

FEDERAL FACILITY AGREEMENT UNDER CERCLA SECTION 120

BETWEEN

SDMS # 31331

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
REGION 9

AND

THE UNITED STATES DEPARTMENT OF THE NAVY

AND

THE STATE OF CALIFORNIA

REPRESENTED BY

THE CALIFORNIA DEPARTMENT OF HEALTH SERVICES

AND

THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,
SAN FRANCISCO BAY REGION

(AUGUST 1990)

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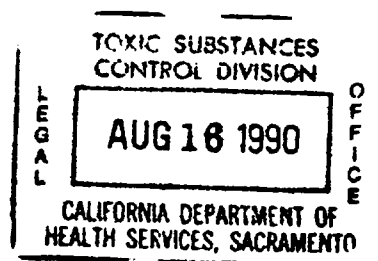


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THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
AND
THE CALIFORNIA DEPARTMENT OF HEALTH SERVICES
AND
THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
AND
THE UNITED STATES DEPARTMENT OF THE NAVY

IN THE MATTER OF:

The U.S. Department of the Navy,
Naval Air Station Moffett Field
California

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FEDERAL FACILITY
AGREEMENT UNDER
CERCLA SECTION 120

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

1 DEFINITIONS

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

In addition: -

1.1 "Administrator" shall mean the Administrator of the Environmental Protection Agency.

1.2 "Agreement" shall mean this document and shall include all Attachments to this document.

1.3 "ARARs" shall mean "legally applicable" or "relevant and appropriate" standards, requirements, criteria or limitations as those terms are used in CERCLA § 121(d)(2).

1.4 "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499, 42 U.S.C. § 9601, et seq.

1.5 "Days" shall mean calendar days, and shall not include the day of the act, event or default from which the designated period of time begins to run. Any submittal, that under the terms of this Agreement would be due on a Saturday, Sunday or holiday, shall be due on the following business day.

1.6 "DHS" shall mean the California Department of Health Services, its successors and assigns, and its duly authorized representatives, which may include its employees, agents, and contractors, as necessary.

1.7 "EPA" shall mean the United States Environmental Protection Agency, its successors and assigns, and its duly authorized

representatives, which may include its employees, agents, and contractors, as necessary.

1.8 "Feasibility Study" or "FS" shall mean that study which fully evaluates and develops remedial action alternatives to prevent or mitigate the migration or the release of hazardous substances, pollutants or contaminants at or from the Site, as more fully described in the NCP.

1.9 "NASMF" shall mean the Naval Air Station, Moffett Field, located in Santa Clara County, California, bounded by the City of Mountain View on the west and the city of Sunnyvale on the south, including all areas identified in Attachment 1. This definition is for the purpose of describing a geographical area and not a political entity.

1.10 "National Contingency Plan" or "NCP" shall refer to the regulations contained in 40 C.F.R. Part 300, and any amendments thereof.

1.11 "Navy" shall mean the U.S. Department of the Navy, including the Naval Air Station Moffett Field, its successors and assigns, and its duly authorized representatives, which may include its employees, agents, and contractors, as necessary.

1.12 "Operable Unit" or "OU" shall mean all discrete response actions, other than removal actions, implemented prior to a final remedial action (FRA) which are consistent with the FRA and which are taken to prevent or minimize the release or migration of hazardous substances, pollutants or contaminants to prevent endangerment of public health, and welfare or the environment. All operable units shall be undertaken in accordance with the NCP and the requirements of CERCLA.

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

1.14 "Parties" shall mean the Navy, EPA, DHS, and RWQCB.

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

1.16 "RCRA permit" shall mean a treatment, storage or disposal permit issued pursuant to RCRA, incorporating the requirements of the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616).

1.17 "Remedial Investigation" or "RI" shall mean that investigation conducted to fully assess the nature and extent of the release of hazardous substances, pollutants or contaminants and to gather necessary data to support the feasibility study and risk assessment, as more fully described in the NCP.

1.18 "RWQCB" shall mean the California Regional Water Quality Control Board, San Francisco Bay Region, its successors and assigns, and its duly authorized representatives, which may include its employees, agents, and contractors, as necessary.

1.19 "Site" shall mean NASMF and other locations affected by migration of hazardous substances, pollutants or contaminants from NASMF. In Section 11 of this Agreement (Permits), the terms "on-site" and "off-site" shall mean those terms as defined or referred to in the NCP. The Parties may change the Site designation on the basis of additional investigations to more accurately reflect the areas of contamination related in whole or part to the NASMF.

1.20 "Submit," "submittal," or "submission" shall mean the following: any document to be submitted by a certain date will be

considered as submitted on time if mailed by that date by certified mail return receipt requested, registered mail, or next day mail. Any other means of submission must arrive on the due date to be considered as timely delivered.

1.21 "Timetables and deadlines" shall refer to the specific schedules for performance of described tasks to be implemented pursuant to this Agreement. Timetables and deadlines will be contained in the Attachments to this Agreement and may also be contained in other parts of this Agreement or in documents prepared pursuant to this Agreement.

