedial action at the Site, then within sixty (60) days of finalization of the ROD as set forth in Section X, U.S. DOE shall submit to U.S. EPA for approval in accordance with Section XII, the work plan to accomplish the design of the remedial action ("the Remedial Design Work Plan" or "RD Work Plan"). The RD Work Plan shall include, but not be limited to, a schedule for the implementation of the tasks required to complete the remedial design. In accordance with a deadline set forth in the approved RD Work Plans for the Site-Wide Operable Unit, U.S. DOE shall submit to U.S. EPA for approval, in accordance with Section XII, the remaining portion ("RA Work Plan") of the RD/RA Work Plan (the combined RD Work Plan and RA Work Plan), including, as necessary, but not limited to, the following project plans: (1) a sampling and analysis plan which includes quality assurance project plan(s) and field sampling plan(s); (2) a health and safety/contingency plan; (3) a plan for satisfaction of permitting requirements; (4) a groundwater monitoring plan; and (5) an operations and maintenance plan. The RD/RA Work Plan, shall be developed by U.S. DOE in conformance with the ROD, the SOW, U.S. EPA Remedial Design and Remedial Action Guidance and policy applicable at the time of the final ROD date, and any additional guidance documents provided by U.S. EPA. The RD/RA Work Plan for the Comprehensive Site-Wide Operable Unit shall also include a schedule for implementation of the RD/RA tasks and submittal of RD/RA Reports.

C. U.S. DOE shall commence the implementation of the RD work plan and RA work plan for Operable Units 1-5 and the Comprehensive Site-Wide Operable Unit within thirty (30) days of approval and finalization of each work plan pursuant to Section XII. All work shall be conducted in accordance with CERCLA, the NCP, U.S. EPA guidance and policy, and the requirements of this Agreement, including the standards specifications and schedules contained in the RD/RA Work Plan.

D. If required by CERCLA, the NCP, or applicable U.S. EPA guidance or policy, U.S. DOE shall perform and submit a Site-Wide Residual Risk Assessment Report to evaluate whether response actions taken at the Site are protective of human health and the environment. This Site-Wide Residual Risk Assessment Report shall be submitted following completion of all response actions at the Site in accordance with CERCLA, the NCP, and applicable U.S. EPA guidance or policy.

E. All documents approved pursuant to this Section shall be incorporated into and made an enforceable part of this Agreement.

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XII. Consultation With U.S. EPA

Review and Comment Process for Draft and Final Documents

A. Applicability:

The provisions of this Section establish the procedures that shall be used by U.S. 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, U.S. 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 resolution in accordance with Paragraphs B through J below.

The designation of a document as "draft" or "final" is solely for purposes of consultation with U.S. EPA in accordance with this Section. Such designation does not affect the obligation of the Parties to issue documents that 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 reports that are major, discrete portions of RI/FS and RD/RA activities. Primary documents are initially issued by the U.S. DOE in draft and are subject to review and comment by U.S. EPA, in consultation with the State of Ohio. Following receipt of comments on a particular draft primary document, U.S. DOE will respond to the comments received and issue a draft final primary document that 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 U.S. DOE in draft subject to review and comment by U.S. EPA, in consultation with the State of Ohio. Although U.S. 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. U.S. DOE shall complete and transmit draft reports for the following primary documents for OUs 1-5 to U.S. EPA for review and comment in accordance with the provisions of this Section:

    a. Remedial Investigation/Baseline Risk Assessment Report;

    b. Initial Screening of Alternatives;

    c. Feasibility Study Report;

    d. Proposed Plan;

    e. Remedial Design Work Plan; and

    f. Remedial Action Work Plan.

2. U.S. DOE shall complete and transmit draft reports for the following primary documents for the Comprehensive Site-Wide Operable Unit to U.S. EPA for review and comments in accordance with the provisions of this Section:

    a. Site-Wide Remedial Investigation/Projected Residual Risk Assessment Work Plan Addendum as provided under Section X.C;

    b. Site-Wide Remedial Investigation/Projected Residual Risk Assessment Report;

    c. Initial Screening of Alternatives;*

    d. Site-Wide Feasibility Study Report;*

    e. Proposed Plan;

    f. Remedial Design Work Plan;* and

    g. Remedial Action Work Plan.*

    * If determined to be necessary by U.S. EPA.

3. In addition to the documents listed above, the following documents shall be treated as primary documents for the purposes of dispute resolution under Section XIV and enforcement under Section XVII, and U.S. DOE shall complete and transmit these documents to U.S. EPA for review and comment in accordance with the provisions of this Section:

    a. OU #3 Remedial Investigation/Feasibility Study Work Plan Addendum as provided under Section X.C;

    b. Site-Wide Characterization Report; and

    c. Site-Wide Residual Risk Assessment Report.*

    * If required by CERCLA, the NCP or U.S. EPA policy or guidance.

4. Only the draft final reports for the primary and other documents identified above shall be subject to dispute resolution. U.S. DOE shall complete and transmit draft primary documents in accordance with the timetable and deadlines established in work plans required by this Agreement.

D. Secondary Documents:

1. U.S. DOE shall complete and transmit draft reports for the following secondary documents to U.S. EPA for review in accordance with the provisions of this Section; however, U.S. DOE may request that such documents be submitted and reviewed as part of the corresponding primary document:

    1. Initial Remedial Action/Data Quality objectives;

2. Detailed Analysis of Alternatives;

3. Post-screening Investigation Work Plan;

4. Treatability Studies;*

5. Sampling and Data Results; and

6. Responsiveness Summary.

* If determined to be necessary by U.S. EPA.

