453-07

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II
UNITED STATES DEPARTMENT OF THE ARMY
AND THE
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

IN THE MATTER OF:	)	
	)	
Seneca Army Depot	)	FEDERAL FACILITY
Romulus, New York	)	AGREEMENT UNDER
	)	CERCLA SECTION 120
	)	
	)	Docket Number:
	)	II-CERCLA-FFA-00202

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

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1. JURISDICTION

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

1.1 The U.S. Environmental Protection Agency (EPA), Region II, enters into those portions of this Agreement that relate to the Remedial Investigation(s)/Feasibility Study(ies) (RI/FS) pursuant to Section 120(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §9620(e)(1), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499 (hereinafter jointly referred to as CERCLA), 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) and Executive Order 12580;

1.2 EPA, Region II, enters into those portions of this Agreement that relate to operable units and remedial actions pursuant to Section 120(e)(2) of CERCLA, Sections 6001, 3008(h) and 3004(u) and (v) of RCRA and Executive Order 12580;

1.3 The Army 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. §§2701-2707;

1.4 The Army enters into those portions of this Agreement that relate to operable units, removal actions, and remedial actions pursuant to Section 120(e)(2) of CERCLA, Sections 6001, 3008(h) and 3004(u) and (v) of RCRA, Executive Order 12580 and DERP;

1.5 The New York State Department of Environmental Conservation (NYSDEC) enters into this Agreement pursuant to Sections 120(f) and 121(f) of CERCLA, 42 U.S.C. §9620(f) and 9621(f), Section 3006 of RCRA, 42 U.S.C. §6926, and New York State Environmental Conservation Law (ECL) Article 27, Titles 9 and 13, and ECL 3-0301.

2. DEFINITIONS

All words and phrases in this Agreement shall have either their conventional meaning or the meaning as used or as defined in CERCLA or the NCP, except as set forth below or otherwise explicitly stated in this Agreement.

2.1 "Additional Work" shall mean any work requested by EPA and/or NYSDEC to address the objectives of this Agreement.

2.2 "AOC" or area of concern shall be defined as in Part 10 to this Agreement.

2.3 "Agreement" shall refer to this document and shall include all Attachments to this document. All such Attachments shall be appended to and made an integral and enforceable part of this document.

2.4 "ARAR" or "applicable or relevant and appropriate requirement" shall mean "legally applicable or relevant and appropriate" laws, standards, requirements, criteria, or limitations as those terms are used in Section 121(d) of CERCLA, 42 U.S.C. §9621(d).

2.5 "Army" or "U.S. Army" shall mean the U.S. Department of the Army, including Seneca Army Depot.

2.6 "Authorized representative" shall mean any agents, employees, or contractors who have been duly authorized by EPA or NYSDEC to perform some activity related to this Agreement.

2.7 "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§9601-9675, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499.

2.8 "Days" shall mean calendar days, unless business days are specified, and they shall be measured from the date of receipt. Any submittal or written statement of dispute which under the terms of this Agreement would be due on a Saturday, Sunday, or Federal holiday shall be due on the following business day.

2.9 "EPA" shall mean the United States Environmental Protection Agency, its employees, agents, and authorized representatives.

2.10 "Guidance" shall mean a formal policy document issued by the Office of Solid Waste and Emergency Response (OSWER) of EPA.

2.11 "Hazardous substance" shall mean any hazardous substance, pollutant, or contaminant (or any mixture containing any hazardous substance) as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14), including hazardous waste constituents as set forth at 40 CFR 260.10.

2.12 "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, and any amendments thereto.

2.13 "NYSDEC", as the representative of the State of New York, shall mean the New York Department of Environmental Conservation, its employees, and authorized representatives.

2.14 "Operable Unit" shall mean a discrete action that comprises an incremental step toward comprehensively addressing site problems. This discrete portion of a remedial response manages migration, or eliminates or mitigates a release, threat of release, or pathway of exposure. The cleanup of a site can be divided into a number of Operable Units, depending on the complexity of the problems associated with a site. Operable Units may address geographical portions of a site, specific site problems, initial phases of an action, a set of actions performed over time, or a set of actions that are concurrent but located in different parts of a site. Operable Units will not impede implementation of subsequent actions, including final action at a site.

2.15 "Parties" shall mean the United States Environmental Protection Agency (EPA), the United States Department of Army (the Army) and the New York State Department of Environmental Conservation (NYSDEC).

2.16 "RCRA" shall mean the Solid Waste Disposal Act, also known as the Resource Conservation and Recovery Act, 42 U.S.C. §§6901-6991, as amended by the Hazardous and Solid Waste Amendments of 1984, Pub. L. 98-616.

2.17 "Receipt" or "received", as contemplated in Part 16, (Notification) shall mean delivery to the addressee's internal mail distribution point or the designated project manager, as indicated on the proof of delivery documentation.

2.17 "Seneca Army Depot" or "SEAD" shall mean the military installation which is located in Romulus, New York, which is owned and operated by the Army and which occupies approximately 10,587 acres of real property, as shown in Attachment 1.

2.18 "Site" shall include Seneca Army Depot, adjacent properties and any other areas affected by contamination by hazardous substances, pollutants, or contaminants that have migrated or threaten to migrate from Seneca Army Depot or were released as a result of activities at Seneca Army Depot; the Site may change as discussed in Part 5 (Site Description) of this Agreement.

2.19 "Submittal" shall mean every document, report, schedule, deliverable, work plan, or any other item to be

submitted by any Party to any other Party pursuant to this Agreement.

2.20 "Solid Waste Management Unit" or "SWMU" shall mean any discernable unit at which solid wastes have been placed at anytime, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include but are not limited to any area at a facility at which solid wastes have been routinely and systematically released. A discernible unit in this context includes the types of units typically identified with the RCRA regulatory program, including landfills, surface impoundments, land treatment units, waste piles, tanks, container storage areas, incinerators, injection wells, wastewater treatment units, waste recycling units and other physical, chemical or biological treatment wells.

2.21 "Timetables and deadlines" or "schedules and deadlines" shall mean schedules by which the work and the actions which are required to be performed pursuant to this Agreement shall be completed.

3. PURPOSE

3.1 The general purposes of this Agreement are to:

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

(b) Establish a procedural framework and schedule for developing, implementing, and monitoring appropriate response actions at the Site in accordance with CERCLA, the NCP, Superfund guidance and policy, RCRA, RCRA guidance and policy, and applicable State law; and,

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

3.2 Specifically, the purposes of this Agreement are to:

(a) Identify Removal Actions which are appropriate at the Site prior to the completion of the final remedial action for the Site. All Parties should be informed of proposed and planned Removal Actions and notified as early as possible prior to their occurrence a described in Part 11 (Removal Actions).

(b) Identify remedial alternatives for Operable Units which are appropriate at the Site. The remedial alternatives shall be identified and proposed to the Parties as early as possible prior to formal proposal of remedial action(s) for Operable Units to

EPA and NYSDEC pursuant to CERCLA and applicable State law. This process is designed to promote cooperation among the Parties in identifying remedial alternatives for Operable Units prior to selection of remedial action(s);

(c) Establish requirements for the performance of RI(s) which shall address all AOCs at the Site 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 FS(s) 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 and applicable State law;

(d) 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 clean-up of hazardous substances, pollutants, or contaminants mandated by CERCLA and ARARs;

(e) Implement the selected remedial action(s) in accordance with CERCLA and applicable State law and satisfy the requirements of Section 120(e)(2) of CERCLA, 42 U.S.C. §9620(e)(2), for an Interagency Agreement among the Parties;

(f) Assure compliance, through this Agreement, with RCRA and other applicable Federal and State hazardous waste laws and regulations for matters covered herein;

(g) Coordinate response actions at the Site with the mission and support activities at Seneca Army Depot;

(h) Expedite the clean-up process to the extent consistent with protection of human health, welfare, and the environment;

(i) Provide for operation and maintenance of any remedial action selected and implemented pursuant to this Agreement; and

(j) Provide for NYSDEC involvement in the initiation, development, selection, and enforcement of remedial actions to be undertaken at the Site, including the review of all applicable data as it becomes available and the development of studies, documents, reports and action plans; and to identify and integrate ARARs into the remedial action process.

4. PARTIES

The Parties to this Agreement are EPA, NYSDEC and the Army. The terms of this Agreement shall be binding upon EPA, NYSDEC,

the Army, and their agents and assigns. Each Party shall notify the other Parties of the identity and assigned tasks of each of their contractors performing work under this Agreement, upon contract award, by a letter or in the appropriate work plan. Nothing herein shall be construed as an agreement to indemnify any person. The Army shall notify its agents, employees, response action contractors for the Site, and all subsequent owners, operators and lessees of Seneca Army Depot of the existence of this Agreement until its termination. Each undersigned representative of a Party certifies that he or she is fully and legally authorized to enter into the terms and conditions of this Agreement and to bind such Party to this Agreement. NYSDEC is responsible for any State obligations to be carried out under this Agreement, and it is the lead agency for the State of New York for the purposes of this Agreement.

5. SITE DESCRIPTION

The approximately 10,587 acre parcel in Romulus, New York, which is currently owned and operated by the Army and which includes areas which are contaminated by radioactive and hazardous substances, pollutants, or contaminants, constitutes Seneca Army Depot (Attachment 1). The Seneca Army Depot Site (the Site) shall consist of the Seneca Army Depot as well as any areas affected by contamination emanating therefrom, whether or not within Seneca Army Depot boundaries. Any such area of contamination which is related in whole or in part to releases or threatened releases of hazardous substances at Seneca Army Depot shall constitute part of the Site. The Site shall include all areas of contamination related to any past, present, or future releases. All of these areas, including Seneca Army Depot itself, shall hereafter be considered part of the Site. EPA and NYSDEC may change the site designation on the basis of new information or additional investigations including the Remedial Investigation(s) performed by the Army at the Site so as to reflect more accurately the areas affected by hazardous substances, pollutants, or contaminants related in whole or in any part to Seneca Army Depot. The Parties will determine which additional areas will be investigated and remediated under this Agreement.

6. FINDINGS OF FACT

6.1 Seneca Army Depot, a 10,587 acre facility in Seneca County, Romulus, New York, has been owned by the United States and operated by the Army since 1941 (see Attachment 1).

6.2 Seneca Army Depot has been used for storage and disposal of military explosives since its inception in 1941. Its primary mission is the receipt, storage, maintenance, and supply of ammunition. Several forms of waste disposal have been carried

out at the facility, including the disposal of solvents and the detonation of military ammunition and explosives.

6.3 In 1953-1954, Seneca Army Depot began storage of material for the General Services Administration (GSA). This included large uncovered storage piles of various ores.

6.4 In May, 1980, the Army prepared an Installation Environmental Assessment. The Army concluded in its assessment that Seneca Army Depot had potentially contaminated groundwater in the area. The Assessment recommended further investigation. An updated report released in March, 1988 concluded that the potential for groundwater contamination existed near the former incinerator, its adjacent landfill, and at the former munitions washout facility leach field.

6.5 A July, 1987 evaluation of Solid Waste Management Units (SWMUs) conducted by the Army Environmental Hygiene Agency (AEHA) identified 41 SWMUs, which included 10 underground waste oil storage tanks. The Incinerator Ash Landfill may be the source of groundwater contamination which has migrated beyond the Seneca Army Depot boundary.

6.6 An October, 1987 hydrogeologic study conducted by AEHA identified a plume of volatile organic compound (VOC) contamination which is believed to be emanating from the Incinerator Ash Landfill. The two main constituents are trichloroethylene and trans-1,2-dichloroethylene. Other contaminants also identified included chloroform, 1,2-dichloroethane and vinyl chloride.

6.7 In August, 1988, NYSDEC completed a RCRA Facility Assessment (RFA) and issued a draft report, which recommended a RCRA Facility Investigation (RFI) and Interim Corrective Measures for three SWMUs, groundwater monitoring for four SWMUs, and sampling for eight SWMUs. EPA's review requested additional information on seven SWMUs.

6.8 In July, 1989, the Army prepared a study of options for RCRA closure of nine burning pads in the Open Burning/Open Detonation grounds. However, RCRA closure was deferred when SEAD was proposed for the National Priorities List (NPL).

6.9 A July, 1989 report titled Burning Pit/Landfill Site Investigation (BP/LI) prepared by the U.S. Army Toxic and Hazardous Materials Agency (USATHAMA) concluded that the Incinerator Ash Landfill contains numerous buried metal targets, soils with low to moderate metals concentrations, and a widespread source of VOCs. USATHAMA further concluded that contaminated groundwater is being released from the Ash Landfill, and it has been documented to have migrated at least as far as the SEAD boundary. The BP/LI indicates that flow may be

channelized along utility lines and buried road surfaces. The Groundwater flow is west-southwest across the landfill.

6.10 Seneca Army Depot overlies a shallow (3-6 ft. deep) unconfined to semi-confined glacial till-weathered shale aquifer. The weathered shale underlies the glacial till about 10 feet below the surface. The deeper unweathered shales are essentially dry, although some groundwater flows through fractures. The shallow weathered-shale aquifer at the Site is underlain by a thickness of approximately 200 feet of a dry, unweathered Devonian shales. Groundwater occurs in the bedding planes and fractures of the shales at various levels. Groundwater use in the area is supported primarily by water contained in this formation. Approximately 1000 people are served by groundwater within a three mile radius of the facility. Alternative water supplies are Cayuga Lake and Seneca Lake.