1.22 "MEW Regional Groundwater Remediation Program" shall mean the regional groundwater extraction, treatment and reuse program to be implemented as part of the remedy selected by the MEW Site Record of Decision signed by the EPA Regional Administrator of Region IX on June 9, 1989.

2 JURISDICTION

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

2.1 The U.S. Environmental Protection Agency (U.S. EPA), Region IX, enters into those portions of this Agreement that relate to the remedial investigation/feasibility study (RI/FS) pursuant to Section 120(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9620(e) (1), and Sections 6001, 3008(h) and 3004(u) and (v) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6961, 6928(h), 6924(u) and (v), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) (hereinafter jointly referred to as RCRA/HSWA or RCRA)¹ and Executive Order (E.O.) 12580;

1. Currently, there are no existing or proposed RCRA treatment, storage or disposal facilities at NASMF.

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

2.3 The U.S. Department of the Navy (Navy) enters into those portions of this Agreement that relate to the RI/FS pursuant to Section 120(e)(1) of CERCLA, Sections 6001, 3008(h) and 3004(u) and (v) of RCRA, Executive Order 12580, the National Environmental Policy Act, 42 U.S.C. § 4321, and the Defense Environmental Restoration Program (DERP), 10 U.S.C. § 2701 et seq;

2.4 The Navy enters into those portions of this Agreement that relate to remedial actions pursuant to Section 120(e)(2) of CERCLA, Sections 6001, 3004(u), 3004(v) and 3008(h) of RCRA, Executive Order 12580 and the DERP.

2.5 The California Department of Health Services (DHS) and the California Regional Water Quality Control Board (RWQCB) enter into this Agreement pursuant to Sections 120 and 121 of CERCLA, California Health and Safety Code Division 20, Chapters 6.5 and 6.8, and Division 7 of California Water Code.

3 STIPULATED DETERMINATIONS

For purposes of this Agreement, and as a basis therefore, the Navy, EPA, DHS, and RWQCB have determined that:

3.1 The Naval Air Station Moffett Field (NASMF), located in Santa Clara County, constitutes a facility within the meaning of 42 U.S.C. § 9601(9).

3.2 NASMF is a federal facility within the meaning of 42 U.S.C. § 9620 and is subject to all guidelines, rules, regulations, and criteria in the same manner and to the same extent as other facilities, as specified in 42 U.S.C. § 9620(a).

3.3 There are areas within NASMF boundaries where hazardous substances, as defined in 42 U.S.C. § 9601(14), have been deposited, stored, placed or otherwise come to be located.

3.4 There have been releases of hazardous substances, pollutants or contaminants into the environment, within the meaning of 42 U.S.C. §§ 9601(22), 9604, 9606 and 9607, California Health and Safety Code §§ 25316 and 25320 and Division 7 of the California Water Code, at NASMF.

3.5 With respect to those releases, the Navy is an owner and operator, as defined in 42 U.S.C. § 9601(20), subject to the provisions of 42 U.S.C. § 9607, Health and Safety Code § 25323.5(a) and California Water Code § 13050.

3.6 Pursuant to 42 U.S.C. § 9604(b), E.O. 12580 and Health and Safety Code § 25355.5(a)(1)(c), the Navy is the agency responsible for implementing the RI/FS.

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

3.8 The Navy, RWQCB, and DHS recognize that for purposes of Section 36 (Cost Reimbursement), DHS shall be the lead state agency, responsible for collecting reimbursable cost, and distributing portions as identified by the Navy to the RWQCB. The Navy, DHS, and RWQCB recognize that the RWQCB has had, and shall continue to have, substantial technical lead for all activities

incidental and consequential to this Agreement. Notwithstanding RWQCB's role, the Parties recognize the DHS shall not be limited in any way in the participation or consultation under this Agreement, or in asserting or carrying out authorities under state or federal laws. However, DHS and RWQCB will in good-faith endeavor to minimize any duplication of effort.

4 PARTIES BOUND

4.1 The Parties to this Agreement are the EPA, Navy, and the State of California as represented by DHS, and RWQCB. The terms of this Agreement shall apply to and be binding upon the Parties and all subsequent owners, operators and lessees of NASMF. Each Party will notify all other Parties of the identity and assigned tasks of each of its contractors performing work under this Agreement upon their selection. This Section shall not be construed as an agreement to indemnify any person. Each Party shall provide copies of this Agreement to its contractors who are performing any work called for by this Agreement. The Navy shall require compliance with this Agreement in any contracts it executes for work performed under this Agreement.

4.2 No change in ownership of NASMF shall in any way alter the status or responsibility of the Parties under this Agreement. Should the Navy transfer ownership of any or all of the property which constitutes NASMF, the notice and remedial action responsibilities specified in Section 28 of this Agreement (Transfer of Real Property) shall apply.

5 PURPOSE

5.1 The general purposes of this Agreement are to:

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

5.1.2 establish a procedural framework and schedule for developing, implementing and monitoring appropriate response actions at the Site in accordance with CERCLA, the NCP, CERCLA guidance and policy, RCRA, RCRA guidance and policy; and,

5.1.3 facilitate cooperation, exchange of information and participation of the Parties in such actions.