2. Although U.S. EPA may comment on the draft reports for the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by Paragraph B hereof. Unless otherwise provided in this Agreement, target dates shall be established for the completion and transmission of draft secondary reports in the work plans required by this Agreement.

E. Meetings of the Project Managers on Development of Reports:

The Project Managers shall meet approximately every thirty (30) 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 report specified in Paragraphs C and D above, the Project Managers shall meet to discuss the report results in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft report.

F. Identification and Determination of Potential ARARs:

1. For those primary reports or secondary documents that consist of or include ARAR determinations, at least thirty (30), days prior to the issuance of a draft report, the U.S. EPA, U.S. DOE, and State Project Managers shall meet to identify and propose, to the best of their ability, all potential ARARs pertinent to the report being addressed. Draft ARAR determinations shall be prepared by the U.S. DOE in accordance with Section 121(d) (2) of CERCLA, the NCP and pertinent policy and guidance issued by U.S. EPA. The determination of final ARARs by U.S. EPA shall be final and not subject to dispute by U.S. DOE.

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, contaminants, and hazardous constituents 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 final ROD is issued.

G. Review and Comment on Draft Reports:

1. U.S. DOE shall complete and transmit each draft primary report to U.S. EPA on or before the corresponding deadline established for the issuance of the report. U.S. DOE shall complete and

transmit the draft secondary document in accordance with the target dates established for the issuance of such reports in this Agreement or in work plans submitted pursuant to this Agreement.

2. Unless the Parties mutually agree to another time period, all secondary draft documents shall be subject to a thirty (30) day period for review and comment and draft primary documents shall be subject to a sixty (60) day period for review and comment by U.S. EPA. Review of any document by U.S. EPA 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 and any U.S. EPA guidance or policy. Comments by U.S. EPA shall be provided with adequate specificity so that U.S. DOE 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 U.S. DOE, U.S. EPA shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy reports, U.S. EPA may extend the thirty (30) or sixty (60) day comment period by written notice to the U.S. DOE prior to the end of the thirty (30) or sixty (60) day period. If U.S. EPA gives notice to U.S. DOE of such extension beyond the thirty (30) or sixty (60) day period, U.S. DOE shall evaluate the impact of such an extension on any timetable, deadline or schedule. Upon agreement with U.S. EPA as to such impact, U.S. EPA shall grant U.S. DOE an appropriate extension of time. On or before the close of the comment period, U.S. EPA shall transmit by next day mail their written comments to the U.S. DOE.

3. Representatives of the U.S. DOE shall make themselves readily available to U.S. EPA 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 U.S. DOE on the close of the comment period.

4. In commenting on a draft report that contains a proposed ARAR determination, U.S. EPA shall include a reasoned statement of whether there is an objection 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 that it believes were not properly addressed in the proposed ARAR determination.

5. Following the close of the comment period for a draft report, U.S. DOE 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, U.S. DOE shall transmit to U.S. EPA 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, U.S. DOE shall transmit to U.S. EPA a draft final primary report, which shall include U.S. DOE's response to all written comments, received within the comment period. While the resulting draft final report, shall be the responsibility of U.S. DOE, it shall be the product of consensus to the maximum extent possible.

6. U.S. DOE 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 U.S. EPA. In appropriate circumstances, this time period may be further extended in accordance with Section XVIII.

H. Availability of Dispute Resolution for Draft Final Primary Documents:

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

2. When dispute resolution is invoked on a draft primary report, work may be stopped in accordance with the procedures set forth in Section XIV.

I. 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 U.S. DOE's position be sustained. If U.S. DOE's determination is not sustained in the dispute resolution process, U.S. DOE shall prepare, within not more than thirty (30) days, a revision of the draft final report that conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Section XVIII.

J. Subsequent Modifications of Final Reports:

Following finalization of any primary report pursuant to paragraph I above, U.S. EPA or U.S. DOE may seek to modify the report, 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 U.S. DOE 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. U.S. EPA or U.S. 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 U.S. 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: (1) the requested modification is based on significant new information, and (2) the requested modification could be of significant assistance in evaluating impacts on the public health or the environment, in evaluating the selection of remedial alternatives, or in protecting human health and the environment.

3. Nothing in this Paragraph J shall alter U.S. EPA's ability to request the performance of additional work pursuant to Section XV of this Agreement, which does not constitute modification of a final document.

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XIII. Permits

A. U.S. EPA and U.S. DOE recognize, under Section 121(d) and 121(e) (1) of CERCLA, 42 U.S.C. §§9621(d) and 9621(e) (1) and the NCP, that portions of the response actions under this Agreement

and conducted entirely on the Site are exempted from the procedural requirement to obtain Federal, State, or local permits. U.S. DOE must satisfy all Federal and State standards, requirements, criteria, or limitations that would have been included in any such permit to the extent required by CERCLA and the NCP.

B. When U.S. DOE proposes a response action to be conducted entirely on the Site, which in the absence of Section 121(e)(1) of CERCLA and the NCP would require a Federal or State permit, U.S. DOE shall include in its submittal to U.S. EPA:

1. Identification of each permit that would otherwise be required:

2. Identification of the standards, requirements, criteria, or limitations that would have had to have been met to obtain each such permit; and

3. Explanation of how the response action will meet the standards, requirements, criteria, or limitations identified in item 2 above.