6.11 Seneca Army Depot was proposed to be included on the National Priorities List (NPL) on July 14, 1989.

7. DETERMINATIONS

The following constitutes a summary of the determinations upon which this Agreement is based:

7.1 Seneca Army Depot, located in Romulus, New York, constitutes a facility as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

7.2 The Army is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. §9601(21).

7.3 The Army is a responsible party within the meaning of Section 107 of CERCLA, 42 U.S.C. §9607, with respect to the releases and threatened releases of hazardous substances at the Site.

7.4 From 1941 to the present, the Army has been an "owner or operator" of Seneca Army Depot within the definition of Section 101(20) of CERCLA, 42 U.S.C. §9601(20), and Section 107(a) of CERCLA, 42 U.S.C. §9607(a). The Army has also been an owner or operator for purposes of Section 3005 of RCRA, 42 U.S.C. 6925;

7.5 Section 3004(u) of the Solid Waste Disposal Act, 42 U.S.C. §6924(u), requires that a permit issued after the date of enactment of HSWA provide for corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage, or disposal facility seeking a permit, regardless of the time that the waste was placed in such a unit. In addition, Section 3004(v) of the Solid Waste Disposal Act, 42 U.S.C. §6924(v), requires that corrective

action must be taken beyond the facility boundary where necessary to protect human health or welfare or the environment unless the owner or operator is unable to obtain the necessary permission to take the corrective action despite the owner or operator's best efforts to do so. The Army is required to comply with these sections in order to receive a final RCRA permit.

7.6 Chemicals and contaminants which are referred to in Part 6 (Findings) are "hazardous substances" as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

7.7 Hazardous substances, pollutants, or contaminants within the meaning of CERCLA Sections 101(14) and 101(33), 42 U.S.C. §§9601(14) and 9601(33), have been disposed of at the Site.

7.8 There have been releases and there continue to be releases and threatened releases within the meaning of Section 101(22) of CERCLA, 42 U.S.C. §9601(22), of hazardous substances, pollutants, or contaminants into the environment at the Site.

7.9 The actions to be taken pursuant to this Agreement are reasonable and necessary to protect the public health or welfare or the environment and are consistent with the NCP.

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

7.11 EPA and NYSDEC have determined that the submittals, actions, and other elements of work to be performed by the Army pursuant to this Agreement are necessary to protect the public health or welfare or the environment.

7.12 Seneca Army Depot is also a "facility" pursuant to Section 6001 of RCRA, 42 U.S.C. §6961, and as such is subject to all Federal, State, interstate and local requirements, both substantive and procedural, respecting control and abatement of solid waste or hazardous waste disposal in the same manner, and to the same extent as any "person", as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. Section 6903(15), and in ECL §27-0901(7), is subject to such requirements.

8. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

8.1 The Parties intend to integrate the Army's CERCLA response obligations and RCRA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes, pollutants, or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will be deemed to achieve the following: compliance with CERCLA, 42 U.S.C. §§9601-

9675; 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 will be protective of human health and the environment such that remediation of releases covered by this Agreement shall obviate the need for further corrective action under RCRA for those releases (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, 42 U.S.C. §9621.

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 Seneca Army Depot 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 Army for on-going hazardous waste management activities at the Site, EPA and/or NYSDEC shall reference and incorporate any appropriate provisions, including appropriate schedules (and the provision for extension of such schedules), of this Agreement into such permit. With respect to those portions of this Agreement incorporated by reference into permits, the Parties intend that judicial review of the negotiated portions shall, to the extent authorized by law, only occur under the provisions of CERCLA.

8.4 Nothing in this Agreement shall alter the authority of either EPA or the Army with respect to removal actions conducted pursuant to Section 104 of CERCLA, 42 U.S.C. §9604, or any authority NYSDEC may have with respect to removal actions.

9. SCOPE OF AGREEMENT

9.1 The Army agrees to perform all of the response actions set forth in this Part, Part 11 (Removal Actions), Part 12 (Records of Decision) and Part 13 (Remedial Design/Remedial Action Implementation) as well as in accordance with the timetables and deadlines established in Part 14 (Schedules and Deadlines) and Attachment 5 of this Agreement for all of the contaminated or potentially contaminated areas at the Site. These actions may consist of any or all of the following activities:

(a) Operable Units - The Army agrees that it shall develop, where appropriate, remedial activities to be addressed as Operable Units. Operable Units shall be comprised of one or more AOC as established in Part 10 (Areas of Concern). All Operable Units shall be addressed through a RI/FS resulting in a ROD, as required in Parts 10 (Areas of Concern) and 12 (Records of Decision) of this Agreement. AOCs which are addressed in Completion reports shall be incorporated into a RI/FS and shall be addressed in the corresponding ROD.

(b) Removal Actions. Any Removal Action conducted at the Site shall be conducted in a manner consistent with Part 11 (Removal Actions) of this Agreement, CERCLA, and the NCP.

(c) Remedial Investigation. The Army agrees it shall develop, implement, and report upon RIs for the Site. The RI documents shall be subject to the review and comment procedures described in Part 17 (Consultation). The RIs shall be conducted in accordance with the requirements and time schedules set forth in Attachment 5 and Part 14 (Schedules and Deadlines) of this Agreement. The RIs shall meet the purposes set forth in Part 3 (Purpose) of this Agreement and shall be conducted in accordance with EPA guidance. All AOCs, as identified by the Parties and set forth in Attachment 4, which are not otherwise addressed through Completion Reports shall be addressed through the RI/FS process, in accordance with all applicable EPA and NYSDEC guidance and regulations.

(d) Feasibility Study. The Army agrees it shall design, propose, undertake, and report upon FSs for each Operable Unit at the Site which has been the subject of an RI. The FS documents shall be subject to the review and comment procedures described in Part 17 (Consultation). The FSs shall be conducted in accordance with the requirements and time schedules set forth in Attachment 5 and Part 14 (Schedules and Deadlines) of this Agreement. The FSs shall meet the purposes set forth in Part 3 (Purpose) of this Agreement.

(e) Remedial Action Selection and Implementation. Following completion of each RI and corresponding FS, and in consultation with EPA and NYSDEC as described in Part 17 (Consultation), the Army shall publish its proposed remedial action plan(s) (PRAP) for public comment in accordance with Part 12 (Records of Decision) of this Agreement and Section 117 of CERCLA, 42 U.S.C. §9617. Remedial selection and implementation shall proceed in accordance with Part 12 (Records of Decision) and Part 13 (Remedial Design/Remedial Action Implementation) of this Agreement. The Parties specifically agree that final clean-up criteria will be determined only after completion of the appropriate Risk Assessment.

(f) <u>Releases.</u> The Army shall address any release or threat of release identified at the Site and conduct remediation of said release as set forth in Part 11 (Removal Actions) or Part 12 (Records of Decision).

9.2 <u>Deliverables</u>. The Army agrees to submit to EPA and NYSDEC certain deliverables within the time periods specified in Attachment 5 to fulfill the obligations and meet the purposes of this Agreement. The deliverables are listed in Part 17 (Consultation) and are described in detail in Attachment 2 to this Agreement. Said deliverables are not necessarily discrete documents and may be consolidated with other primary documents and/or secondary documents as appropriate. The schedule for the submittal of the deliverables will be established as described in Part 14 (Schedules and Deadlines).

10. AREAS OF CONCERN

10.1 <u>Areas of Concern.</u> Areas of Concern (AOCs) shall include both (a) Solid Waste Management Units (SWMUs) where releases of hazardous substances may have occurred and (b) locations where there has been a release or threat of a release into the environment of a hazardous substance, pollutant, or contaminant (including radionuclides) under CERCLA. AOCs may include, but need not be limited to, former spill areas, landfills, surface impoundments, waste piles, land treatment units, transfer stations, wastewater treatment units, incinerators, container storage areas, scrapyards, cesspools, and tanks and associated piping which are known to have caused a release into the environment or whose integrity has not been verified. Attachment 4 is a list of identified AOCs at the time this Agreement is executed. This list shall be updated on an ongoing basis.

10.2 <u>Identification.</u>

(a) The Army agrees to identify all SWMUs at the Site. Such identification will comply with the requirements of the RCRA Facility Assessment (RFA) guidance. Attachment 3 is a list of all SWMUs presently identified at the Site for purposes of this Agreement. The identification will include a list of said identified SWMUs and a facility map, which will indicate any discernible waste management units from which hazardous waste or hazardous constituents may have migrated or may migrate, regardless of whether the unit was intended for the management of hazardous or solid wastes.

(b) The identification of SWMUs by the Army shall include a proposal for each SWMU to be classified as either a "No Action SWMU" or an "AOC".

10.3 Classification of SWMUs.

(a) The Army's Basis of Classification. The Army's proposal to classify each SWMU either as No Action or an AOC shall be based on all relevant information and data available for each SWMU. The Army shall also submit certification that, to its knowledge, the list of SWMUs is complete and all relevant information and data are included in submittals to EPA and NYSDEC.

(b) No Action SWMUs. No Action SWMUs shall be those SWMUs from which no release of hazardous substances, pollutants, or contaminants has occurred or from which a release of hazardous waste or hazardous substances, pollutants, or contaminants has occurred that does not pose a threat to the public health, welfare, or the environment. SWMUs classified as No Action will be identified in the 6 NYCRR Part 373/HSWA permit as No Action SWMUs.

(c) SWMUs Classified as AOCs. SWMUs classified as AOCs shall be those SWMUs from which a release or a threat of release of hazardous substances, pollutants, or contaminants has or may have occurred resulting in a threat to the public health, welfare, or the environment or those SWMUs for which there is insufficient information to classify as No Action SWMUs.

(d) Review of SWMU Classification. EPA and NYSDEC shall review the proposed list of SWMUs and their proposed classifications and all relevant data and information used to make this determination. EPA and NYSDEC shall determine whether the proposed classifications are correct.

1. EPA and NYSDEC Agree with the Army's Proposed Classification. If EPA and NYSDEC determine that the list of SWMUs and corresponding classifications are complete and appropriate, EPA and NYSDEC shall so notify the Army in writing. All SWMUs will be identified in the 6 NYCRR Part 373/HSWA permit and those classified as No Action SWMUS shall be designated as such in said permit.

2. EPA and/or NYSDEC do not Agree with the Army's Proposed Classification. If EPA and/or NYSDEC determine that the list of SWMUs is incomplete and/or the classifications are not appropriate, EPA and NYSDEC shall so notify the Army in writing. The Army shall take all necessary actions to revise and resubmit the SWMU list, as set forth in Attachment 3, and classifications.

10.4 Other AOCs. AOCs also include locations where there has been a release or threat of release into the environment of a

hazardous substance, pollutant, or contaminant (including radionuclides) under CERCLA.

10.5 Ongoing Identification and Addition of SWMUs and AOCs. The Army is under a continuing obligation to notify EPA and NYSDEC of any additional SWMUs or other potential AOCs of which the Army becomes aware. SWMUs identified or created after issuance of the 6 NYCRR Part 373/HSWA Permit shall be classified as AOCs. Any Party may submit a written proposal to all Parties to add AOCs on the basis of additional information which more accurately reflects contamination related in whole or in part to the Site. Unless one of the Parties invokes Dispute Resolution within fifteen (15) days after the receipt of the proposal, the proposed new AOC shall be added to Attachment 4 (AOCs).

10.6 Completion Reports for AOCs.

(a) Preparation of Completion Reports. For those AOCs which the Army asserts (a) that necessary response actions have been completed prior to the effective date of this Agreement, (b) are addressed in Removal Actions under this Agreement, or (c) pose no threat to public health, welfare, or the environment, the Army shall prepare a Completion Report with certification and documentation to establish that such AOCs do not constitute a threat to public health, welfare, or the environment and that further remedial measures are not necessary. Such documentation shall meet, to the extent practicable and as necessary under the specific facts pertaining to the AOC, the requirements of EPA's RCRA Facility Investigation Guidance, EPA's Guidance for Conducting RI/FSs under CERCLA, and any subsequent amendments to these documents and all other applicable federal or state guidance.

(b) Review of Completion Reports. EPA and NYSDEC will review the Completion Reports submitted by the Army to ascertain the adequacy of the documentation and to determine whether, based on information and conditions known by EPA and NYSDEC at that time, all appropriate response actions have been implemented at the AOC and whether the AOC continues to present any threat to public health, welfare, or the environment.

1. EPA and/or NYSDEC Determination that No Further Response Action is Required. Based on information and conditions known by EPA and/or NYSDEC at that time, if EPA and/or NYSDEC determine that no further response action is necessary or that no response action will be necessary, EPA and/or NYSDEC shall inform the Army in writing that no further response action is required for that particular AOC. The Completion Report on which the determination has been made shall be documented and incorporated into/or constitute a RI/FS and shall be finalized in a ROD.