5.2 Specifically, the purposes of this Agreement are to:

5.2.1 identify operable units (OUs) which are appropriate at the Site prior to the implementation of final remedial action(s) for the Site. OUs shall be identified and proposed to the Parties as early as possible prior to formal proposal of OUs to the Parties pursuant to CERCLA. This process is designed to promote cooperation among the Parties in identifying OU alternatives prior to selection of final OUs;

5.2.2 establish requirements for the performance of a RI to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release and threatened release of hazardous substances, pollutants or contaminants at the Site and to establish requirements for the performance of a FS for the Site to identify, evaluate, and select alternatives for the appropriate remedial action(s) to prevent,

mitigate, or abate the release or threatened release of hazardous substances, pollutants or contaminants at the Site in accordance with CERCLA;

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

5.2.4 implement the selected interim and final remedial action(s) in accordance with CERCLA and meet the requirements of Section 120(e)(2) of CERCLA for an interagency agreement among the Parties;

5.2.5 assure compliance, through this Agreement, with RCRA and other federal and state laws and regulations for matters covered herein;

5.2.6 coordinate response actions at the Site with the mission and support activities at NASMF;

5.2.7 expedite the cleanup process to the extent consistent with protection of human health and the environment;

5.2.8 conduct operation and maintenance of remedial action(s) selected and implemented pursuant to this Agreement; and

5.2.9 adequately characterize source areas of contamination at the Site and identify and implement removal actions to control such source areas in accordance with Attachments 4 and 5 prior to and in coordination with the implementation of the MEW Regional Groundwater Remediation Program. The purpose of such source control removals is to eliminate any impediment to the effective implementation of the MEW Regional Groundwater Remediation Program North of Highway 101 that otherwise would be caused by the failure to implement such source control removals.

6 STIPULATED FACTS

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.

6.1 NASMF occupies about 1,500 acres of land located between the cities of Mountain View and Sunnyvale. NASMF was commissioned by the Navy in 1933. Since April, 1962, the Navy has used NASMF to support anti-submarine warfare training and patrol squadrons. As part of the Navy's past operations, the Navy handled, generated, accumulated and disposed of hazardous materials and wastes at NASMF.

6.2 The Department of the Navy developed the Navy Assessment and Control of Installation Pollutants (NACIP) to identify and control environmental contaminants from past use and disposal of hazardous substances at Navy installations. The program was later renamed the Installation Restoration Program (IRP) of the Department of Defense and is similar to the U.S. EPA's Superfund Program authorized by CERCLA. As part of the NACIP, the Navy conducted a record and field survey of the NASMF to identify areas potentially contaminated by past operations and disposal activities. The results were presented in a report titled "Initial Assessment Study of Naval Air Station, Moffett Field, Sunnyvale, California" (IAS) dated April, 1984. The IAS identified nine sites on NASMF for further investigation.

6.3 The RWQCB issued Waste Discharge Requirements Order No. 85-66 on May 15, 1985 requiring the Navy to fully define the extent of contaminants at each of the nine sites identified in the IAS. In addition, Order No. 85-66 required the Navy to submit an interim cleanup plan and to conduct an investigation to identify, locate, and evaluate deep wells with potential to serve as conduits for inter-aquifer cross contamination. The Navy submitted reports in response to Order No. 85-66, but the RWQCB determined

that the scope of work performed was not satisfactory to comply with the requirements.

6.4 In a report titled "Final Report Industrial Waste Engineering Study, Naval Air Station, Moffett Field, CA" dated April, 1986, the Navy identified four active sites on NASMF with potential contamination problems. The Navy modified their waste disposal practices in 1987 at three of the active sites to reduce or eliminate further releases. The Navy intends to address past releases from these three sites under this Agreement.

6.5 In response to State and Santa Clara County regulations regarding registration and monitoring requirements for underground storage tanks, the Navy submitted a report dated June 10, 1986. This report contained a listing of 68 underground tanks and sumps. Based on a limited investigation performed by the Navy in 1987 of 31 of the 68 tanks, 12 tanks were shown to be leaking. To date, most of the tanks are slated for removal, approximately 20 are to remain in use with some form of leak monitoring system.

6.6 NASMF was proposed as a National Priorities List (NPL) site by EPA in June, 1986 and was placed on the NPL in July, 1987 (see 52 Fed. Reg. 27620). Section 120 of CERCLA requires that a Remedial Investigation and Feasibility Study (RI/FS) be commenced within 6 months of NPL listing. The RI/FS must be conducted in accordance with the National Contingency Plan and guidance issued by U.S. EPA for the CERCLA Program. Executive Order 12580, January 23, 1988, delegates the responsibility to the Department of the Defense to carry out the RI/FS in consultation with EPA and appropriate State regulatory agencies.

6.7 The RWQCB issued Cease and Desist Order No. 87-125 to the Navy on September 16, 1987. Order No. 87-125 was issued to the Navy for their failure to comply with the requirements of Order No. 85-66, and for violations of the California Water Code and prohibitions of the RWQCB's Basin Plan for the sites mentioned in Sections 6.4 and 6.5 above. Order No. 87-125 required the Navy to investigate all the sites identified, prepare interim and final cleanup plans, identify and evaluate potential deep well conduits, and prepare and submit reports to comply with the statutory requirements of the California Water Code and the California Health and Safety Code.