C. Paragraphs A and B above are not intended to relieve U.S. DOE from the requirement(s) of obtaining a permit whenever it proposes a response action involving the shipment, movement, or any other off-site activity with respect to hazardous substances, contaminants, pollutants, or hazardous constituents from the Facility.

D. U.S. DOE shall notify U.S. EPA in writing of all permits required for off-site activities as soon as practicable after U.S. DOE becomes aware of the requirement. Upon request by U.S. EPA, U.S. DOE shall provide U.S. EPA copies of all such permit applications and any other documents related to the permit process.

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XIV. Resolution of Disputes

Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Section shall apply. This Section does not apply to RODs and Responsiveness Summaries.

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

When controversies arise which appear likely to result in the need for formal dispute resolution or an assessment of stipulated penalties, U.S. EPA and U.S. DOE will, as soon as practicable, use their best efforts to provide written notice of the circumstances to the controversy as follows: (1) by the U.S. DOE Fernald Site Manager to the Associate Director of U.S. DOE's Office of Environmental Restoration, and (2) by the U.S. EPA Region V Project Manager to the Director of U.S. EPA Region V's Waste Management Division. The Associate Director of U.S. DOE's Office of Environmental Restoration and Director of U.S. EPA Region V's Waste Management Division shall thereafter use their best efforts to resolve the controversy so as to minimize the need for formal, time-consuming dispute resolution. This "early warning system" shall operate in addition to and not in lieu of, the dispute resolution process set forth in this Section.

The Parties recognize the importance of promoting consistency in the directions under which U.S. DOE will proceed at the Site. To this end, the Parties agree that in the case of a dispute under this Section wherein U.S. DOE claims to be subject to conflicting directives from U.S. EPA and the State of Ohio, a representative of the OEPA shall be invited for consultation in dispute resolution, in accordance with the requirements of CERCLA. This may include informal dispute resolution, the Dispute Resolution Committee, the Senior Executive Committee and/or consultation with U.S. DOE prior to final dispute resolution. Nothing in this section shall restrict U.S. EPA from issuing a final determination pursuant to the dispute resolution process.

A. Within thirty (30) days after: (1) the period established for the review of a draft final primary document; or (2) any action which leads to or generates a dispute, the disputing Party shall submit to the other Party 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.

B. Prior to any Party's issuance of a written statement of dispute, the disputing Party shall engage the other Party in informal dispute resolution among the Project Managers and/or their immediate supervisors. Within the thirty (30) day informal dispute resolution period described in paragraph A. of this Section, the Parties shall meet as many times as are necessary to discuss and attempt resolution of the dispute.

C. If 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 thereby elevating the dispute to the Dispute Resolution Committee for resolution.

D. The Dispute Resolution Committee will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The individuals designated to serve on the Dispute Resolution Committee shall be employed at the policy level (Senior Executive Service or equivalent) or be delegated the authority to participate on the Dispute Resolution Committee for the purpose of dispute resolution under this Agreement. The U.S. EPA representative on the Dispute Resolution Committee is the Associate Director, Waste Management Division of U.S. EPA Region V. U.S. DOE's designated member is the Manager of U.S. DOE's Fernald Office. Written notice of any delegation of authority from a Party's designated representative on the Dispute Resolution Committee, or on the Senior Executive Committee described in Section F, shall be provided to all other Parties within five (5) days of such delegation.

E. Following elevation of a dispute to the Dispute Resolution Committee, the Dispute Resolution Committee shall have twenty-one (21) days to unanimously resolve the dispute and issue a written decision. If the Dispute Resolution Committee 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 for resolution.

F. The Senior Executive Committee will serve as the forum for resolution of disputes for which agreement has not been reached by the Dispute Resolution Committee. The U.S. EPA representative on the Senior Executive Committee is the Regional Administrator of U.S. EPA Region V. U.S. DOE's representative on the Senior Executive Committee is the Associate Director of U.S. DOE's Office of Environmental Restoration. The Senior Executive Committee 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. Within twenty-one (21) days of the Regional Administrator's issuance of U.S. EPA's position, U.S. DOE may 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 the U.S. DOE elects not to elevate the dispute to the Administrator within the designated twenty-one (21) day escalation period, U.S. DOE shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.

G. Upon escalation of a dispute to the Administrator of U.S. EPA pursuant to Paragraph F above, 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 U.S. DOE to discuss the issue(s) under dispute. The Administrator shall provide U.S. DOE with a written final decision setting forth resolution of the dispute.

H. The pendency of any dispute under this section shall not affect U.S. 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.

I. When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if U.S. EPA requests, in writing, that work related to the dispute be stopped because, in 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 U.S. DOE prior notification that a work stoppage request is forthcoming. After stoppage of work, if U.S. DOE believes that the work stoppage is inappropriate or may have potential significant adverse impacts, U.S. DOE may meet with the U.S. EPA Region V Waste Management Division Director to discuss the work stoppage. Following this meeting, and further consideration of the issues, the Division Director will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the Division Director may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to either the Dispute Resolution Committee or the Senior Executive Committee, at the discretion of U.S. DOE.