2. EPA and/or NYSDEC Determination that Additional Response Actions are Required.

a. If EPA and/or NYSDEC determine that conditions at an AOC as described in a Completion Report are not protective of public health, welfare, or the environment, or that the documentation is inadequate to make a protectiveness determination, EPA and/or NYSDEC shall so notify the Army in writing.

b. The Army may submit additional documentation to EPA and NYSDEC for review, or with the concurrence of EPA and NYSDEC, perform additional investigative activities. EPA and NYSDEC shall review and respond to such additional documentation in accordance with this Subpart.

c. If EPA and/or NYSDEC determine, consistent with this Subpart 10.6 (b)(2) above, that further response action is warranted, the AOC will be addressed through a Removal as set forth in Part 11 or the RI/FS process as set forth in Parts 12-13. AOCs may be addressed individually or collectively as Operable Units for purposes of investigation and remediation.

10.7 AOCs not addressed through Completion Reports. All AOCs not addressed as set forth in Subpart 10.6, above, shall be addressed through the RI/FS process, as set forth in Parts 12-13. AOCs may be addressed individually or collectively as Operable Units for the purposes of investigation and remediation.

10.8 Records of Decision for AOCs. All AOCs will be documented in a ROD.

10.9 Completion of Response Actions. Determinations by EPA or NYSDEC regarding an AOC shall not preclude EPA or NYSDEC from making subsequent determinations at the delisting phase that measures taken hereunder are not protective of public health, welfare, or the environment.

11. REMOVAL ACTIONS

11.1 The provisions of this Part shall apply to all removal actions as defined in Section 101(23) of CERCLA, 42 U.S.C. 9601(23), including all modifications to, or extensions of, the ongoing removal actions and any new removal actions proposed or commenced following the effective date of this Agreement.

(a) All removal actions performed at the Site shall be conducted in a manner consistent with this Agreement, CERCLA,

RCRA, the NCP, Executive Order 12580 and shall be consistent with the efficient performance of any long term remedial action with respect to the release(s) or threatened release(s) concerned.

(b) All reviews conducted by EPA and the State will be conducted in a fashion, to the extent practicable, so as not to unduly jeopardize fiscal resources of the Army for funding the removal actions.

(c) If a Party determines that there may be an endangerment to the public health, welfare, or the environment because of an actual or threatened release of a hazardous substance, pollutant, or contaminant at or from the Site, the Party may request that the Army take such response actions as may be necessary to abate such danger or threat and to protect the public health or welfare or the environment.

11.2 Notice and Opportunity to Comment.

(a) The Army shall provide the other Parties with timely notice and opportunity to review and comment upon any proposed Removal Action for the Site.

(b) For emergency response actions, the Army shall immediately orally notify all other Parties. Such oral notification shall, except in the case of extreme emergencies, include adequate information concerning the site background, threat to the public health, welfare, or the environment (including the need for response), proposed actions and costs (including a comparison of possible alternatives, means of transportation of hazardous substance off-site, and proposed manner of disposal), expected change in the situation should no action be taken or should action be delayed (including associated environmental impacts), any important policy issues, and the Army Project Manager recommendations. Within forty-five (45) days of completion of the emergency action, the Army will furnish EPA and NYSDEC with an action memorandum addressing the information provided in the oral notification, and any other information required pursuant to CERCLA, the NCP, and in accordance with pertinent EPA guidance documents, for such actions.

(c) For any other Removal Actions, the Army will provide EPA and NYSDEC with any information required by CERCLA, the NCP, and in accordance with pertinent EPA guidance documents such as the action memorandum, the Engineering Evaluation/Cost Analysis (EE/CA) (in the case of non-time-critical removals) and, to the extent it is not otherwise included, all information required to be provided in accordance with this Subpart. Such information shall be furnished as early as practicable, but not less than forty-five (45) days before the response action is to begin.

(d) All activities related to ongoing Removal Actions shall be reported by the Army in the progress reports as described in Part 26 (Reporting).

11.3 Dispute. Any dispute among the Parties as to whether a proposed non-emergency response is a proper Removal Action under CERCLA, or as to the consistency of such a Removal Action with the final remedial action, shall be resolved pursuant to Part 19 (Resolution of Disputes). Such dispute may be brought directly to the Dispute Resolution Committee or the Senior Executive Committee at any Party's request.

11.4 Nothing in this Agreement shall alter the Army's authority to conduct Removal Actions pursuant to Section 104 of CERCLA, 42 U.S.C. §9604.

12. RECORDS OF DECISION AND PROPOSED REMEDIAL ACTION PLANS

12.1 For any Operable Unit, the Army shall submit the draft final RI/FS and draft Proposed Remedial Action Plan (PRAP) to EPA and NYSDEC for review and comment in accordance with Part 17 (Consultation) of this Agreement and within the time schedules set forth in Attachment 5 to this Agreement. After review of the draft PRAP by EPA and NYSDEC, and any subsequent revisions as set forth in Part 17 (Consultation), the PRAP shall be distributed to the public for comment in accordance with Section 117 of CERCLA, 42 U.S.C. §9617, and the Army will hold a public information meeting to discuss the preferred alternative for each Operable Unit. Advance notice of the public comment period will be given by the Army, as required by Section 117 of CERCLA, 42 U.S.C. §9617, and EPA guidance, and a public hearing will be held by the Army to receive comments on the PRAP for each Operable Unit. Copies of all written and oral public comments received by any Parties will be provided to all other Parties. Public review and comment shall be conducted in accordance with Section 117 of CERCLA, 42 U.S.C. §9617. Following public comment, the Parties will determine if the PRAP should be modified based on the comments received. Any such modifications will be made by the Army and said modified documents will be reviewed by EPA and NYSDEC. Any of the Parties may recommend that additional public comment be solicited if modifications to the PRAP substantially change the remedy originally proposed to the public.

12.2 Based on comments received from EPA, NYSDEC, and the public, the Army will draft and submit to EPA and NYSDEC a draft ROD for each Operable Unit in accordance with applicable guidance. The draft ROD will include a Responsiveness Summary in accordance with applicable EPA guidance. The Responsiveness Summary shall address public concerns. The Parties shall have thirty (30) days to attempt to jointly select a remedy following the Army's submission of a draft ROD. If the Parties agree on the draft ROD, EPA and NYSDEC shall co-sign the draft ROD and it

shall be adopted by EPA, NYSDEC, and the Army. Within thirty (30) days of receipt of the ROD with EPA's and NYSDEC's signatures, the Army shall publish and issue said ROD to the public. If the Parties are unable to reach agreement on the draft ROD, selection of a remedial action shall be made by the EPA Administrator and EPA shall then prepare the final ROD. The selection of any remedial action by the EPA Administrator shall be final and not subject to dispute resolution by the Army. NYSDEC reserves its rights to seek judicial review after selection of the remedy by the EPA Administrator. If a ROD prepared by EPA departs significantly from the PRAP which was subject to public comment, then EPA shall subject a new PRAP to public comment.

12.3 Notice of the final ROD shall be published by the Party preparing it and shall be made available to the public prior to commencement of the remedial action, in accordance with Section 117(b) of CERCLA, 42 U.S.C. §9617(b).

12.4 Upon issuance of any ROD for any Operable Unit pursuant to Subpart 12.2 above, the RI/FS for that Operable Unit will be deemed completed.

12.5 Upon approval by EPA and NYSDEC, all terms, conditions, reports, documents, timetables, deadlines, schedules, or proposed work relating to any remedial actions that are required by this Part shall be incorporated into this Agreement and become an enforceable part thereof. Any such terms, conditions, reports, documents, timetables, deadlines, schedules, or proposed work shall be limited to the subject matter of the related ROD and shall not otherwise amend this Agreement.

12.6 A dispute arising under this Part on any matter other than selection of a remedial action by the EPA Administrator shall be resolved pursuant to Part 19 (Dispute Resolution).

13. REMEDIAL DESIGN/REMEDIAL ACTION IMPLEMENTATION

13.1 Within twenty-one (21) days of issuance of a Record of Decision for an Operable Unit, the Army shall submit a schedule for the completion of the Remedial Design and Remedial Action (RD/RA) Work Plans in accordance with Part 14 (Schedules and Deadlines) of this Agreement. Upon finalization, the final schedule and deadlines established pursuant to Part 14 (Schedules and Deadlines) shall be published by EPA as reflected and updated in the Facility Schedule at Attachment 5.

13.2 The Remedial Design Work Plan is a primary document subject to the review and comment process in Part 17 (Consultation). The Remedial Design Work Plan shall contain at a minimum (a) the tentative formation of the design team, (b) a Health and Safety Plan for design activities, (c) the

requirements for additional field data collection, (d) the requirements for treatability studies, (e) a schedule for completion of the design, (f) tentative treatment schemes, and (g) permitting requirements. Upon approval of the Remedial Design Work Plan by EPA and NYSDEC, the Army will implement the Work Plan in accordance with the Remedial Design schedule contained therein. Such implementation shall include the review and approval of the design by EPA and NYSDEC which shall be submitted in two reports. The two reports are:

(a) Preliminary Design Report, which is a secondary document that begins with an initial design and ends with the completion of approximately thirty percent (30%) of the design effort.

(b) Pre-Final/Final Design Report, which is a primary document that includes the following: (1) final design plans, specifications, or performance standards; (2) a remediation schedule; (3) an Operation and Maintenance (O&M) plan; (4) a Field Sampling Plan; (5) Contractor Quality Assurance Plan; (6) a Contingency Plan; and (7) a Waste Management Plan.

13.3 The Remedial Action Work Plan is a primary document subject to the review and comment process in Part 17 (Consultation). The Remedial Action Work Plan shall at a minimum contain, (a) a Contractor Quality Control Plan which is a description of the method by which the Contractor Quality Assurance Plan shall be implemented, including criteria and composition of the Independent Quality Assurance Team, (b) a schedule for the Remedial Action and the process to continuously update the project schedule, (c) a Health and Safety Plan for field activity (d) the strategy for implementing the Contingency Plan, (e) the requirements for project closeout (f) a description of the roles and relationships of the Army Project Manager, Contractor, Independent Quality Assurance Team, remedial design professional, and the remedial action contractor, (g) the process for the selection of the remedial action contractor, and (h) the procedure for data collection during the Remedial Action to validate the completion of the project.

13.4 At a time approved by EPA and NYSDEC, the Army shall conduct a pre-final and final inspection of completed work. The purpose of the inspection is to determine if all aspects of the design have been implemented at the Site.

13.5 The Project Closeout Report is a primary document subject to the review and comment process in Part 17 (Consultation). At the completion of the Remedial Action, the Army will prepare the Project Closeout Report which certifies that all items contained in this Agreement and any documents incorporated herein have been completed in accordance with EPA or NYSDEC comments or approved documents.

13.6 The Remedial Design and Remedial Action shall be developed and implemented in accordance with the requirements of CERCLA, the NCP, and relevant guidance.

14. SCHEDULES AND DEADLINES

14.1 Within twenty-one (21) days of the effective date of this Agreement, the Army shall propose schedules and deadlines, after consideration of Attachment 7, for completion of the following draft primary documents for identified Operable Units. It is the intention of the parties that schedules and deadlines proposed will be generally consistent with the timeframes set forth in Attachment 7, and these will be incorporated as Attachment 5:

(a) SWMU Classification Report
(b) RI/FS Work Plan
(c) Community Relations Plan
(d) RI Report(s)
(e) FS Report(s)
(f) Proposed Remedial Action Plan(s)
(g) Record(s) of Decision

14.2 Within thirty (30) days of receipt, EPA and NYSDEC shall review and provide comments to the Army regarding the proposed schedules and deadlines. Within thirty (30) days following receipt of the comments, the Army shall, as appropriate, make revisions and re-issue the proposal. The Parties shall meet as necessary to discuss and finalize the proposed schedules and deadlines. If the Parties agree on the proposed schedules and deadlines, the finalized schedules and deadlines shall be incorporated into the appropriate work plans. If the Parties fail to agree within thirty (30) days on the proposed schedules and deadlines, the matter shall immediately be submitted for dispute resolution pursuant to Part 19 (Dispute Resolutions) of this Agreement. The final schedules and deadlines established pursuant to this Part shall be published by EPA and NYSDEC and incorporated into this Agreement as Attachment 5.

14.3 If the Parties agree that any supplemental work or any treatability studies are to be undertaken pursuant to this Agreement, the Army shall provide target dates for submission of the secondary documents listed below within twenty-one (21) days of written request by EPA for such target dates:

(a) Supplemental Work Plans and Studies for completion of an FS
(b) Supplemental Reports
(c) Treatability Studies
(d) Sampling and Data Results
(e) Preliminary Design Report

14.4 Within twenty-one (21) days of issuance of a ROD, the Army shall propose schedules and deadlines for completion of the following draft primary documents:

(a) Remedial Design Work Plan
(b) Pre-final/Final Remedial Design Report
(c) Remedial Action Work Plan
(d) Project Closeout Report

These schedules and deadlines shall be proposed, finalized and published utilizing the same procedures set forth in Subpart 14.2 above.

14.5 The schedules and deadlines set forth in this Part, or to be established as set forth in this Part, may be extended pursuant to Part 18 (Extensions) of this Agreement. The Parties recognize that one possible basis for extension of the schedules and deadlines for completion of the Remedial Investigation and Feasibility Study reports is the identification of significant new site conditions during the performance of the Remedial Investigation.