6.8 The wastes generated by the Navy at NASMF from past operations include the following: waste oil; chlorinated hydrocarbons, including trichloroethylene (TCE), Trichloroethane (TCA), and tetrachloroethylene (PCE); Methyl Ethyl Ketone (MEK); toluene; dry cleaning fluids and other solvents; fuel; Polychlorinated Biphenyls (PCBs); industrial wastewater; and paints and thinners. A detailed description of the areas currently being investigated, including locations, is presented in the Sampling and Analysis Plan, Phase I & II.

7 SCOPE OF AGREEMENT

7.1 Remedial Investigation

The Navy agrees it shall develop, implement and report upon a RI(s) of the Site (including a RI for any operable unit at the Site) in accordance with the requirements specified in 42 U.S.C.

9601 et seq., the NCP, Attachment 2, and the timetables and deadlines specified in Attachment 3 to this Agreement. The RI shall be subject to the review process set forth in Section 9 (Consultation with EPA, DHS, and RWQCB) of this Agreement. The RI shall meet the purposes set forth in Section 5 of this Agreement. The Parties agree that final Site cleanup level criteria will only be determined following completion of a risk assessment.

7.2 Feasibility Study

The Navy agrees it shall design, propose, undertake and report upon a FS(s) for the Site (including a FS for any operable unit of the Site) which is in accordance with the requirements specified in 42 U.S.C. 9601, et seq., the NCP, Attachment 2, and the timetables and deadlines specified in Attachment 3 to this Agreement. The FS shall be subject to the review process set forth in Section 9. The FS shall meet the purposes set forth in Section 5 of this Agreement.

7.3 Remedial Action Selection And Implementation

Following completion and a review in accordance with Section 9 of this Agreement by EPA, DHS, and RWQCB of a RI (including a RI for any operable unit) and the corresponding FS (including a FS for any operable unit) for all or part of the Site, the Navy shall, after consultation with EPA, DHS, and RWQCB pursuant to Section 9, publish its Proposed Plan for public review and comment in accordance with CERCLA § 117(a), 42 U.S.C. § 9617(a), the NCP, and applicable guidance. Upon completion of the public comment period, all Parties will consult with each other about the need for modification of the Proposed Plan and additional public

comment based on public response. When public comment has been properly considered, the Navy shall submit its draft Record of Decision (ROD) in accordance with Section 9, Attachment 2 and Attachment 3. At the time of submittal of the draft Proposed Plan, the Navy shall submit a proposed schedule for implementation of the selected remedial action(s) to the other Parties in accordance with Section 9, and Attachment 3. In the event the Parties cannot reach agreement on selection of the Final Remedial Action, the EPA Administrator shall select the Final Remedial Action in accordance with Section 10 (Resolution of Disputes). After approval in accordance with Section 9, the ROD shall be published by the Navy before commencement of the remedial action, in accordance with CERCLA §§ 117(b), (c), and (d). The Navy shall implement the remedial action(s) in accordance with approved time schedules. The Navy shall conduct operation and maintenance to maintain the effectiveness of response actions at the Site.

7.4 Removal Actions

7.4.1 The provisions of this Subsection shall apply to all removal actions as defined in CERCLA Section 101(23), 42 U.S.C. § 9601(23), and Health and Safety Code Section 25323, including all modifications to, or extensions of, the ongoing removal actions, and all new removal actions proposed or commenced following the effective date of this Agreement, including those removal actions undertaken pursuant to the schedules contained in Attachments 4 and 5.

7.4.2 Any removal actions conducted on the Site shall be conducted in a manner consistent with CERCLA, the NCP, and 10 U.S.C. § 2705.

7.4.3 Except for the specific review and comment process that applies to removals undertaken pursuant to Attachment 5, and the provisions of Subsection 7.4.9, nothing in this Agreement shall alter the Navy's authority with respect to removal actions conducted pursuant to

Section 104 of CERCLA, 42 U.S.C. § 9604.

7.4.4 EPA, DHS, and RWQCB reserve any authority they may have concerning removal actions conducted on the Site, and nothing in this Agreement shall alter any authority the State or EPA may have with respect to removal actions conducted on the Site.

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

7.4.6 The Navy shall provide the other Parties with timely notice and opportunity to review and comment upon any proposed removal action for the Site, in accordance with 10 U.S.C. § 2705(a) and (b). The Navy will provide the other Parties with any information required by CERCLA, the NCP, and pertinent EPA guidance, including but not limited to the Action Memorandum and the Engineering Evaluation/Cost Analysis (in the case of non-time critical removals). Such information shall be furnished at least forty-five (45) days before the proposed removal action is to begin.

7.4.7 All activities related to ongoing removal actions shall be reported by the Navy in the progress reports as described in Section 13, Monthly Progress Report.

7.4.8 Any dispute among the Parties as to whether a proposed non-emergency response action is properly considered a removal action, as defined by 42 U.S.C. § 9601(23), or as to the consistency of such a removal action with the final remedial action, shall be resolved pursuant to Section 10, Resolution of Disputes. Such dispute may be brought directly to the DRC at any Party's

request.