J. Within thirty (30) days of resolution of a dispute pursuant to the procedures specified in this Section, U.S. DOE shall incorporate the resolution and final determination into the approriate plan, schedule or procedures and proceed to implement this Agreement according to the amended plan, schedule or procedures. Within thirty (30) days of receipt, U.S. EPA shall notify U.S. DOE in writing if such amended plan, schedule or procedures adequately reflect the resolution of the dispute. If U.S. EPA approves the amended plan, schedule, or procedures, the document will become final.

K. Resolution of a dispute pursuant to this section of the Agreement constitutes a final resolution of any dispute arising under this Agreement. U.S. DOE shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this section of this Agreement. By mutual agreement of the Parties, the time periods for dispute resolution described above may be extended or accelerated to expedite resolution.

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XV. Additional Work

A. In the event that U.S. EPA determines that additional work or modification to work is necessary to accomplish the objectives of this Agreement, justification of such additional work or modification to work will be provided to U.S. DOE. The justification for additional work shall include the nature of the work and the technical justification for its performance. U.S. DOE agrees, subject to dispute resolution, to implement such work.

B. Any additional work or modification to work determined to be necessary by U.S. DOE shall be proposed in writing and will be subject to review as a primary document, unless a waiver (confirmed in writing within five (5) days, if verbal) to this requirement is received from U.S. EPA prior to commencement of any work done pursuant to this Section.

C. Any additional work or modification to work approved pursuant to Paragraphs A or B of this Section, shall be completed in accordance with standards, specifications, and schedules approved by U.S. EPA. If any additional work or modification to work will adversely affect work scheduled or will require significant revisions to the approved work plan, U.S. EPA Remedial Project Manager/On-Scene Coordinator (RPM/OSC) shall be notified immediately of the situation and be followed by written explanation within five (5) days of the initial notification.

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XVI. 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 development, implementation and completion of 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 condition of this Agreement which relate to removal and remedial actions, including corresponding timetables, deadlines or schedules, and all work associated with the removal or 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 Section XIV. 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 both Parties shall have the right to enforce the terms of this Agreement.

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XVII. Stipulated Penalties

A. U.S. EPA may assess a stipulated penalty against U.S. DOE in any of the following circumstances:

1. In the event that U.S. DOE fails to submit a primary document (including a draft Record of Decision or Responsiveness Summary) to U.S. EPA pursuant to the applicable timetable or deadline, or fails to comply with a term or condition of the Agreement which relates to the implementation of: (a) a removal action in Section IX of this Agreement; or (b) the remedy at each operable unit (i.e., remedial design and remedial action); or (c) related activities, including U.S. DOE's obligation's under Section XXIX of the Agreement, that will affect the timely completion of the removal or remedial action to be performed under the Agreement, then U.S. EPA may issue a notice of intent to assess a stipulated penalty against U.S. DOE. U.S. DOE shall have thirty (30) days after receipt of this notice of intent to invoke formal dispute resolution under Section XIV of this Agreement. If U.S. DOE does not invoke formal dispute resolution within this period, U.S. DOE will be deemed to have concurred in U.S. EPA's assessment of a penalty. U.S. EPA may assess penalties only after the conclusion of the dispute resolution period or following the conclusion of the dispute resolution proceedings, whichever is later. Any such penalties shall relate back to the date of violation.

2. Draft primary documents shall be submitted by U.S. DOE to U.S. EPA for review and comment as set forth in Section XII of this Agreement. U.S. EPA shall review, evaluate and comment upon draft primary documents as set forth in Section XII, Paragraph G.2, of this Agreement. Within the time period set forth in Sections XII G.5 and G.6 of this Agreement, U.S. DOE shall respond to all U.S. EPA comments received on the draft primary document and shall submit a draft final document to U.S. EPA which complies with the terms of this Agreement, CERCLA, the NCP, and applicable U.S. EPA guidance or policy. The draft final primary document shall become the final primary document unless U.S. EPA subjects the document to dispute resolution within sixty (60) days of receipt of the draft final primary document. If upon review of the draft final primary document, U.S. EPA determines that the document does not comply with the terms of this Agreement, CERCLA, the NCP, or any applicable U.S. EPA guidance or policy, U.S. EPA may issue a notice of intent to assess a stipulated penalty against U.S. DOE. However, the parties agree that the draft final primary document shall go through the dispute resolution process prior to U.S. EPA actual assessment of a stipulated penalty. If U.S. DOE's position as to the adequacy of the draft final primary document is upheld in dispute resolution, U.S. EPA agrees not to assess a stipulated penalty and that its notice of intent to assess a stipulated penalty shall be deemed withdrawn. However, if U.S. EPA's position as to the adequacy of the draft final primary document is upheld in the dispute resolution process, U.S. EPA may assess a stipulated penalty against U.S. DOE which relates back to the date of the notice of intent to assess a stipulated penalty. Further, if U.S. EPA's position is upheld in the dispute resolution process, U.S. DOE shall revise the draft final

primary document as set forth in Section XII.I of this Agreement.

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 Section occurs.

B. The annual reports required by Section 120(e) (5) of CERCLA shall include, with respect to each final assessment of a stipulated penalty against U.S. 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.

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

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

E. This Section shall not affect U.S. DOE's ability to obtain an extension of a timetable, deadline or schedule pursuant to this Agreement.

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

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XVIII. Extensions

A. Either a timetable, 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 U.S. DOE shall be submitted in writing and shall specify:

1. The timetable, 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, 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, deadline, or schedule; and

5. Any other event or series of events mutually agreed to by the Parties as constituting good cause (e.g., additional time needed for public participation and document review).