15. PROJECT MANAGERS

15.1 The Project Managers and alternates for the Army, EPA and NYSDEC are identified in Attachment 6. Any Party may change its designated Project Manager and alternate by notifying the other Parties in writing, within ten (10) 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 Part 16 (Notification) of this Agreement. Each Project Manager shall be responsible for assuring that all communications from other Project Managers are appropriately disseminated and processed by the entities which the Project Managers represent.

15.2 Subject to the limitations set forth in Part 23 (Site Access), the EPA and NYSDEC Project Managers shall have the authority to engage in, but not be limited to, such activities as follows:

(a) To take samples and/or obtain split samples of any Army samples collected at the Site relating to this Agreement, and it is understood that the Army will not be responsible for providing materials, supplies or labor for obtaining said samples;

(b) To observe all activities performed pursuant to this Agreement, to take photographs and make such other reports on the progress of the work as the Project Manager deems appropriate to ensure that work is performed properly and pursuant to EPA protocols as well as pursuant to Attachment 2 and plans

incorporated into this Agreement, subject to Security provision outlined in this Agreement in Part 23 (Site Access); and

(c) To review records, files and documents relevant to this Agreement.

15.3 The Army Project Manager similarly has authority to take split or duplicate samples of samples collected by EPA and NYSDEC.

15.4 The Project Manager of any Party may recommend and request minor field modifications to the work to be performed pursuant to this Agreement, or in techniques, procedures or designs utilized in carrying out this Agreement, which are necessary to the completion of said work. Any minor field modifications proposed under this Part by any Party must be approved orally by Project Managers for the Army, EPA, and NYSDEC to be effective. If agreement cannot be reached between the Army, EPA, and NYSDEC on any proposed additional work or modification to work, the dispute resolution procedures as set forth in Part 19 (Dispute Resolution) may be used in addition to this Part.

15.5 Within fifteen (15) days following an agreement for any minor field modification made pursuant to this Part, the Project Manager who requested the modification shall prepare a memorandum detailing the modification and the reasons therefore and shall provide a copy of the memorandum to the other Project Managers.

15.6 The Project Manager or alternate for the Army shall supervise all work performed at Seneca Army Depot during implementation of the work performed pursuant to this Agreement. The Project Manager for the Army shall be available to EPA and NYSDEC Project Managers throughout the performance of all work required by this Agreement. The absence of the EPA or NYSDEC Project Manager from the Site shall not be cause for work stoppage. Project Managers for the Army shall be physically present on SEAD or reasonably available to supervise all work.

15.7 The Project Managers or alternates shall meet formally approximately every ninety (90) days, or sooner if requested by two (2) or more Project Managers, pursuant to Part 17 (Consultation) of this Agreement to discuss issues relating to the performance of work under this Agreement. The minutes of the Project Manager meeting shall be distributed by the Army within fifteen (15) days of the meeting.

16. NOTIFICATION

16.1 Unless otherwise specified, any report, document or submittal provided pursuant to a schedule or deadline identified

in or developed under this Agreement shall be sent by certified mail or next day mail, return receipt requested, or hand delivered. All time periods specified in Part 17 (Consultation) for review and/or comment of any Primary or Secondary document by any Party under this Agreement shall commence on the date any such document is received by that Party. The Parties Agree that, upon proof that documents submitted under this part, including deliverables as specified in this Agreement, were post-marked or otherwise provided to an expedited delivery service prior to any deadlines provided for in this Agreement, the Army shall not be subject to the provisions of Part 22 (Stipulated Penalties).

16.2 Notice to the individual Parties shall be provided under this Agreement to the designated Project Managers:

(a) For the Army (5 copies):
FFA Program Manager
Directorate of Engineering and Housing
Seneca Army Depot, Romulus NY 14541-5001

(b) For EPA (11 copies):
Seneca Army Depot Project Manager (ERRD-PSB)
Emergency and Remedial Response Division
U.S. Environmental Protection Agency,
Region II
26 Federal Plaza
New York, New York 10278

(c) For NYSDEC (7 copies):
Seneca Army Depot Project Manager
Bureau of Eastern Remedial Action - Division of Hazardous Waste Remediation
N.Y.S. Dept. of Environmental Conservation, Rm. 208
50 Wolf Road
Albany, NY 12233-7010

Unless otherwise requested, all routine correspondences may be sent by first class mail to the addressees indicated above.

16.3 It is the responsibility of the Project Managers to assure that all documents relating to this Agreement are disseminated to all relevant agents and employees of their respective agencies, as needed, to facilitate the actions required by this Agreement.

16.4 Written notice by EPA and NYSDEC to the Project Manager for the Army will be deemed notification to the Army for any matters relating to this Agreement unless otherwise stated in this Agreement.

16.5 Written notice by the Army to the Project Manager for EPA and NYSDEC will be deemed notification to EPA and NYSDEC for any matters relating to this Agreement unless otherwise stated in this Agreement.

16.6 It is the responsibility of the originating Project Manager to assure that all document submittals are disseminated to all Project Managers, including copies of correspondence, regardless of whether the correspondence is required to be sent to only one Party under this Agreement.

17. CONSULTATION WITH EPA AND NYSDEC: REVIEW AND COMMENT PROCESS FOR DRAFT AND FINAL DOCUMENTS

17.1 Applicability. The provisions of this Part establish the procedures that shall be used by the Parties to provide the other Parties with appropriate notice, review, comment, and response to comments regarding RI/FS and reports specified herein as either primary or secondary documents. In accordance with Section 120 of CERCLA, 42 U.S.C. §9620, and 10 U.S.C. §2705, the Army will normally be responsible for issuing primary and secondary documents to EPA and NYSDEC. As of the effective date of this Agreement, all draft and final documents for any deliverable identified herein shall be prepared, distributed, and subject to dispute in accordance with Subparts 17.2 through 17.10, below.

The designation of a document as "draft" or "final" is solely for purposes of consultation with EPA and NYSDEC in accordance with this Part. Such designation does not affect the obligation of the Parties to issue documents, which may be referred to herein as "final", to the public for review and comment as appropriate and as required by law.

17.2 General Process for RI/FS and RD/RA documents.

(a) Primary documents include those documents that are major, discrete portions of RI/FS or RD/RA activities. Primary documents are initially issued by the Army in draft subject to review and comment by EPA and NYSDEC. Following receipt of comments on a particular draft primary document, the Army 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 thirty (30) days after issuance of a draft final document if dispute resolution is not invoked. If dispute resolution is invoked, the draft final primary document will become the final primary document in accordance with the dispute resolution procedures described in Part 19 (Dispute Resolution).

(b) Secondary documents include those documents that are discrete portions of the primary documents and are typically

input or feeder documents. Secondary documents are issued by the Army in draft subject to review and comment by EPA and NYSDEC. Although the Army 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.

17.3 Primary Documents.

(a) The Army shall complete and transmit drafts of the following primary documents to EPA and NYSDEC for review and comment in accordance with the provisions of this Part:

1. SWMU Classification Report;
2. RI/FS Work Plans;
3. Community Relations Plan;
4. RI Reports;
5. FS Reports;
6. Proposed Remedial Action Plans (PRAP);
7. Record(s) of Decision;
8. Remedial Design Work Plans;
9. Pre-final/Final Remedial Design Reports;
10. Remedial Action Work Plans; and
11. Project Closeout Reports.

(b) Only the draft final documents for the primary documents identified above shall be subject to dispute resolution. The Army shall complete and transmit draft primary documents in accordance with the timetable and deadlines established in Part 14 (Schedule and Deadlines) of this Agreement.

17.4 Secondary Documents.

(a) The Army shall complete and transmit drafts of the following secondary documents to EPA and NYSDEC for review and comment in accordance with the provisions of this Part:

1. Supplemental Work Plans and Studies for completion of an FS.
2. Supplemental Reports
3. Treatability Studies
4. Sampling and Data Results
5. Preliminary Remedial Design

(b) Although EPA and NYSDEC may comment on the draft secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by Subpart 17.2 hereof. Target dates shall be established for the completion and transmission of draft secondary documents pursuant to Part 14 (Schedule and Deadlines) of this Agreement.

17.5 Meetings of the Project Managers on Development of Documents. The Project Managers shall meet approximately every ninety (90) days, except as otherwise agreed or as set forth in Part 15 (Project Manager), to review and discuss the progress of work being performed at the Site. Prior to preparing any draft document specified in Subparts 17.3 and 17.4, above, the Project Managers shall discuss the document 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.

17.6 Identification and Determination of Potential ARARs.

(a) For those primary or secondary documents that consist of or include ARAR determinations, prior to the issuance of a draft document, the Project Managers shall meet to identify and propose, to the best of their ability, all potential ARARs pertinent to the document being addressed. NYSDEC shall identify all potential State ARARs as early in the remedial process as possible consistent with the requirements of CERCLA Section 121, 42 U.S.C. §9621, and the NCP. The Army shall consider any written interpretation of ARARs provided by NYSDEC. Draft ARAR determinations shall be prepared by the Army in accordance with Section 121(d)(2) of CERCLA, 42 U.S.C. §9621(d)(2), the NCP, and pertinent guidance issued by EPA which is not inconsistent with CERCLA and the NCP.

(b) 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.

17.7 Review and Comment on Draft Documents.

(a) The Army shall complete and transmit each draft primary document to EPA and NYSDEC on or before the corresponding deadline established for the issuance of the document. The Army shall complete and transmit the draft secondary document in accordance with the target dates established for the issuance of such documents established pursuant to Part 14 (Schedule and Deadlines) of this Agreement.

(b) Unless the Parties mutually agree to another time period, all draft documents shall be subject to a thirty (30) day period for review and comment. Review of any document by EPA and NYSDEC may concern all aspects of the document (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP, and any pertinent guidance or

policy issued by EPA and with applicable State law. Comments by EPA and NYSDEC shall be provided with adequate specificity so that the Army may respond to the comment and, if appropriate, make changes to the draft document. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of the Army, EPA or NYSDEC shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy documents, EPA or NYSDEC may extend the thirty (30) day comment period for an additional twenty (20) days by written notice to the Army prior to the end of the thirty (30) day period. In appropriate circumstances, this time period may be further extended in accordance with Part 18 (Extensions) hereof. On or before the close of the comment period, EPA and NYSDEC shall transmit by next day mail their written comments to the Army. Transmittal of final written comments to the Army by both EPA and NYSDEC, or notice of no comments, will be sent stating that said transmittal constitutes formal closure of the comment period with respect to that Party.

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

(d) In commenting on a draft document which contains a proposed ARAR determination, EPA and NYSDEC shall include a reasoned statement of whether they object to any portion of the proposed ARAR determination. To the extent that EPA and NYSDEC do object, they shall explain the bases for its objection in detail and shall identify any ARARs which it believes are not properly addressed in the proposed ARAR determination.

(e) Following the receipt of the comments from EPA and NYSDEC for a draft document, the Army shall give full consideration to all written comments on the draft document submitted during the comment period.

1. Within fifteen (15) days of receipt of the notice of closure of comments, the Army may submit a written request for formal consultation to EPA and NYSDEC, which identifies the comments at issue, for the purpose of clarifying those comments made by the respective Parties or resolving those comments that are apparently in conflict. Dispatch of the request for formal consultation tolls the Army's deadline for responding to the comments.

2. Within seven (7) days of the request for formal consultation, the Army shall submit to the Parties, in

the form of a written explanation, those specific comments requiring clarification or resolution.

3. The formal consultation shall take place within twenty-one (21) days of the written request for formal consultation.

4. The Army's period to reply to the comments shall resume at the close of the formal consultation unless any Party invokes Part 19 (Dispute Resolution) or an extension is requested or otherwise agreed upon by the Parties.

(f) Subject to the provisions for formal consultation above, within forty-five (45) days of receipt of the comments on the draft secondary document, the Army shall transmit to EPA and NYSDEC its written response to comments received within the comment period. Within forty-five (45) days of the receipt of comments on a draft primary document, the Army shall transmit to EPA and NYSDEC a draft final primary document, which shall include the Army's response to all written comments received within the comment period. While the resulting draft final document shall be the responsibility of the Army, it shall be the product of consensus to the maximum extent possible.

(g) Except in circumstances when the formal consultation process outlined above is invoked, the Army may otherwise extend the forty-five (45) day period for either responding to comments on a draft secondary document or for issuing the draft final primary document for an additional fifteen (15) days by providing notice to EPA and NYSDEC. In appropriate circumstances, this time period may be further extended in accordance with Part 18 (Extensions) hereof. If the formal consultation process outlined above is invoked, the Army waives its right to the fifteen (15) day extension of the forty-five (45) day period and may extend the response period only in accordance with Part 18 (Extensions).

(h) Deadlines or response times imposed upon the Army, generated by the forgoing provisions of this Part, shall commence upon the Army's receipt of the latter formal comment from EPA and NYSDEC.

(i) EPA and NYSDEC reserve the right to comment on any draft final document submitted by the Army, request additional amendment or modification to such a document, or invoke the procedures of Part 19 (Dispute Resolution). EPA and NYSDEC will transmit any such additional comments or invoke the procedures of Part 19 (Dispute Resolution) within thirty (30) days of receipt of any such draft final document, unless otherwise agreed upon.