7.4.9 Any dispute among the Parties as to the adequacy of the Navy's design, implementation or operation of the source control removals at the Site described in Attachment 5 shall be resolved pursuant to Section 10 of this Agreement (Resolution of Disputes).

7.5 Document Submittal

The Navy agrees to submit to the other Parties certain documents to fulfill the obligations and meet the purposes of this Agreement. A description of these documents and the schedule for their submittal are specified in Section 9 (Consultation with EPA, DHS, and RWQCB), and the Attachments to this Agreement.

7.6 Guidance

EPA, DHS, and RWQCB agree to 1) assist the Navy in identifying applicable guidance and, whenever practicable, supply the Navy with copies of such guidance and; 2) give a timely response to requests for guidance to assist the Navy in the performance of the requirements under this Agreement.

7.7 On-Site Contamination Originating Off-NASMF

The Parties recognize that releases of hazardous substances originating off-NASMF, including certain groundwater plumes comingled with plumes originating on-NASMF, may be addressed pursuant to a separate agreement entered into by the responsible parties and the regulatory agencies.

8 STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

8.1 The Parties intend to integrate the Navy's CERCLA response obligations and RCRA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes, pollutants or contaminants covered by this Agreement into this com-

prehensive 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 (v) of RCRA, 42 U.S.C. 6924(u) and (v), for a RCRA permit, and Section 3008(h), 42 U.S.C. 6928(h), for interim status facilities; and to meet or exceed all applicable or relevant and appropriate Federal and State laws and regulations, to the extent required by Section 121 of CERCLA, 42 U.S.C. 9621.

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

8.3 The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties further recognize that on-going hazardous waste management activities at the NASMF may require the issuance of permits under Federal and State laws. This Agreement does not affect the requirements, if any, to obtain such permits. However, if a permit is issued to the Navy for on-going hazardous waste management activities at the Site, the issuing party shall reference and in-

corporate 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.

9 CONSULTATION WITH EPA, DHS, AND RWQCB

Review and Comment Process for Draft and Final Documents

9.1 Applicability:

9.1.1 The provisions of this Section establish the procedures that shall be used by the Parties to provide each other with appropriate notice, review, comment, and response to comments regarding RI/FS and RD/RA documents, specified herein as either primary or secondary documents. In accordance with Section 120 of CERCLA and 10 U.S.C. §§ 2701 and 2705, the Navy will normally be responsible for issuing primary and secondary documents to the other Parties. As of the effective date of this Agreement, all draft and final reports for any deliverable document identified herein shall be prepared, distributed and subject to dispute in accordance with Subsections 9.2 through 9.10 below.

9.1.2 The designation of a document as "draft" or "final" is solely for purposes of consultation among the Parties in accordance with this Part. Such designation does not affect the obligation of the Parties to issue documents, which may be referred to herein as "final", to the public for review and com-

ment as appropriate and as required by law.

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

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

9.2.2 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 the Navy in draft subject to review and comment by the other Parties. Although the Navy 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.

9.3 Primary Documents:

9.3.1 The Navy shall complete and submit draft reports for the following primary documents to the other Parties for review and comment in accordance with the provisions of this Section:

1. Quality Assurance Project Plan (Final already submitted)

2. Sampling and Analysis Plan(s) (Final Phase I and II Sampling and Analysis Plan already submitted)
3. Work Plan Phase I & II (Final already submitted)
4. Community Relations Plan (Final already submitted)
5. Management Plan
6. Known Abandoned Wells Closure Report
7. Suspected Abandoned Wells Closure Report
8. Initial Screening of Remedial Alternatives
9. RI Report(s)
10. FS Report(s) (including Baseline Risk Assessment)
11. Proposed Plan(s)
12. Record(s) of Decision
13. Remedial Design(s)
14. Remedial Action Operations Plan(s)
15. Action Memoranda relating to Attachment 5.

9.3.2 Only the draft final reports for the primary documents identified above shall be subject to dispute resolution. The Navy shall complete and submit draft primary documents in accordance with the timetables and deadlines established in Attachment 3 and Attachment 5 of this Agreement.

9.4 Secondary Documents:

9.4.1 The Navy shall complete and submit draft reports for secondary documents to the other Parties for review and comment in accordance with the provisions of this Section. The secondary

documents include, but are not limited to, the following:

1. Research Report - Potential Conduits Investigation (Vertical) (Final already submitted)
2. Water Quality SWAT Proposal (already submitted)
3. Health and Safety Plan (already submitted)
4. Removal Action Plan for Tanks 2, 14, 43, 53, 67 and 68 and Sump 66 (already submitted)
5. Active Wells Report (already submitted)
6. Water Quality SWAT Report
7. Plan for Evaluation and Closure of Abandoned Wells
8. Suspected Wells Investigation Report
9. Phase I Characterization Report
10. Additional Removal Action Plan(s) (only if generated)
11. Detailed Analysis of Alternatives (only if generated as a separate document)
12. Post-screening Investigation Work Plan(s) (only if generated)
13. Treatability Studies (only if generated)

9.4.2 Although EPA, DHS, and RWQCB 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 Subsection 9.2 hereof. Target dates for the completion and submission of draft secondary documents which are not in Attachment 3 shall be established by the Project Managers. The Project Managers may also identify additional secondary documents and establish target dates for the completion and submission of these

secondary documents.