C. U.S. EPA expressly recognizes that U.S. DOE may request an extension under Section XVIII above, in the following circumstances; U.S. EPA agrees to evaluate, in good faith, the existence of good cause for all such timely requests:

1. A delay caused by circumstances in which either (a) despite U.S. DOE's best efforts, the initial analysis results for particular samples indicate the need for resampling and/or additional analysis, or (b) despite U.S. DOE's best efforts, there is insufficient qualified laboratory capacity to timely process and analyze samples taken by U.S. DOE in complying with this Agreement. U.S. DOE shall notify U.S. EPA as soon as possible after discovering either such circumstance, and submit a request for an extension of the timetable, deadline, or other schedule affected by either circumstance, an explanation of how such timetable, deadline, or other schedule is impacted, and a description of all actions taken, or to be taken, to minimize such impact.

2. A delay in Operable Unit 3 schedules caused by circumstances in which (a) despite U.S. DOE's best efforts, scoping activities disclose information that substantially changes planned field characterization activities (e.g., delineation of the sampling and analytical requirements substantially alters the numbers/protocols of samples/analyses), (b) safe shutdown activities (e.g., decontamination of production facilities and equipment, characterization, stabilization and extraction of in-process materials) cannot be completed and integrated with OU 3 despite the exercise of best efforts by U.S. DOE, or (c) despite U.S. DOE's best efforts, interruptions in waste management or material disposition activities interferes with OU 3 field activities (e.g., containerized wastes/materials stored in OU 3 physically hinder access to large areas of buildings). U.S. DOE shall notify U.S. EPA as soon as possible after discovering any of these circumstances, and submit a request for an extension of the timetable, deadline, or other schedule affected by such circumstance, an explanation of how such timetable, deadline, or other schedule is impacted; and a description of all actions taken, or to be taken, to minimize such impact.

D. The parties mutually agree to consider in good faith any timely request for changes in a schedule, timetable or other deadline which results in either an acceleration or extension under this Section. In the absence of agreement between the parties as to the existence of good cause under Section

XVIII.A, U.S. DOE may seek and obtain a determination through the dispute resolution process.

E. Within seven (7) days of receipt of a request for an extension of a timetable, deadline, or a schedule, U.S. EPA shall advise the U.S. DOE in writing of its position on the request. Any failure by U.S. EPA to respond within the seven (7) day period shall be deemed to constitute concurrence in the request for extension. If U.S. EPA does not concur with the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

F. If there is consensus among the Parties that the requested extension is warranted, U.S. EPA shall extend the affected timetable, 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, deadline or schedule shall not be extended, except in accordance with the determination resulting from the dispute resolution process.

G. Within seven (7) days of receipt of a statement of nonconcurrence with the requested extension, U.S. DOE may invoke dispute resolution pursuant to Section XIV.

H. 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, 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, deadline or schedule as most recently extended.

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XIX Force Majeure

A. A Force Majeure event 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 and delegated authorities, any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority other than U.S. 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 the U.S. DOE has made timely request for such funds as part of the budgetary process as set forth in Section XX of this Agreement. A Force Majeure shall also include any strike or other labor dispute, whether or not within 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.

B. If any event(s) occurs or has occurred that may delay the performance of any obligation under this Agreement, whether or not caused by a force majeure event, U.S. DOE shall notify by telephone the RPM/OSC or, in his or her absence, the Director of the Waste Management Division, U.S. EPA Region V, within forty- eight (48) hours of when U.S. DOE first knew or should have known that the

event(s) might cause a delay. Within twenty (20) days of the event(s) which U.S. DOE contends is responsible for the delay, U.S. DOE shall supply to U.S. EPA in writing the reason(s) for and anticipated duration of such delay, the measures taken and to be taken by U.S. DOE to prevent or minimize the delay, and the timetable for implementation of such measures. Failure to give written explanation in a timely manner shall constitute a waiver of any claim of force majeure.

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XX. Funding

It is the expectation of the Parties to this Agreement that all obligations of U.S. DOE arising under this Agreement will be fully funded. U.S. DOE shall take all necessary steps and make best efforts to obtain timely funding to meet its obligations under this Agreement.

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

Any requirement for the payment or obligation of funds, including stipulated penalties, by U.S. DOE 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.

If appropriated funds are not available to fulfill U.S. DOE's obligations under this Agreement, U.S. EPA reserves the right to initiate any other action which would be appropriate absent this Agreement.

The parties recognize that U.S. EPA must possess adequate resources to meet its commitments established by this Agreement. So that activities to be performed pursuant to this Agreement may proceed, U.S. EPA agrees to reprogram existing FY90 resources to fulfill its FY90 commitments established by this Agreement. The parties agree that during FY90, the parties will explore any possible alternatives which may be available to ensure that adequate resources are available to U.S. EPA to fulfill its commitments established by this Agreement.

Notwithstanding any other provision of this Agreement, in the event that U.S. EPA determines that adequate resources are not available to meet any post-FY90 commitments established by this Agreement, U.S. EPA may terminate this Agreement by written notice to DOE.

U.S. EPA reserves any rights it may have to seek or obtain reimbursement of any funds expended by U.S. EPA at FMPC to the extent authorized by CERCLA; nothing herein shall prejudice U.S. EPA's ability to exercise any right to reimbursement provided for by CERCLA.