(j) Upon receipt of any comments on a draft final primary document, the Army shall either (a) respond to the comments of

EPA and/or NYSDEC, (b) request a second formal consultation, or (c) invoke the procedures of Part 19 (Dispute Resolution).

17.8 <u>Availability of Dispute Resolution for Draft Final Primary Documents.</u>

(a) Dispute resolution shall be available to the Parties for draft final primary documents as set forth in Part 19 (Dispute Resolution). Draft final primary documents shall be subject to a thirty (30) day period for EPA and NYSDEC review and comment.

(b) When dispute resolution is invoked on a draft primary document, work may be stopped in accordance with the procedures set forth in Part 19 (Dispute Resolution) regarding dispute resolution.

17.9 <u>Finalization of Documents.</u> 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 procedures should the Army's position be sustained. If the Army's determination is not sustained in the dispute resolution procedures the Army shall prepare, within not more than forty-five (45) days after receipt of the written resolution of the dispute, a revision of the draft final document which conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Part 18 (Extensions) hereof.

17.10 <u>Subsequent Modifications of Final Documents.</u> Following finalization of any primary document pursuant to Subpart 17.9, above, any Party to this Agreement may seek to modify the document, including seeking additional field work, pilot studies, computer modeling, or other supporting technical work, only as provided in Subparts (a) and (b) below.

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

(b) In the event that a consensus is not reached by the Project Managers on the need for a modification, any Party may invoke dispute resolution to determine if such modification shall be conducted. Modification of a document shall be required only upon a showing that: (1) the requested modification is based on

significant new information, and (2) the requested modification could be of significant assistance in evaluating impacts on the public health or welfare or the environment, in evaluating the selection of remedial alternatives, or in protecting human health or welfare or the environment.

(c) Nothing in this Part shall alter EPA's or NYSDEC's ability to request the performance of additional work which was not contemplated by this Agreement. The Army's obligation to perform such work must be established by either a modification of a document or by amendment to this Agreement.

18. EXTENSIONS

18.1 Either a timetable and deadline or a schedule shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension.

Any request for extension by a Party shall be submitted prior to the deadline or scheduled deliverable date in writing and shall specify:

(a) the timetable and deadline or the schedule that is sought to be extended;

(b) the length of the extension sought;

(c) the good cause(s) for the extension; and

(d) any related timetable and deadline or schedule that would be affected if the extension were granted.

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

(a) an event of force majeure;

(b) a delay caused by another Party's failure to meet any requirement of this Agreement;

(c) a delay caused by the good faith invocation of dispute resolution or the initiation of judicial action; a delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and deadline or schedule; and

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

18.3 Absent agreement of the Parties with respect to the existence of good cause, the Army may seek and obtain a

determination through the dispute resolution procedure that good cause exists.

18.4 A delay caused by either EPA or NYSDEC's failure to comment or respond as required in accordance with this agreement shall result in the an extension of the corresponding timetable, deadline, or schedule, not to exceed the period of the EPA or NYSDEC delay. In such circumstances where a delay is caused by either EPA or NYSDEC, the Army shall submit a revised timetable, deadline, or schedule, as appropriate, reflecting the delay and its subsequent effects.

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

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

18.7 Within seven days of receipt of a statement of nonconcurrence with the requested extension, the Army may invoke dispute resolution. If the Army does not invoke dispute resolution within seven (7) days of receipt of a statement of nonconcurrence, the existing schedule remains in force.

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

18.9 If an extension is requested by EPA or NYSDEC, such a request shall include the details set forth in Subpart 18.1. If no Party invokes dispute resolution within fourteen (14) days

after notice of the requested extension, the extension shall be deemed approved.

19. DISPUTE RESOLUTION

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

19.1 Within thirty (30) days after (a) the issuance of a draft final primary document pursuant to Part 17 (Consultation) of this Agreement, or (b) 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.

19.2 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.

19.3 The DRC will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (Senior Executive Service (SES) or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The EPA representative on the DRC is the Director of the Emergency and Remedial Response Division (ERRD). The Army's designated member is the Commander of Seneca Army Depot. NYSDEC's designated member is Director of the Division of Hazardous Waste Remediation. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Part 16 (Notification).

19.4 Following either the receipt of any written statements of dispute or position or the expiration of the period provided for such a submittal, whichever comes later, the DRC shall have twenty-one (21) days to unanimously resolve the dispute and issue a written decision signed by all Parties. If the DRC is unable

to unanimously resolve the dispute within this twenty-one (21) day period, the written statement of dispute or statement of position 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.

19.5 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 II. The Army's representative on the SEC is Deputy Assistant Secretary of the Army for Environment, Safety and Occupational Health. NYSDEC's representative on the SEC is the Assistant Commissioner of Hazardous Waste Remediation of the NYSDEC. The SEC members shall, as appropriate, confer, meet, and exert their best efforts to resolve the dispute and issue a written decision signed by all Parties. 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. The Army or NYSDEC may, within twenty-one (21) days of the Regional Administrator's issuance of EPA's position, issue a written notice elevating the dispute to the Administrator of EPA for resolution in accordance with all applicable laws and procedures. In the event that the Party elects not to elevate the dispute to the Administrator within the designated twenty-one (21) day escalation period, the Party shall be deemed to have agreed with Regional Administrator's written position with respect to the dispute.

19.6 Upon escalation of a dispute to the Administrator of EPA pursuant to Subpart 19.5, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the EPA Administrator may, if requested, meet and confer with the Army's Secretariat Representative and the Commissioner of NYSDEC to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the other Parties with a written final decision setting forth resolution of the dispute. The duties of the Administrator set forth in this Part shall not be delegated.

19.7 The pendency of any dispute under this Part shall not affect the Army'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.

19.8 When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the ERRD Director for EPA's Region II or, upon the State receiving

authorization for its corrective action program under RCRA and to the extent provided in such authority, NYSDEC's Hazardous Waste Remediation Division Director requests in writing that work related to the dispute be stopped because, in EPA's or NYSDEC's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or welfare or the environment or is likely to have a substantial adverse effect on the remedy selection or implementation process. Prior to receiving authorization for its corrective action program, NYSDEC may request EPA's Region II ERRD Director to order work stopped for the reasons set out above. To the extent possible, the Party seeking a work stoppage shall consult with the other Parties prior to initiating a work stoppage request. After stoppage of work, if a Party believes that the work stoppage is inappropriate or may have potential significant adverse impacts, the Party may meet with the Party ordering such work stoppage to discuss the work stoppage. Following this meeting and further consideration of the issues, the EPA ERRD Director or, upon receiving authorization for its corrective action program and to the extent provided in such authority, the NYSDEC Division Director, as the case may be, will issue in writing a final decision with respect to the work stoppage. The final written decision of the EPA ERRD Director or NYSDEC Division Director may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the Party requesting dispute resolution.

19.9 Within forty-five (45) days of resolution of a dispute pursuant to the procedures specified in this Part, the Army 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.

19.10 Except as provided below in Part 29, the procedures established for the resolution of disputes pursuant to this Part of this Agreement constitutes a final resolution of any dispute arising under this Agreement. All Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Part of this Agreement.

20. FORCE MAJEURE

Force Majeure shall mean any event arising from causes beyond the control of a Party that causes a delay in or prevents the performance of any obligation under this Agreement, including, but not limited to, the following: acts of God, fire, war, insurrection, civil disturbance, explosion, unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance, adverse weather conditions that could not be reasonably anticipated, unusual

delay in transportation, restraint by court order or order of public authority, inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority other than the Army, 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 Department of Defense appropriated funds. In order for a Force Majeure event to be based on insufficient availability of appropriated funds to apply to the Army, the Army shall have made timely request for such funds as part of the budgetary process as set forth in Part 35 (Funding) of this Agreement. Force Majeure shall also include any strike or other labor dispute, whether or not within the control of the Parties affected thereby. Force Majeure shall not include increased costs or expenses of Response Actions, whether or not anticipated at the time such Response Actions were initiated.

21. ENFORCEABILITY

21.1 The Parties agree that:

(a) 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, 42 U.S.C. §9659, 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, 42 U.S.C. §§9659(c) and 9609;

(b) All timetables or deadlines associated with the RI/FS shall be enforceable by any person pursuant to Section 310 of CERCLA, 42 U.S.C. §9659, and any violation of such timetables or deadlines will be subject to civil penalties under Sections 310(c) and 109 of CERCLA, 42 U.S.C. §§9659(c) and 9609;

(c) All terms and conditions of this Agreement which relate to remedial actions for Operable Units, including corresponding timetables, deadlines, or schedules, and all work associated with any remedial actions, shall be enforceable by any person pursuant to Section 310(c) of CERCLA, 42 U.S.C. §9659, and any violation of such terms or conditions will be subject to civil penalties under Sections 310(c) and 109 of CERCLA, 42 U.S.C. §§9659(c) and 9609; and,

(d) Any final resolution of a dispute pursuant to Part 19 (Dispute Resolution) 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, 42 U.S.C. §9659(c), 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, 42 U.S.C. §§9659(c) and 9609.

21.2 Nothing in this Agreement shall be construed as authorizing any person to seek judicial review of any action or work where review is barred by any provision of CERCLA, including Section 113(h) of CERCLA, 42 U.S.C. §9613(h).

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

21.4 Nothing in this Agreement shall be construed as a restriction or waiver of any rights EPA or NYSDEC may have under CERCLA, including but not limited to any rights under Sections 113 and 310, 42 U.S.C. §§9613 and 9659. The Army does not waive any rights it may have under Section 120 of CERCLA, 42 U.S.C. §9620, Section 211 of SARA, 10 U.S.C. Chapter 160, and Executive Order 12580.

21.5 The Army will take all necessary actions in order to fully effectuate the terms of this Agreement, including undertaking response actions at Seneca Army Depot, Romulus, New York, in accordance with Federal and State applicable or relevant and appropriate laws, standards, limitations, criteria and requirements consistent with Section 121 of CERCLA, 42 U.S.C. §9621. The Army agrees that it is bound by this Agreement and that the terms of this Agreement may be enforced against the Army pursuant to this Part of this Agreement.

22. STIPULATED PENALTIES

22.1 In the event that the Army fails to submit a primary document as identified in Part 17 (Consultation) to EPA or NYSDEC pursuant to the appropriate schedule or deadline in accordance with the requirements of this Agreement, or any extension granted pursuant to this Agreement, or fails to comply with a term or condition of this Agreement which relates to an interim or final remedial action, EPA may assess a stipulated penalty against the Army. Similarly, in such instances NYSDEC may request of EPA and pursuant thereto EPA may assess a stipulated penalty against the Army. 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 Subpart occurs.

22.2 Upon determining that the Army has failed in a manner set forth in Subpart 22.1, EPA shall so notify the Army in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the Army shall have fifteen (15) days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. The Army shall not be liable for the

stipulated penalty assessed by EPA if the failure is determined, through the dispute resolution procedure, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty, should said procedures be invoked and so invoked in a timely manner.

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

(a) The facility responsible for the failure;

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

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

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

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

22.4 Stipulated penalties assessed pursuant to this Part shall be shared equally, to the extent allowed by law, between EPA and NYSDEC and shall be payable to the Hazardous Substances Superfund and NYSDEC, to the extent allowed by law, only in the manner and to the extent expressly provided for in the Defense Environmental Restoration Program (DERP), or Acts specifically authorizing funds for, and appropriations to, the Department of Defense (DOD).

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

22.6 This Part shall not affect the Army's ability to obtain an extension of a timetable, deadline, or schedule pursuant to Part 18 (Extensions) of this Agreement.

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

22.8 In the event that EPA declines to assess a stipulated penalty pursuant to request by NYSDEC, or in the event that NYSDEC does not receive its share of any stipulated penalty assessed by EPA, NYSDEC may pursue any penalty, remedy or

sanction which it may have according to law related to said penalty.

23. SITE ACCESS

23.1 Without limitation on any authority conferred on EPA or NYSDEC by statute or regulation, EPA, NYSDEC, and/or their authorized representatives shall have authority to enter the Site at all reasonable times for the purposes of, but not limited to, the following:

(a) inspecting records, files, photographs, operating logs, contracts and other documents relevant to implementation of this Agreement;

(b) reviewing the progress of the Army, its response action contractors or lessees in implementing this Agreement;

(c) conducting such tests as the EPA and NYSDEC Project Managers deem necessary;

(d) verifying the data submitted to EPA and NYSDEC by the Army;

(e) observing the performance of any sampling, testing, response action, Removal Action, Remedial Action, pilot study and/or any other action taken at Seneca Army Depot pursuant to the terms of this Agreement; or

(f) using sound, optical or other types of recording equipment to document activities which have been or are being conducted pursuant to this Agreement.

23.2 The Army shall honor all reasonable requests for access by EPA and NYSDEC to exercise their rights of access pursuant to Subpart 23.1 above, conditioned only upon presentation of proper credentials to the Army. However, such access shall be obtained in conformance with the Army and SEAD security and safety regulations and in a manner minimizing interference with any military operations at Seneca Army Depot.

23.3 The Army assumes all responsibility for obtaining access to all areas within the boundaries of Seneca Army Depot, such as any real property and/or structure occupied by non-Army entities, for the purposes of performing all activities and implementing all other measures required by this Agreement.