9.5 Meetings of the Project Managers on Development of Reports:

The Project Managers shall meet approximately every sixty (60) days, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the Site on the primary and secondary documents. Prior to preparing any draft document specified in Paragraphs 9.3 and 9.4 above, the Project Managers shall meet to discuss the document results in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft document.

9.6 Identification and Determination of Potential ARARs:

9.6.1 For those primary reports or secondary documents that consist of or include ARAR determinations, prior to the issuance of a draft report, the Project Managers shall 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 Navy, in coordination with EPA, DHS, and RWQCB, in accordance with § 121(d)(2) of CERCLA, the NCP and pertinent guidance issued by EPA, which is not inconsistent with CERCLA and the NCP.

9.6.2 In identifying potential ARARs, the Parties recognize that actual ARARs can be identified only on a site-specific basis and that ARARs depend on the specific hazardous substances, pollutants and contaminants at a site, the particular actions proposed as a remedy and the characteristics of a site. The Parties recognize that ARAR identification is necessarily an

iterative process and that potential ARARs must be re-examined throughout the RI/FS process until a ROD is issued.

9.7 Review and Comment on Draft Reports:

9.7.1 The Navy shall complete and submit each draft primary report to EPA, DHS, and RWQCB on or before the corresponding deadline established for the issuance of the report. The Navy shall complete and submit each draft secondary document in accordance with the target dates established for the issuance of such documents.

9.7.2 Unless the Parties mutually agree to another time period, all primary draft reports shall be subject to a sixty (60) day period for review and comment. Review of any document by the Parties may concern all aspects of the report (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP and any pertinent guidance or policy issued by EPA, DHS or RWQCB. Comments by EPA, DHS, and RWQCB shall be provided with adequate specificity so that the Navy may respond to the comment and, if appropriate, make changes to the draft report. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of the Navy, the commenter shall provide a copy of the cited authority or reference, if not generally available in the public domain. In cases involving complex or unusually lengthy reports, the Parties may extend the sixty (60) day comment periods for an additional thirty (30) days by written notice to the Navy prior to the end of the sixty (60) day period for which the extension is necessary. On or before the close of the

comment period, EPA, DHS, and RWQCB shall submit their written comments to the Navy in accordance with Section 14 (Notification and Distribution List).

9.7.3 Representatives of the Navy shall make themselves readily available to EPA, DHS, and RWQCB during the comment period for purposes of informally responding to questions and comments on draft reports. Oral comments made during such discussions need not be the subject of a written response by the Navy on the close of the comment period.

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

9.7.5 Following the close of the comment period for a draft report, the Navy shall give full consideration to all written comments on the draft report submitted during the comment period. Within sixty (60) days of the close of the comment period on a draft secondary report, the Navy shall transmit to the other Parties its written response to comments received within the comment period. Within sixty (60) days of the close of the comment period on a draft primary report, the Navy shall transmit to the other Parties a draft final primary report, which shall include the Navy's response to all written comments, received within the comment period. While the resulting draft final report shall be

the responsibility of the Navy, it shall be the product of consensus to the maximum extent possible.

9.7.6 The Navy may extend the sixty (60) day period for either responding to comments on a draft report or for issuing the draft final primary report for an additional thirty (30) days by providing notice to the other Parties.

9.7.7 In appropriate circumstances, these time periods may be further extended in accordance with Section 27 (Extensions).

9.8 Availability of Dispute Resolution for Draft Final Primary Documents:

9.8.1 Dispute resolution shall be available to the Parties for draft final primary reports as set forth in Section 10.

9.8.2 When dispute resolution is invoked on a draft final primary report, work may be stopped in accordance with the procedures set forth in Section 10 regarding dispute resolution.

9.9 Finalization of Reports:

The draft final primary document shall serve as the final primary document if no party invokes dispute resolution regarding the document or, if invoked, at completion of the dispute resolution process should the Navy's position be sustained. If the Navy's determination is not sustained in the dispute resolution process, the Navy shall prepare, within not more than 35 days of resolution of the dispute pursuant to Section 10, a revision of the draft final document which conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Section 27 (Extensions).

9.10 Subsequent Modifications of Final Reports

9.10.1 Following finalization of any primary report pursuant to Paragraph 9.9 above, the Parties may seek to modify the report, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in Subsections 9.10.2 and 9.10.3 below.

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

9.10.3 In the event that a consensus is not reached by the Project Managers on the need for a modification, the Parties 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.

9.10.4 Nothing in this Subsection shall alter the ability of EPA, DHS or RWQCB to request the performance of additional work which was not contemplated by this Agreement. The Navy's obligation to perform such work must be established by either a

modification of a report or document or by amendment to this Agreement.

10 RESOLUTION OF DISPUTES

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

10.2 All Parties may invoke the dispute resolution procedures. 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.

10.3 Within thirty (30) days after: (1) the receipt by EPA, DHS, and RWQCB of a draft final primary document pursuant to Section 9 (Consultation with EPA, DHS, and RWQCB) of this Agreement, or (2) any action which leads to or generates a dispute, the disputing Party shall submit to the Dispute Resolution Committee (DRC) a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute and the technical, legal or factual information the disputing Party is relying upon to support its position.