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XXI. CERCLA Funding

U.S. DOE waives any claims or demands for compensation or payment under Section 106(b), 111, and 112 of CERCLA against the Hazardous Substance Response Trust Fund established by Section

221 of CERCLA for, or arising out of, any activity performed or expenses incurred pursuant to this Agreement. This Agreement does not constitute any decision or preauthorization of funds under Section 111(a)(2) of CERCLA.

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XXII. Imminent and Substantial Endangerment

In the event that U.S. EPA determines that activities conducted pursuant to this Agreement or any other circumstances or activities may be creating an imminent and substantial endangerment to the health or welfare of the people on the Site or in the surrounding area or to the environment, U.S. EPA may order U.S. DOE to halt further implementation of this Agreement for such period of time as needed to take appropriate action including abating the danger. In the event that U.S. DOE determines that any activities or work being implemented under this Agreement may create an imminent threat to human health or the environment from the release or threat of release of a hazardous substance, pollutant, contaminant, or hazardous constituent, it may stop any work or activities for such period of time as needed to respond and take whatever action is necessary to abate the danger. U.S. DOE may stop work under this Section for seventy-two (72) hours while seeking guidance from U.S. EPA regarding the existence of the danger and whether to proceed with the work.

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XXIII. Reporting

A. U.S. DOE agrees it shall submit to U.S. EPA monthly written progress reports that describe the actions that U.S. DOE has taken during the previous month to implement the requirements of this Agreement. Progress reports shall also describe the activities scheduled for the upcoming month. Progress reports shall be submitted by the twentieth (20th) 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 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. Progress reports shall include a statement noting any changes in key personnel performing work pursuant to this Agreement.

B. By the twentieth (20) day of each month, U.S. DOE shall submit to U.S. EPA a summary of daily wastewater flows and radionuclide concentrations and loadings released to the Great Miami River and an estimate of runoff and radionuclide concentrations to Paddys Run during the previous month.

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XXIV. Notification

A. Unless otherwise specified, any report or submittal or notice sent to U.S. EPA by U.S. DOE pursuant to this Agreement shall be sent by facsimile or next day mail and addressed or hand delivered to:

U.S. Environmental Protection Agency
Waste Management Division (5HR-12)
Attn: James Saric

230 South Dearborn Street
Chicago, Illinois 60604

B. Unless otherwise specified, any submittals or notices to be sent to U.S. DOE by U.S. EPA pursuant to this Agreement shall be sent by facsilmile mail or hand delivered to:

U.S. Department of Energy
Fernald Site Office
Attn: Jack Craig, Remedial Project Manager
P.O. Box 398705
Cincinnati, Ohio 45239-8705

Routine correspondence may be sent via regular mail or by facsimile notification.

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XXV. Project Managers

U.S. EPA and U.S. DOE have both designated Project managers for the purpose of overseeing the implementation of this Agreement. The U.S. EPA Project Manager shall have the authority vested in the RPM/OSC by the NCP.

U.S. EPA's RPM/OSC is:

James Saric
U.S. Environmental Protection Agency
Waste Management Division. (5HR-12)
230 South Dearborn Street
Chicago, Illinois 60604
(312 or FTS) 886- 0992

U.S. DOE's Project Manager is:

Jack Craig
U.S. Department of Energy - FMPC Site Office
P.O. Box 398705
Cincinnati, Ohio 45234-8705
(513) 738-6159 (FTS 774-6159)

Any Party may change its designated Project Manager by notifying the other Party, in writing, within five (5) days of the change. To the maximum extent possible, communications between U.S. DOE and U.S. EPA and all documents, including reports, agreements, and other correspondence, concerning the activities performed pursuant to the terms and conditions of this Agreement, shall be directed through the Project Managers.

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XXVI. Sampling and Data/Document Availability

A. At the request of U.S. EPA, U.S. DOE shall make available to U.S. EPA quality assured results of sampling, tests, or other data generated by U.S. DOE or on their behalf, with respect to the implementation of this Agreement within fifteen (15) days of their receipt from the laboratory by U.S. DOE or its authorized representative.

B. At the request of U.S. EPA, U.S. DOE shall allow samples or split samples to be taken. U.S. DOE's Project Manager shall notify U.S. EPA not less than ten (10) business days in advance of any sample collection following receipt of a U.S. EPA written request to take samples or split samples.

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XXVII. Retention of Records

U.S. DOE shall make available to U.S. EPA and shall retain, during the pendency of this Agreement and for a period of ten (10) years after its termination, 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 U.S. DOE or on its behalf, with respect to the 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, U.S. DOE shall notify U.S. EPA at least ninety (90) calendar days prior to the destruction of any such documents, and upon request by U.S. EPA, U.S. DOE shall relinquish custody of the documents or copies of the documents to U.S. EPA.

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XXVIII. Technical Support Group

U.S. EPA and U.S. DOE agree that the establishment of a technical support group may assist U.S. EPA and U.S. DOE in performing their obligations under this Agreement. U.S. EPA and U.S. DOE shall establish such a group, composed of technical experts from U.S. EPA and U.S. DOE and mutually agreed upon independent experts representing organizations or interests that are external to U.S. EPA and U.S. DOE. The precise roles, functions, membership, and charter of the technical support group will be developed jointly by U.S. EPA and U.S. DOE.