23.4 The Army shall use its best efforts to obtain access promptly to all areas located outside the legal boundaries of Seneca Army Depot onto which access is needed to perform any activities under this Agreement, including obtaining access for the Army, EPA, and/or NYSDEC onto all real property and

structures which are not owned by the United States or the Army. "Best efforts," for the purposes of this Subpart, shall include identifying and locating the owner(s) and lessees of areas, offering reasonable consideration to the owner(s) and/or lessees for access to areas, making attempts to obtain access agreements from the owners and/or lessees of all areas onto which access is needed under this Agreement, and asserting all authority which the Army possesses under Section 104(e) of CERCLA, 42 U.S.C. 9604(e), including issuing administrative orders and initiating judicial action(s) to obtain access pursuant to the authority of the Army under Section 104 and other Sections of CERCLA.

23.5 The Army shall ensure that all response measures, groundwater rehabilitation measures, or remedial actions of any kind which are undertaken pursuant to this Agreement on any areas which (a) are presently owned by the United States and occupied by the Army or leased by the Army to any other entity or (b) are in any manner under the control of the Army or any lessees or agents of the Army shall not be impeded or impaired in any manner by any transfer of title or change in occupancy or any other change in circumstances of such areas.

23.6 With respect to non-Army property upon which monitoring wells, pumping wells, treatment facilities, or any other response actions are to be located or conducted, any access agreements obtained shall also provide that no conveyance of title, easement, or other interest in the property shall be consummated for the duration of the access agreement without provisions for the continued right of entry and continued operation of such wells, treatment facilities, or any other response actions on the property. The access agreements shall also provide that the owners of any property where monitoring wells, pumping wells, treatment facilities, or any other response activities are conducted shall notify the Army, EPA, and NYSDEC by certified mail at least thirty (30) days prior to any conveyance, or of the property owner's intent to convey any interest in the property, including the identification of the provisions made for the continued operation of the monitoring wells, treatment facilities, or any other response activities conducted pursuant to this Agreement.

23.7 If, after using its best efforts as provided above, the Army shall have failed to obtain voluntary access, the Army shall utilize its authority to issue an Administrative Order providing for such access as may be required or shall refer the access issue to the Department of Justice. Such referral shall request a judicial order providing for such access as may be required. EPA shall assist in obtaining access by providing testimony or documents or in other ways, as appropriate.

23.8 The Army shall ensure that EPA and NYSDEC and their authorized representatives shall be allowed to enter and move

about all areas where any activities are to be or are being performed under this Agreement, consistent with Subparts 23.2 and 23.4 of this Part.

23.9 EPA, NYSDEC and the Army recognize that access to certain areas of the Site may be restricted based upon National Security concerns if so stipulated in an executive order issued by the President pursuant to Section 120(j)(1) of CERCLA, 42 U.S.C. 9620(j)(1).

23.10 All Parties with access to the Site pursuant to this Part shall comply with all approved Health and Safety Plans.

23.11 In the event that Site access is not obtained, the Army shall notify EPA and NYSDEC within fifteen (15) days regarding the inability to obtain such access. Within fifteen (15) days of such notice, the Army shall submit appropriate modification(s) to this Agreement or to approved documents in response to such an inability to obtain access.

24. SAMPLING AND DATA/DOCUMENT AVAILABILITY

24.1 The Parties shall use Quality Assurance, Quality Control (QA/QC), chain-of-custody procedures during all field investigation, sample collection, transportation, and laboratory analysis procedures, in accordance with EPA guidance.

Throughout all sample collection, transportation, and analyses activities conducted in connection with this Agreement, the Army shall use procedures for QA/QC and for chain of custody in accordance with approved EPA methods, including Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans (QAMS-005/80), Data Quality Objective Guidance (EPA 540/G-87/003 and 004), and subsequent amendments to such guidelines. The Army shall require any laboratory with which it contracts to perform any analysis according to approved EPA methods and to participate in a QA/QC program equivalent to that which is followed by the EPA Contract Laboratory Program (CLP) and which is consistent with EPA document QAMS-005/80.

24.2 Each Party shall make available to the other Parties within sixty (60) days of performance of any sampling event or test quality assured results of sampling, tests, or other data generated by any Party, or on their behalf, with respect to the implementation of this Agreement. If quality assurance is not completed within sixty (60) days, results shall be submitted within the sixty (60) day period, raw data may be requested by any party within said period, and quality assured data or results shall be submitted as soon as they become available.

24.3 The Army shall inform the EPA and NYSDEC Project Managers in advance as to which laboratories will be retained by

the Army and ensure that EPA and NYSDEC personnel and their authorized representatives have reasonable access to the laboratories and personnel retained to conduct analyses.

24.4 The Army shall ensure that laboratories retained by the Army for the performance of analyses are in accordance with this Agreement.

24.5 The Army shall ensure that laboratories used by the Army for the performance of analyses are in accordance with available EPA methods. The Army shall submit all protocols to be used for analyses to EPA and NYSDEC as part of the Field Sampling and Analysis Plan.

24.6 The Army shall ensure that laboratories used by the Army for analyses participate in a QA/QC program approved by EPA. The laboratories used will either:

(a) be in EPA's CLP,
(b) participate in EPA's CLP quarterly blind samples,
(c) supply state certifications for the parameters/methods of interest,
(d) perform acceptably on samples supplied by EPA, or
(e) be otherwise approved by EPA and NYSDEC.

As part of such a program and upon request by EPA, such laboratories shall be required to perform analyses of samples provided by EPA to demonstrate the quality of the analytical data.

24.7 The Army shall make available data validation protocols, upon request, if EPA Region II data validation protocols are not used.

24.8 At the request of either the EPA or NYSDEC Project Manager, the Army shall allow split or duplicate samples to be taken by EPA or NYSDEC during sample collection conducted during the implementation of this Agreement. The Army Project Manager shall endeavor to notify the EPA and NYSDEC Project Managers not less than thirty (30) business days in advance of any sample collection. If it is not possible to provide thirty (30) business days prior notification, the Army shall notify the NYSDEC and/or EPA Project Managers as soon as possible after becoming aware that samples will be collected.

24.9 Upon request, the Army shall submit to EPA and submit or otherwise make available to NYSDEC at such locations as it designates, copies of records and other documents relating to tests, reports, sampling or monitoring data, except those records or documents which are subject to the attorney-client or attorney work product privilege or are classified information consistent with Section 120(j)(2) of CERCLA, 42 U.S.C. §9620(j)(2).

25. PERMITS

25.1 The Army shall be responsible for obtaining all Federal, New York State and local permits which are necessary for the performance of all work under this Agreement.

25.2 The Parties recognize that pursuant to Sections 121(d) and 121(e)(1) of CERCLA, 42 U.S.C. §§9621(d) and 9621(e)(1), and the NCP, portions of the response actions called for by this Agreement and conducted entirely on-site are exempt from the procedural requirement to obtain Federal, State, or local permits. All such activities must, however, comply with all the applicable or relevant and appropriate Federal and State standards, requirements, criteria, or limitations which would have been included in any such permit unless a waiver is granted.

25.3 When the Army proposes a response action to be conducted entirely on-site, which in the absence of Section 121(e)(1) of CERCLA, 42 U.S.C. §9621(e)(1), and the NCP would require a Federal or State permit, and for which the Army does not seek a permit, the Army shall include in the submittal in which said response action is proposed:

(a) identification of each permit which would otherwise be required;

(b) identification of the standards, requirements, criteria, or limitations which would have had to have been met to obtain each such permit, as identified in accordance with Subpart 17.6 of this Agreement; and

(c) explanation of how the response action proposed will meet the standards, requirements, criteria or limitations identified in (b) immediately above.

Upon request of the Army, EPA and NYSDEC will provide their positions with respect to (b) and (c) above in a timely manner.

25.4 Subpart 25.2 above is not intended to relieve the Army from the requirement(s) of obtaining a permit whenever it proposes a response action involving the shipment or movement of a hazardous substance or hazardous waste off the Site.

25.5 The Army shall notify EPA and NYSDEC in writing of any permits required for any activities it plans to undertake off the Site as soon as it becomes aware of the requirement. The Army shall be responsible for obtaining any such permit.

25.6 Upon request, the Army shall provide EPA and NYSDEC copies of all such permit applications and other documents related to the permit process. The Army shall furnish EPA and NYSDEC with copies of all permits obtained in implementing this

Agreement. Such copies shall be appended to the appropriate submittal or periodic report.

25.7 During any appeal by any Party of any permit required to implement this Agreement, or during review of any proposed modification(s), the Army shall continue to implement those portions of this Agreement which can be reasonably implemented independent of final resolution of the permit issue(s) under appeal. However, as to work which cannot be so implemented, any corresponding timetable, deadlines, and schedule will be subject to Part 18 (Extensions) of this Agreement.

25.8 If a permit which is necessary for implementation of this Agreement is not issued, or is issued or renewed in a manner which is materially inconsistent with the requirements of this Agreement, the Army agrees it shall notify EPA and NYSDEC of its intention to propose modifications to this Agreement to conform to the permit (or lack thereof). Notification by the Army of its intention to propose such modifications shall be submitted within fifteen (15) days of receipt by the Army that: (1) a permit will not be issued; (2) a permit has been issued or reissued; or (3) a final determination with respect to any appeal related to the issuance of a permit has been entered. Within thirty (30) days from the date it submits its notice of intention to propose modifications, the Army shall submit to EPA and NYSDEC its proposed modifications to this Agreement with an explanation of its reasons in support thereof. The thirty (30) day period may be extended in accordance with Part 18.

25.9 EPA and NYSDEC shall review and comment upon proposed modifications to this Agreement in accordance with Part 17 (Consultation) of this Agreement. If the Army submits proposed modifications prior to a final determination of any appeal taken related to a permit required to implement this Agreement, EPA and NYSDEC may elect to delay review of the proposed modifications until after such final determination is entered. If EPA elects to delay such review, the Army shall continue implementation of this Agreement as provided in Subpart 25.7 of this Agreement.

25.10 Except as otherwise provided in this Agreement, the Army shall comply with applicable State and Federal hazardous waste management requirements at the Site.

26. REPORTING

26.1 The Army shall submit to EPA and NYSDEC quarterly reports, no later than the 10th day of the months of January, April, July, and October, which shall include the following:

(a) minutes of all formal Project Manager, Technical Review Committee (TRC), or other formal meetings held during the preceding period. This shall also include a summary of issues

discussed by the Project Manager meetings which may have occurred in the last quarter;

(b) status report on all milestones met on schedule during the period, report and explanation for any milestones not met during the preceding period and assessment of milestones scheduled for the next reporting period;

(c) outside inspection reports, audits, or other administrative information developed during the preceding period, including notice of any outside inspections or audits scheduled during the next reporting period;

(d) permit status as applicable;

(e) personnel staffing Status or Update;

(f) copies of all Quality Assured Data and sampling and test results and, upon request, all other laboratory deliverables received by the Army during the reporting period, if any; and

(g) a community relations activity update.

26.2 When field work associated with response activities is being conducted at the Site, the Army shall submit a monthly Field Activity Report to EPA and NYSDEC, not later than the 10th day of the month addressing the following:

(a) a summary of work completed in the field, i.e., sampling events or well installation. Upon request, copies of trip reports and/or field logs shall be provided;

(b) anticipated or actual delay of a scheduled field activity, to include the basis for the delay and any effect it may have on subsequent events or scheduled activities;

(c) discovery or indication of significant additional contamination or any new family of hazardous substances at an AOC other than that previously recognized or expected for the AOC location;

(d) quantum increase in concentration of hazardous substances of any media beyond that previously recognized or expected for that AOC location;

(e) Determination of any specific or potential increase of danger to the public, the environment, or to individuals assigned to work at the Site. Such a determination shall be reported to the EPA and NYSDEC as soon as discovered; and

(f) Copies of all Quality Assured Data and sampling and test results and, upon request, all other laboratory deliverables received by the Army during the month, if any.

27. FIVE YEAR REVIEW

27.1 The Army agrees that EPA and NYSDEC will review any remedial action taken at the Site no less often than 5 years after the initiation of each remedial action, consistent with Section 121(c) of CERCLA, 42 U.S.C. §9621(c), if any selected remedial action results in any hazardous substance, pollutant, or contaminant remaining at the Site. Such reviews shall be conducted to assure that human health, welfare, and the environment are being protected by the remedial action implemented.

27.2 If upon such review it is the conclusion of EPA and/or NYSDEC that additional action(s) or modification(s) to any remedial action(s) are appropriate pursuant to any provision under CERCLA, the Army shall implement such additional or modified action in accordance with Subpart 17.10 of Part 17 (Consultation). Any dispute of a determination under this Part shall be resolved under Part 19 (Dispute Resolution).

27.3 Any additional action or modification to a selected remedial action which is agreed upon pursuant to this Part shall be consistent with the procedures set forth in Subpart 33.5.

27.4 To synchronize the five-year reviews for those Operable Units and final remedial actions as described in Subpart 27.1, above, the following procedure will be used: Review of Operable Unit remedial actions will be conducted every five (5) years counting from the completion of the remedial action for the first Operable Unit until completion of the final remedial action for the Site. At that time, a separate review for all Operable Units shall be conducted. Review of the final remedial action (including all Operable Units) shall be conducted every five (5) years thereafter.