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

necessary to discuss and attempt resolution of the dispute.

10.5 The DRC will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The EPA representative on the DRC is the Waste Management Division Director of U.S. EPA's Region IX. The Navy's designated member is the Director, Office of Environmental Management, Western Division, Naval Facilities Engineering Command (WESTNAVFACENGCOM). DHS's designated member is the Chief of the Site Mitigation Unit, Toxic Substances Control Division, Region 2. RWQCB's designated member is the Division Chief of the appropriate division. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Section 14 (Notification and Distribution List).

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

10.7 The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The EPA

representative on the SEC is the Regional Administrator of EPA's Region IX. The Navy's representative on the SEC is the Commander, WESTNAVFACENGCOM. DHS's representative on the SEC is the Section Chief, Toxic Substances Control Division, Region 2. RWQCB's representative on the SEC is the Executive Officer. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision. If unanimous resolution of the dispute is not reached within twenty-one (21) days, EPA's Regional Administrator shall issue a written position on the dispute within five (5) days after the twenty-one (21) day period. Any other Party may, within fourteen (14) days of the Regional Administrator's issuance of EPA's position, issue a written notice elevating the dispute to the Administrator of EPA for resolution in accordance with all applicable laws and procedures. In the event that the other Parties elect not to elevate the dispute to the Administrator within the designated fourteen (14) day escalation period, the other Parties shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.

10.8 Upon escalation of a dispute to the Administrator of EPA pursuant to Subsection 10.7, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the EPA Administrator shall meet and confer with the Navy's Secretariat Representative, the DHS's Deputy Director, and/or the Chairman of the RWQCB to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the Parties with a written final decision setting forth resolution of the dispute. The duties of the

Administrator set forth in this Section shall not be delegated.

10.9 Whenever formal dispute resolution procedures are invoked, DHS and RWQCB, as agencies of the State of California, shall attempt, in good faith, to take a consistent position on the matter to be resolved, thereby presenting one State position.

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

10.11 When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if a DRC member requests, in writing, that work related to the dispute be stopped because, in its 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, the DRC member requesting the work stoppage shall consult with the other DRC members prior to initiating a work stoppage request. After stoppage of work, if another DRC member believes that the work stoppage is inappropriate or may have potential significant adverse impacts, the DRC may meet to discuss the work stoppage.

10.12 Following this meeting, and further consideration of the

issues, the DRC members (other than the Navy's member) will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the DRC may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to the SEC.

10.13 Within thirty-five (35) days of resolution of a dispute pursuant to the procedures specified in this Section, the Navy shall incorporate the resolution and final determination into the appropriate plan, schedule or procedures and proceed to implement this Agreement according to the amended plan, schedule or procedures.

10.14 Except as provided in Section 25 (Covenant Not to Sue and Reservation of Rights), resolution of a dispute pursuant to this Section of the Agreement constitutes a final resolution of the dispute arising under this Agreement. All Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Section of this Agreement.

11 PERMITS

11.1 The Parties recognize that under 42 U.S.C. 9621(e)(1), no federal, state or local permit shall be required for the portion of any removal or remedial action conducted entirely on-site, where such action is selected and carried out in compliance with 42 U.S.C. 9621. However, the Navy must satisfy all the ARARs which would have been included in any such permit.

11.2 When the Navy proposes a response action to be conducted

entirely "on-site," as that term is defined in the NCP, which in the absence of 42 U.S.C. § 9621(e)(1) would require a federal, state, or local permit, the Navy, in consultation with EPA, DHS, and RWQCB shall include, in the appropriate submittal:

11.2.1 Identification of each permit, including applicable standards and requirements, which would otherwise be required;

11.2.2 Explanation of how the response action will meet the standards and requirements identified in Subsection 11.2.1 above.

11.3 This section is not intended to relieve the Navy from any and all regulatory requirements, including but not limited to CERCLA § 121(d)(3), whenever it proposes a response action involving the movement of hazardous substances, pollutants or contaminants off-site.

11.4 The Navy shall furnish EPA, DHS, and RWQCB with copies of all permits obtained in implementing this Agreement. Such copies shall be appended to the appropriate submittal or monthly progress report.

11.5 Nothing in this section shall affect or impair the obligation of the Navy to comply with any applicable requirement of 42 U.S.C. 6901 et seq. the Hazardous Waste Control Law, Health and Safety Code 25100 et seq. or Division 7 of the California Water Code.

12 PROTECTION OF PUBLIC HEALTH AND THE ENVIRONMENT

12.1 All activities pursuant to this Agreement will be conducted under the Health and Safety Plan and will be conducted so

as to minimize any threat to the surrounding public. In the event EPA, DHS or RWQCB determines, in that Party's best professional judgment, that any activities conducted pursuant to this Agreement are creating a threat to the public health or welfare or the environment, EPA, DHS or RWQCB may request the Navy to stop further implementation of all or part of this Agreement for such period of time as needed to abate the danger.