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XXIX. Access

A. Without limitation on any authority conferred on U.S. EPA by statute or regulation, U.S. EPA and/or its Authorized Representatives shall have the authority to enter the FMPC at all reasonable times for purposes consistent with this Agreement.

B. To the extent that access is required by U.S. DOE to areas of the Site presently owned by or leased to parties other than U.S. DOE, U.S. DOE agrees to exercise its authorities to obtain access pursuant to Section 104(e) of CERCLA from the owners or lessees upon the approval of any work plan, EE/CA, or any other proposal that requires access to those properties to assure the timely performance of U.S. DOE's obligations under this Agreement. In the event voluntary access has not

been obtained by U.S. DOE within thirty (30) days of the approval of any work plan, EE/CA, or proposal, whichever is earliest, that requires access to properties not owned or leased to U.S. DOE, U.S. DOE agrees within the next thirty (30) days to refer the matter to the U.S. Department of Justice for the appropriate judicial process in accordance with available U.S. EPA or U.S. DOE guidance. Any access agreement obtained by U.S. DOE shall provide for reasonable access by U.S. EPA and/or its Authorized Representatives. U.S. DOE shall use its best efforts to assure that the access agreement shall also provide that the owners of any property where monitoring wells, pumping wells, treatment facilities, sample locations, or other response actions may be located shall notify U.S. DOE and U.S. EPA 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 above-mentioned response actions pursuant to this Agreement.

In the event any existing access agreement fails to provide for access for any activity required by this Agreement, U.S. DOE agrees to obtain access in accordance with the foregoing provisions of this Paragraph.

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XXX. Five Year Review

Consistent with Section 121(c) of CERCLA, and in accordance with this Agreement, U.S. DOE agrees that U.S. EPA will review remedial actions no less often than each five (5) years after the installation of final remedial actions to assure that human health and the environment are being protected by the remedial actions being implemented. If, upon such review, it is the judgment of U.S. EPA that additional action or modification of the remedial actions is appropriate in accordance with Section 104 or 106 of CERCLA, U.S. EPA shall require U.S. DOE to implement such additional or modified action. The Five Year Review shall be conducted consistent with the requirements of CERCLA, the NCP and all U.S. EPA policy and guidance applicable at the time. The first Five Year Review shall be conducted a maximum of five years from the initiation of remedial action at the Site.

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XXXI. Other Claims

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, contaminants, or hazardous constituents found at, taken to, or taken from FMPC. U.S. EPA shall not be held as a party to any contract entered into by U.S. DOE to implement the requirements of this Agreement. This Agreement shall not restrict U.S. EPA from taking any legal or response action for any matter not specified as a part of this Agreement.

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XXXII. Other Applicable Laws

A. All actions required to be taken pursuant to this Agreement shall be undertaken in accordance with the requirements of all applicable Federal, State, and local laws and regulations to the extent required

by CERCLA.

B. U.S. EPA and U.S. DOE acknowledge that the parties are currently negotiating a Federal Facility Agreement (FFA) to implement the requirements of 40 CFR Part 61, Subpart Q for radon emissions. U.S. EPA and U.S. DOE agree that all schedules for action required under the FFA have or will be established pursuant to this Agreement and shall be enforceable under this Agreement pursuant to CERCLA, the NCP and applicable U.S. EPA guidance or policy, and under the FFA pursuant to Section X.

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XXXIII. Amendment of Agreement

A. This Agreement can be amended or modified solely upon written consent of both U.S. DOE and U.S. EPA. Such amendments or modifications shall have as the effective date that date on which they are signed by U.S. EPA.

B. Any reports, plans, specifications, schedules, and attachments required by this Agreement are, upon approval by U.S. EPA, incorporated into this Agreement.

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XXXIV. Transfer of Property

No conveyance of title, easement, or other interest in FMPC 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 U.S. DOE without provision for continued maintenance of any such system or response action(s). No conveyance of title, easement, or other interest in the U.S. DOE property shall occur without meeting requirements of Section 120(h) of CERCLA and/or regulations issued thereunder. At least thirty (30) days prior to any conveyance, U.S. DOE shall notify U.S. EPA of the provisions made for the continued operation and maintenance of any response action(s) or system installed or implemented pursuant to this Agreement. U.S. EPA will review any such proposed conveyance with regard to any effect it may have on the RI, any operable unit, or RA.

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XXXV. Public Participation

A. U.S. DOE agrees that this Agreement and any subsequent response actions shall comply with administrative record and public participation requirements of CERCLA, including Section 117 of SARA, the NCP, and U.S. EPA guidance on public participation and administrative records.

B. U.S. DOE shall develop and implement a Public Involvement and Response Plan that responds to the need for an interactive relationship with all interested community elements regarding activities undertaken by U.S. DOE. U.S. DOE shall submit the Plan to U.S. EPA within thirty (30) days of the effective date of this Agreement and shall modify and implement the plan that it has submitted to U.S. EPA to incorporate any U.S. EPA comments. U.S. DOE shall develop the plan in a manner consistent with Section 117 of SARA, the NCP, U.S. EPA guidelines set forth in U.S. EPA's

Community Relations Handbook, and any modifications thereto.

C. The public participation requirements of this Agreement shall be implemented so as to meet the public participation requirements applicable to RCRA under 40 CFR Part 124 and Section 7004 of RCRA.