28. RETENTION OF RECORDS

28.1 Each Party shall preserve for a minimum of ten (10) years after termination of this Agreement all records and documents in its possession or in the possession of its contractors which relate in any way to the presence of hazardous substances, pollutants, or contaminants at the Site or to activities taken pursuant to this Agreement, including, but not limited to, the complete Administrative Record, post-ROD primary and secondary documents, and annual reports, despite any document retention policy to the contrary. After this ten (10) year period, any Party wishing to destroy or dispose of any such records or documents shall notify the other Parties to this Agreement at least ninety (90) days prior to destruction or disposal of any such documents or records. Upon request by any Party to this Agreement, the Party being notified shall make available any or all of such records or documents to the

notifying Party at any time during the performance of the work under this Agreement and up to ten (10) years after the termination of this Agreement. Any Party to this Agreement shall allow the other Parties to make copies of any or all records relating to this Agreement upon request, except those records or documents which are subject to the attorney-client or attorney work product privilege or are classified information consistent with Section 120(j)(2) of CERCLA, 42 U.S.C. §9620(j)(2).

28.2 All such records and documents shall be preserved for a period of ten (10) years following the termination of any judicial action regarding the work performed under CERCLA, which is the subject of this Agreement.

29. COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

29.1 In consideration of the Army's compliance with this Agreement, and based on the information known to the Parties on the effective date of this Agreement, EPA agrees that compliance with this Agreement shall stand in lieu of any administrative, legal or equitable remedy against the Army available to it regarding the currently known release or threatened release of hazardous substances, pollutants, or contaminants at the Site which are the subject of any RI/FS(s) and which will be addressed by the response actions provided for under this Agreement. Nothing in this Agreement shall preclude EPA from exercising any administrative, legal or equitable remedies available to it to require additional response actions by the Army in the event that (1) conditions previously unknown or undetected by EPA arise or are discovered at the Site, or (2) EPA receives additional information not previously available concerning the premises which it employed in reaching this Agreement, or (3) the implementation of the requirements of this Agreement is no longer protective of public health or welfare or the environment. Prior to exercising any such remedy, however, EPA shall attempt to resolve its concerns through the procedures set forth in Part 19 (Dispute Resolution), above.

29.2 (a) Nothing in this Agreement shall preclude the State from exercising any administrative, legal, or equitable remedies available to it to require additional response actions by the Army in the event that the State determines that:

(1) conditions previously unknown or undetected by the State arise or are discovered at the Site; or,

(2) the State receives additional information not previously available concerning the premise which it employed in reaching this Agreement; or,

(3) the implementation of the requirements of this Agreement is no longer protective of the public health or welfare or the environment.

Prior to making such a determination, the State agrees to exhaust the dispute resolution process described in Part 19 (Dispute Resolution). Dispute resolution need not be so exhausted where the Commissioner transmits in writing by telefax with a copy by next day mail to the other parties a brief description of the basis for the Commissioner's determination that an imminent and substantial endangerment to public health or welfare or the environment warrants the immediate exercise of any administrative, legal, or equitable remedies available to the State to require additional response actions by the Army.

As to disputes arising under this paragraph, any final resolution under Part 19 (Dispute Resolution) by the Administrator shall not preclude the State from exercising any administrative, legal, or equitable remedies available to it to require additional response actions by the Army.

(b) In addition, the State reserves the following rights:

(1) Any and all rights it may have under CERCLA, including, but not limited to, Sections 113, 120, 121 and 310, 42 U.S.C. §§ 9613, 9620, 9621, 9659, and specifically including all of the rights it may have to obtain judicial review of any remedy selected by the Administrator. The State agrees to exhaust the dispute resolution process described in Part 19 (Dispute Resolution) prior to exercising any rights to judicial review that it may have of any action taken or decision made pursuant to this Agreement; provided, that nothing in this subparagraph shall be construed as nullifying the terms of paragraph (a), above.

Any final resolution by the Administrator under Part 19 (Dispute Resolution) shall not preclude the State from exercising any rights it may have under CERCLA.

(2) The right to seek penalties or other relief against the Army for a failure to comply with this Agreement, as authorized by Part 22 (Stipulated Penalties).

(3) The right to procure enforcement of this Agreement.

(4) The right to recover response costs not reimbursed pursuant to the Department of Defense and State Memorandum of Agreement of June 6, 1991, as the same

may be modified from time to time according to its terms.

(c) This Agreement shall not restrict the State from taking any legal or response action, specifically including action to the extent authorized by federal law to obtain compliance by the Army with State law, for any matter not specifically addressed by this Agreement.

29.3 Nothing in this Agreement shall preclude, limit, or affect in any way any claims for damages for injury to, destruction of, or loss of natural resources, or for the costs of assessing such injury, destruction or loss.

30. TRANSFER OF PROPERTY

30.1 In the event the Army determines to enter into any contract for the sale or transfer of any portion of the Site, the Army shall comply with the requirements of CERCLA §120(h), 42 U.S.C. §9620(h), in effectuating that sale or transfer, including all notice requirements. In addition, the Army shall include notice of this Agreement in any document transferring ownership or operation of any portion of the Site to any subsequent owner and/or operator. Such notification to EPA and NYSDEC shall be at least ninety (90) days prior to any such sale or transfer and shall include any provisions therein established to satisfy additional remedial action requirements of this Agreement.

30.2 No transfer of ownership of the Site, or any portion thereof, nor notice pursuant to Section 120(h)(3)(B) of CERCLA, 42 U.S.C. §9620(h)(3)(B), shall relieve the Army of its obligation to perform pursuant to this Agreement. No transfer of ownership of any portion of the Site which the Army owns shall occur without provision for continued maintenance of any containment, treatment, or monitoring system, or other response action(s) installed or implemented pursuant to this Agreement.

(a) The Army shall provide EPA and NYSDEC with at least ninety (90) days notice prior to any conveyance of title to or any transfer of an interest in real property which may affect this Agreement or any activities to be taken pursuant to it in which said property or interest therein is owned by the Army.

(b) The Army shall provide EPA and NYSDEC notice of any conveyance of title to or any transfer of an interest in real property which may affect this Agreement or any activities to be taken pursuant to it in which said property or interest is owned by a person, entity, or agency other than the Army. Said notice will be provided within ninety (90) days after the Army Project Manager becomes aware of the proposed conveyance or transaction.

(c) The Army shall use all authorized administrative and/or judicial means to ensure that all response actions undertaken pursuant to this Agreement will not be impeded or impaired by any transfer of title or any transfer of any other interest in real property relating to the Site or any structures located thereon.

31. PUBLIC PARTICIPATION

31.1 The Parties agree that this Agreement and all work, including any proposed remedial action plan and any subsequent plan for remedial action at the Site arising out of this Agreement, shall comply with the Administrative Record and public participation requirements of Sections 113 and 117 of CERCLA, 42 U.S.C. §§9613 and 9617, the NCP, EPA guidance, and regulations with respect to the Administrative Record, public participation, and all applicable State laws.

31.2 The Army shall develop and implement a Community Relations Plan (CRP) which responds to the need for an interactive relationship with all interested community elements, both on and off Seneca Army Depot, regarding activities and elements of work undertaken by the Army. The Army agrees to develop and implement the CRP in a manner consistent with Section 117 of CERCLA, 42 U.S.C. §9617, the NCP, EPA guidelines set forth in EPA's Community Relations Handbook, and any modifications thereto. The CRP is subject to the review and comment process set forth in Part 17 (Consultation) of this Agreement.

31.3 Any Party issuing a formal press release to the media regarding any of the work required by this Agreement shall advise the other Parties of such press release and the contents thereof, at least two (2) business days before the issuance of such press release and of any subsequent changes prior to release.

31.4 Administrative Record. The Army agrees that it shall establish and maintain an Administrative Record at Seneca Army Depot in accordance with Section 113(k) of CERCLA, 42 U.S.C. §9613(k). The Administrative Record shall be established and maintained in accordance with current and future EPA policy and guidelines. The Administrative Record developed by the Army shall be updated on at least a quarterly basis. The establishment and maintenance of the Administrative Record shall satisfy, but not be limited to, the following requirements:

(a) A copy of the Administrative Record shall be available to the public at a location in Seneca County, including a copy of a current index;

(b) The selection of each response action shall be based on the Administrative Record, in accordance with CERCLA Section 113(k), 42 U.S.C. §9613(k), any regulations promulgated pursuant thereto, and applicable guidance. A copy of the Administrative

Record or a complete index of the Administrative Record shall be maintained at the EPA Region II Office, currently at 26 Federal Plaza, New York, New York;

(c) The Army shall provide EPA and NYSDEC with copies of documents generated or possessed by the Army which are included in the Administrative Record. EPA and NYSDEC will provide the Army with copies of documents generated by each Party which should be included in the Administrative Record;

(d) Upon establishment of an Administrative Record, the Army shall provide EPA and NYSDEC with an index of the Administrative Record. The index shall identify the documents which will comprise the Administrative Record for each decision document for each particular response action;

(e) The Army shall provide EPA and NYSDEC with a quarterly update of any documents added to the Administrative Record and the updated Administrative Record index when any changes or additions to the Record have been made;

(f) Upon request by any Party, the Army shall provide a copy of any document in the Administrative Record to the requesting Party;

(g) EPA will provide the Army with guidance on establishing and maintaining the Administrative Record as this guidance develops, and

(h) EPA and NYSDEC shall make the final determination of whether a document is appropriate for inclusion in the Administrative Record.

32. TECHNICAL REVIEW COMMITTEE

32.1 The Army shall establish and lead a Technical Review Committee (TRC). The purpose of the TRC is to afford a forum of cooperation between the Army and concerned local officials and citizens and to provide a meaningful opportunity for members of the TRC to become informed and to express their opinion about the technical aspects of any RI/FS or RD/RA. The TRC consists of representatives from the Army, EPA, NYSDEC, the Township of Romulus, Seneca County, and a public representative of the community involved. The Army representative shall chair the meetings of the TRC. The committee shall meet quarterly, or as agreed upon by the respective representatives, to review the progress of any RI/FS or RD/RA. Minutes of the TRC meetings shall be kept by the Army and distributed to the members of the TRC and the Parties to this Agreement within fifteen (15) days of the date of any such meeting. The minutes shall, as appropriate, become part of the Administrative Record.

32.2 Copies of the minutes shall be made available to the public at the location of Administrative Record.

33. AMENDMENT OF AGREEMENT

33.1 This Agreement may be amended by a written agreement among the Parties. Any and all modifications to this Agreement must be in writing and shall be executed by duly authorized representatives of the Army, EPA, and NYSDEC.

33.2 EPA will be the last signatory to execute all modifications to this Agreement.

33.3 The effective date of all modifications to this Agreement shall be the date on which it is executed by EPA, unless otherwise explicitly stated in any modification. Public participation requirements as set forth in Section 117 of CERCLA, 42 U.S.C. §9613(k), shall be satisfied, where applicable, prior to execution by EPA.

33.4 No oral advice, guidance, suggestions, or informal comments by EPA or NYSDEC regarding documents, reports, plans, specifications, schedules, or any other writing relating to this Agreement which are submitted by the Army will be construed as modifying this Agreement or as relieving the Army of any obligation under this Agreement, including the need to obtain approvals as may be required by this Agreement.

33.5 The Attachments to this Agreement may be revised, subject to dispute resolution, by written agreement. Such revisions shall be in writing and shall be effective as of the date on which such revisions are signed by all Parties. The Commander of SEAD shall sign any revision of any Attachment to this Agreement for the Army. The Chief of the Program Support Branch, Emergency and Remedial Response Division, shall sign any revision of any Attachment to this Agreement for EPA. The Chief of the Bureau of Eastern Remedial Action shall sign any revision of any Attachment to this Agreement for NYSDEC. Any revision or other change to an Attachment in accordance with this Subpart shall be limited to the subject matter of that Attachment and shall not otherwise amend this Agreement.

34. OTHER PROVISIONS

34.1 Nothing contained in this Agreement shall affect any right, claim, interest, defense, or cause of action which EPA, NYSDEC, or the Army may have at present or which may arise in the future with regard to any other entity which is not a signatory to this Agreement.

34.2 Nothing herein shall affect the right of EPA or NYSDEC to issue any order or initiate any action against any entity which is not a party to this Agreement.

34.3 All work performed pursuant to this Agreement shall be performed in accordance with the requirements of all applicable or relevant and appropriate Federal and State laws and regulations in effect at the time that the work is approved to the extent required by CERCLA.

34.4 All work performed pursuant to this Agreement shall comply with all applicable provisions of CERCLA, the NCP, and other Federal regulations and guidance related to CERCLA and actions taken pursuant to CERCLA at Federal facilities.

34.5 EPA and NYSDEC shall not be a party to any contract entered into by the Army or any agents of the Army for any matters relating to this Agreement.

34.6 The Army agrees to assume full responsibility for clean-up of the Site in accordance with CERCLA and the NCP. However, nothing in this Agreement shall constitute or be construed as a bar or release by either EPA, NYSDEC or the Army 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, pollutants, or contaminants found at, taken to, or taken from the Site.