12.2 In complying with any such requests, the Navy shall not be liable for failure to comply with other sections of this Agreement that may be caused by such compliance. EPA, DHS, and RWQCB reserve any authority they may have to respond to threats to public health and the environment.

13 MONTHLY PROGRESS REPORT

The Navy shall submit to EPA, DHS, and RWQCB monthly written progress reports which shall include, but may not be limited to, a description of the actions which the Navy has taken during the previous month to implement the requirements of this Agreement, including significant community relations activities or contacts; a description of the activities scheduled to be taken during the current month; and a description of the activities scheduled for the next month. Progress reports shall be submitted by the fifteenth (15) 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 timetables and deadlines provided for pursuant to this Agreement are being met. In addi-

tion, the progress reports shall identify anticipated delays in meeting schedules, the reason(s) for the delay and actions taken to prevent future delays. However, formal extensions required, if any, must still be requested pursuant to Section 27 (Extensions). The Project Managers may agree to make the progress reports quarterly rather than monthly.

14 NOTIFICATION AND DISTRIBUTION LIST

14.1 Unless otherwise specified by a Party, any report or submittal provided pursuant to a schedule identified in or developed under this Agreement shall be hand delivered, sent by certified mail, return receipt requested, or sent by next day mail, and addressed as follows:

U.S. Environmental Protection Agency, Region 9
1235 Mission St., Mail Code H-7-3
San Francisco, CA 94103
Attn: (Project Manager)

California Department of Health Services
Toxic Substances Control Program, Region 2
700 Heinz Avenue, Building F, Suite 200
Berkeley, CA 94710
Attn: (Project Manager)

Regional Water Quality Control Board
San Francisco Bay Region
1800 Harrison St., Suite 700
Oakland, CA 94612
Attn: (Project Manager)

Naval Facilities Engineering Command
Western Division, Code 18
Office of Environmental Management
900 Commodore Dr., Bldg. 101
P.O. Box 727
San Bruno, CA 94066-0720
Attn: (Project Manager)

14.2 Any other correspondence may be sent by first class mail.

15 PROJECT MANAGERS

15.1 The Navy, EPA, DHS, and RWQCB shall each designate a Project Manager and Alternate (hereinafter jointly referred to as Project Manager) for the purpose of overseeing the implementation of this Agreement. Within ten (10) days of the effective date of this Agreement, all Parties shall notify the other Parties, in writing, of the name and address of its Project Manager. Any Party may change its Project Manager by notifying the other Parties, in writing, within five days of the change. To the maximum extent possible, communications between the Parties concerning the terms and conditions of this Agreement shall be directed through the Project Managers as set forth in Section 14 of this Agreement. Each Project Manager shall be responsible for assuring that all communications from the other Project Managers are appropriately disseminated and processed by the entities which the Project Managers represent.

15.2 The absence of the EPA, DHS, RWQCB or Navy Project Manager from the Site shall not be cause for work stoppage.

16 SAMPLING AND DATA/DOCUMENT AVAILABILITY

16.1 Quarterly data reports containing quality assured data will be submitted by the Navy to the other Parties. In addition, if requested, the Parties shall make available to each other raw

data or results, or quality assured results of sampling, testing or other data generated by any Party, or on their behalf, with respect to the implementation of this Agreement, as soon as such data or results become available.

16.2 Any Party may request, and the party taking the sample shall allow, split or duplicate samples to be taken during sample collection conducted during the implementation of this Agreement. The Project Managers collecting the sample shall endeavor to notify each other not less than ten (10) days in advance of any sample collection. At this time, the Parties shall make known their request to be present or to collect split or duplicate samples. If it is not possible to provide ten (10) days prior notification, the Parties shall notify each other as soon as possible after becoming aware that samples will be collected.

17 QUALITY ASSURANCE

17.1 Field work

The Navy has prepared the quality assurance project plan in accordance with EPA Document QAMS-005/80 and other applicable guidance furnished by EPA.

17.2 Laboratory work

The Navy agrees to use, at a minimum, laboratory methods and procedures which are functionally equivalent to the methods and procedures used in the EPA contract laboratory program and, where there is no conflict in field or laboratory procedures and methodologies, the DHS certified laboratory program.

17.3 Documentation

The Navy shall document compliance with all EPA and state approved field and laboratory procedures and methodologies, including but not limited to element-specific sampling methodologies, chain of custody procedures, sample storage and shipping methods, calibration procedures and frequencies, and other laboratory quality control and quality assurance procedures.

18 RETENTION OF RECORDS

The Navy shall preserve for a minimum of ten (10) years after termination of this Agreement the complete Administrative Record, and post ROD primary and secondary documents. After this ten (10) year period, the Navy shall notify EPA, DHS, and RWQCB at least forty-five (45) days prior to the destruction or disposal of any such documents or records. Upon request by the EPA, DHS, or RWQCB, the Navy shall make available such records or documents to EPA, DHS, or RWQCB, subject to Section 23 (Release of Records).

19 ACCESS

19.1 The Parties to this Agreement and their duly authorized representatives may enter the site for the following purposes:
(1) inspecting records relevant to the implementation of this