D. Upon the effective date of this Agreement, U.S. DOE shall establish and maintain an administrative record at the following location in accordance with Section 113(k) of CERCLA for all response actions pursuant to this Agreement:

Public Environmental Information Center
10845 Hamilton Cleves Road
Harrison, Ohio 45030

The administrative record shall be established and maintained in accordance with current and future U.S. EPA policy and guidelines. It shall be updated at least bi-monthly. A second administrative record shall be submitted to U.S. EPA. U.S. DOE shall maintain an administrative record index that will be modified with each addition to the administrative record. A copy of the modified administrative record index shall be submitted to U.S. EPA with each addition to the administrative record. U.S. EPA retains the right to make final determinations as to the contents of administrative records.

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

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XXXVI. Public Comment

A. Within fifteen (15) days of the date of signature of this Agreement by U.S. EPA, 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 transmit to U.S. DOE all comments received during the comment period. U.S. EPA shall review these comments and:

1. Determine if the Agreement shall be made effective in its present form, in which case U.S. DOE will be so notified. The Agreement shall become effective on the date said notice is provided to U.S. DOE; or

2. Determine that modification of the Agreement is necessary, in which case U.S. DOE will be presented with a revised Agreement by U.S. EPA that includes all required changes to the Agreement.

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

C. In the event that modification of the Agreement is determined by U.S. EPA to be necessary pursuant to Subparagraph A.2 above, within twenty (20) days of the receipt of the revised Agreement, U.S. DOE reserves the right to withdraw from this Agreement, in which case the FFCA and the 1990 Consent Agreement shall remain in effect. If U.S. DOE does not provide U.S. EPA with written

notice of withdrawal from the Agreement within such twenty (20) day period, the modified Agreement shall automatically become effective on the twenty-first (21) day.

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XXXVII. Termination

The provisions of this Agreement shall be deemed satisfied upon the receipt of written notice from U.S. EPA that U.S. DOE has demonstrated to U.S. EPA's satisfaction that all terms of this Agreement have been completed.

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XXXVIII. Effective Date

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

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XXXIX. U.S. DOE's Environmental Restoration and Waste Management Plan

U.S. DOE is preparing an Environmental Restoration and Waste Management Plan (Five-Year Plan), that will identify, integrate, and prioritize compliance and cleanup activities at all U.S. DOE nuclear facilities and sites and provide a consistent basis for U.S. DOE to address environmental requirements and develop and support its budget requests. U.S. DOE's Five-Year Plan will be updated annually to incorporate any changes that occur in the program, including changes due to the following factors: the availability of Congressional funding, application of a national prioritization system to environmental restoration and waste management activities conducted under the Five-Year Plan, conditions determined as the result of assessment and characterization activities at U.S. DOE facilities and sites, and new or amended regulatory requirements.

On July 18, 1986, U.S. DOE entered into an FFCA with U.S. EPA providing for a RI/FS and remedial action to study and clean up releases and threatened releases of hazardous substances at and from the FMPC. U.S. EPA and U.S. DOE have agreed to enter into this Agreement that amends the provisions relating to the completion of the RI/FS and remedial action of the July 18, 1986 FFCA, to meet requirements of Section 120 of CERCLA for any facility on the NPL. The activities and related milestones in the Five-Year Plan shall be consistent with provisions, including requirements and schedules, of this Agreement; it is the intent of U.S. DOE that the Five-Year plan be drafted to ensure that the provisions of this Agreement are incorporated into the U.S. DOE planning and budget process. Nothing in the Five-Year Plan shall be construed to affect the provisions of this Agreement. In the event that the application of the Five-Year Plan's national prioritization system by U.S. DOE results in a proposed implementation schedule for environmental restoration and waste management activities that is different from the schedules developed pursuant to this Agreement, U.S. DOE may request in writing an amendment to this Agreement or the extension of deadlines established by this Agreement. Where necessary, U.S. DOE may also invoke the appropriate dispute resolution provisions of this Agreement. Pending resolution of any dispute, the schedules developed pursuant to this Agreement shall remain enforceable in accordance with the terms hereof. Any resulting amendments or modifications to this Agreement will be incorporated, as necessary, in the annual

updates to the Five-Year Plan.

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XL. Covenant Not to Sue/Reservation of Rights

In consideration of U.S. DOE's compliance with this agreement and based on the information known to the Parties on the effective date of this Agreement, U.S. EPA agrees that compliance with this Agreement shall stand in lieu of any civil remedies, including administrative, legal and equitable, against U.S. DOE, its employees, its contractors or their employees available under current law to U.S. EPA regarding the currently known releases or threatened releases of hazardous substances, pollutants, contaminants, and hazardous substances, pollutants, contaminants, and hazardous constituents at the Site which are the subject of the RI/FS(s) and which will be addressed by the remedial action(s) provided for under this Agreement. Nothing in this Agreement shall preclude U.S. EPA from exercising any administrative, legal and equitable remedies available (including the assessment of civil penalties and damages if such are otherwise legally assessable) to require additional response action by U.S. DOE in the event that the implementation of the requirements of this Agreement is no longer protective of public health or the environment.

IT IS SO AGREED:

By:

Roger P. Whitfield, Associate Director — Date 9/18/1991
Office of Environmental Restoration

BY:

David A. Ullrich, Director — Date 9/20/1991
Waste Management Division
U.S. Environmental Protection Agency
Region V

BY:

Valdas V. Adamkus
Regional Administrator — Date 9/20/1991
U.S. Environmental Protection Agency
Region V

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