34.7 This Agreement does not constitute any decision or preauthorization of funds by EPA under Section 111(a)(2) of CERCLA, 42 U.S.C. §9611(a)(2), for any person, agent, contractor, or consultant acting for the Army.

34.8 This Agreement shall not restrict EPA or NYSDEC from taking any legal or response action for any matter not specifically covered by this Agreement.

34.9 EPA, NYSDEC, and the Army shall provide a copy of this Agreement to appropriate contractors, subcontractors, laboratories, and consultants retained to conduct any portion of the work performed pursuant to this Agreement prior to beginning work to be conducted under this Agreement.

34.10 All reports, documents, plans, specifications, and schedules submitted and identified as deliverables in Attachment 2 pursuant to this Agreement are, upon approval by EPA, incorporated into this Agreement. Any requirement set forth in the deliverables identified in Attachment 2 shall be limited to

the subject matter of that Attachment and shall not otherwise amend this Agreement.

35. FUNDING

35.1 It is the expectation of the Parties to this Agreement that all obligations of the Army arising under this Agreement will be fully funded. The Army agrees to seek sufficient funding through the DOD budgetary process (1383/A106) to fulfill its obligations under this Agreement.

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

35.3 Any requirement for the payment or obligation of funds, including stipulated penalties, by the Army 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 the Army's obligations under this Agreement, EPA and NYSDEC reserve the right to initiate an action against any other person, or to take any response action, which would be appropriate absent this Agreement.

35.4 Funds authorized and appropriated annually by Congress under the "Environmental Restoration, Defense" appropriation in the Department of Defense Appropriation Act allocated by the Office of the Assistant Secretary of Defense to the Army will be the source of funds for those activities eligible for Defense Environmental Restoration Account funding required by this Agreement consistent with Section 211 of SARA, 10 U.S.C. Chapter 160. However, should the Environmental Restoration, Defense appropriation be inadequate in any year to meet the total Army CERCLA implementation requirements, DOD shall employ and the Army shall follow a standardized DOD prioritization process which allocates that year's appropriations in a manner which maximizes the protection of human health and the environment. A standardized DOD prioritization model shall be developed and utilized with the assistance of EPA and the States. The first sentence of this subpart notwithstanding, if Seneca Army Depot is selected for closure in accordance with the provisions of the Defense Base Closure and Realignment Act of 1990, Pub. L. 101-

510, as amended, or any successor law, the source of funds shall be as provided in Pub. L. 101-510, as amended, or any successor law to the extent that there is any conflict regarding funding between such law and the first sentence of this Subpart.

36. RECOVERY OF EXPENSES

36.1 Recovery of EPA expenses. The Parties agree to amend this Agreement at a later date in accordance with any subsequent national resolution of the issues related to of cost reimbursement. Pending such resolution, EPA reserves any rights it may have with respect to cost reimbursement.

36.2 Recovery of NYSDEC expenses.

The State of New York shall recover expenses consistent with the Defense/State Memorandum of Agreement executed on June 6, 1991. The Army and NYSDEC agree that the following terms and conditions of this Part which address reimbursement to NYSDEC shall become effective in the event that the Defense/State Memorandum of Agreement executed on June 6, 1991 is terminated.

(a) The Army agrees to request funding and reimburse NYSDEC, subject to the conditions and limitations set forth in this Part, and subject to Part 35 (Funding), for all reasonable costs it incurs in providing services in direct support of the Army's environmental restoration activities pursuant to this Agreement at the Site, provided that the costs of such services have not been reimbursed otherwise.

(b) Reimbursable expenses shall consist only of actual expenditure required to be made and actually made by NYSDEC in providing the following assistance to Seneca Army Depot:

1. timely technical review and substantive comment on reports or studies which the Army prepares in support of its response actions and submits to NYSDEC;

2. identification and explanation of unique State requirements applicable to military installations in performing response actions, especially State applicable or relevant and appropriate requirements;

3. field visits to ensure investigations and clean-up activities are implemented in accordance with agreed upon conditions between NYSDEC and the Army that are established in the framework of this Agreement;

4. support and assistance to the Army in the conduct of public participation activities in accordance with Federal and State requirements for public involvement;

5. participation in the review and comment functions of the Technical Review Committee;

6. other services specified in this Agreement;

(c) Within ninety (90) days of the end of each quarter of the Federal Fiscal year, NYSDEC shall submit to the Army an accounting of all costs actually incurred during that quarter in providing direct support services under this Part. Such accounting shall be accomplished by cost summaries and be supported by documentation which meets Federal auditing requirements. The summaries will set forth employee-hours and other expenses by major type of support service. All costs submitted must be for work directly related to implementation of this Agreement and not inconsistent with either the NCP or the requirements described in Office of Management and Budget Circulars A-87 (Cost Principles for State and Local Governments) and A-128 (Audits for State and Local Cooperative Agreements with State and Local Governments) and Standard Forms 424 and 270. The Army has the right to audit cost reports used by NYSDEC to develop the cost summaries. Before the beginning of each fiscal year, NYSDEC shall supply a budget estimate of what it plans to do in the next year in the same level of detail as the billing documents.

(d) Except as allowed pursuant to Subparts (e) or (f) below, within ninety (90) days of receipt of the accounting provided pursuant to Subpart (c) above, the Army shall reimburse NYSDEC in the amount set forth in the accounting.

(e) In the event the Army contends that any of the costs set forth in the accounting provided pursuant to Subpart (c) above are not properly payable, the matter shall be resolved through a bilateral dispute resolution procedure set forth at Subpart (i) below.

(f) The Army shall not be responsible for reimbursing NYSDEC for any costs actually incurred in the implementation of this Agreement in excess of one percent (1%) of the Army's total lifetime Defense Environmental Restoration Account (DERA) project costs incurred throughout construction of the remedial actions. The Parties recognize that circumstances could arise whereby fluctuation in the Army's estimates or actual final costs through the construction of remedial actions creates a situation wherein NYSDEC receives reimbursement in excess of one percent of these costs. Under such circumstances, NYSDEC remains entitled to payment for services rendered prior to the completion of a new estimate if the services are within the ceiling applicable under the previous estimate.

(g) Either the Army or NYSDEC may request, on the basis of significant upward or downward revisions in the Army's estimate

of its total lifetime costs throughout construction used in Subpart (f) above, a renegotiation of the cap. Failing an agreement, either the Army or NYSDEC may initiate dispute resolution in accordance with Subpart (i) below.

(h) This Agreement is the mechanism for payment of the costs incurred by NYSDEC in providing the services listed in Subpart (b) of this Part in relation to DERA-funded work carried out at the Site after the effective date of this Agreement. Full payment of NYSDEC costs pursuant to this Agreement constitutes final settlement of any claims NYSDEC may have for performance, after the effective date of this Agreement, of the foregoing services.

(i) Notwithstanding Part 19 (Dispute Resolution), this Subpart shall govern any dispute between the Army and NYSDEC regarding the application of this Part or any matter controlled by this Part including without limitation allowability of expenses and limits on reimbursement. While it is the intent of the Army and NYSDEC that these procedures shall govern resolution of disputes concerning reimbursement to NYSDEC, informal dispute resolution is encouraged.

1. The Army and NYSDEC Project Managers shall be the initial points of contact for coordination of dispute resolution under this Subpart.

2. If the Army and NYSDEC Project Mangers are unable to resolve a dispute, the matter shall be referred to the Army's Commander of Seneca Army Depot and to NYSDEC's Hazardous Waste Remediation Division Director, or to their designated representatives, as soon as practicable, but in any event within five (5) working days after the dispute is elevated by the Project Managers.

3. If the Army's Commander of Seneca Army Depot and NYSDEC's Hazardous Waste Remediation Division Director are unable to resolve the dispute within ten (10) working days, the matter shall be elevated to the Army's Deputy Assistant Secretary and to NYSDEC's Assistant Commissioner of Hazardous Waste Remediation, or their designated representatives.

4. In the event that the Army's Deputy Assistant Secretary and the NYSDEC's Assistant Commissioner of Hazardous Waste Remediation are unable to resolve the dispute, NYSDEC reserves the right to pursue any legal and equitable remedies it may have to recover its expenses, and additionally NYSDEC may withdraw from this Agreement by giving sixty (60) days notice to the other Parties.

(j) Nothing herein shall be construed to limit the ability of the Army to contract with NYSDEC for technical services that could otherwise be provided by a private contractor, including without limitation:

1. identification, investigation, and clean-up of any contamination beyond the boundaries of Seneca Army Depot;

2. laboratory analyses; or

3. data collection for field studies.

37. ADDITIONAL WORK

37.1 In the event that EPA and/or NYSDEC determine during periodic review or through the discovery of significant and/or additional contamination at the Site that additional work, including remedial investigatory work, engineering evaluation and/or minor field modifications, is necessary to accomplish the objectives of this Agreement, notification of such additional work, with appropriate deadlines, shall be provided to the Army. The Army agrees, subject to the dispute resolution procedures set forth in Part 19 (Dispute Resolution), to implement any such work.

37.2 Any additional work determined by EPA and/or NYSDEC to be necessary pursuant to paragraph 37.1 of this Part shall be proposed by the Army and shall be subject to the review and comment procedures described in Part 17 (Consultation) of this Agreement prior to initiation of any work.

37.3 Within fifteen (15) days following a modification pursuant to Subparts 37.1 or 37.2, the Army Project Manager shall prepare a letter report detailing the modifications and provide and/or mail a copy of the letter report to the other Project Managers.

37.4 Any additional work approved pursuant to Subparts 37.1 or 37.2 shall be completed in accordance with the standards, specifications, and schedule determined or approved by the Parties. If any additional work will adversely affect work scheduled or will require significant revisions to an approved Work Plan, EPA and NYSDEC Project Managers shall be notified by the Army of the circumstances in the letter report required in Subpart 37.3.

37.5 Any additional work or modification of work agreed to pursuant to this Agreement shall be governed by the provisions of this Agreement.

38. CREATION OF DANGER

38.1 Discovery and Notification. If any Party discovers or becomes aware of an emergency or other situation that may present an endangerment to public health, welfare, or the environment at or near the Site which is related to or may affect the work performed under this Agreement, that Party shall immediately orally notify the Army, and the Army shall immediately notify all other Parties. If the emergency or endangerment arises from activities conducted pursuant to this Agreement, the Army shall then take immediate action to notify the appropriate State and local agencies and affected members of the public. Once defined pursuant to Section 2(e) of Executive Order 12580, that definition of the term "emergency" shall be used for this Agreement.

38.2 Work Stoppage. In the event any Party determines that activities conducted pursuant to this Agreement will cause or otherwise be threatened by a situation described in Subpart 11.1, the Party may propose the termination of such activities. If the Parties mutually agree, the activities shall be stopped for such period of time as required to abate the danger. In the absence of mutual agreement the activities shall be stopped in accordance with the proposal, and the matter shall be immediately referred for a work stoppage determination in accordance with Subpart 19.8 of Part 19 (Resolution of Disputes).

38.3 Protective Measures. In the case of contamination originating on the Site or which is the result of activities in connection with the Site, the Army will expeditiously take appropriate measures to protect the affected public health or welfare or the environment. EPA may also, to the extent authorized by law, take any appropriate measures to protect the affected public health or welfare or the environment.

39. CONFIDENTIAL INFORMATION

The Army may assert a confidentiality claim covering all or part of the information requested by this Agreement. Analytical data shall not be claimed as confidential by the Army. Information determined to be confidential by EPA, pursuant to 40 CFR Part 2, shall be afforded the protection specified therein, and such information shall be treated by NYSDEC as confidential. The Army hereby waives any and all claims to confidentiality under New York law for any information determined by EPA not to be confidential pursuant to 40 CFR Part 2. If no claim of confidentiality accompanies the information when it is submitted to EPA or NYSDEC, the information may be made available to the public without further notice to the Army. No document marked draft may be made available to the public without prior consultation with the generating Party.

40. PUBLIC COMMENT

40.1 Within fifteen (15) days of the date of the execution of this Agreement, the Parties shall jointly announce the availability of this Agreement to the public for review and comment. EPA shall accept comments from the public for a period of forty-five (45) days after such announcement. At the end of the comment period, EPA shall transmit any comments to the other Parties, and the Parties shall review all such comments and shall either:

(a) determine that the Agreement should be made effective in its present form, in which case all Parties shall be so notified in writing and the Agreement shall become effective on the date such determination is made; or

(b) determine that modification of the Agreement is necessary, in which case the Parties shall meet to discuss, negotiate, and agree upon any proposed changes.

40.2 In the event of significant revision or public comment, notice procedures of Section 117 and 211 of CERCLA, 42 U.S.C. §9617 and 10 U.S.C. Chapter 160, shall be followed and a responsiveness summary shall be published by EPA. Any response action underway upon the effective date of this Agreement shall be subject to oversight by the Parties.

41. NOTICE OF COMPLETION

41.1 Except as provided in Part 27 (Five Year Review), EPA and NYSDEC will, upon the Army's satisfactory completion of all response actions conducted pursuant to the provisions of this Agreement and upon written request by the Army, send the Army a written notice of satisfaction of the terms of this Agreement within ninety (90) days of the request. The notice shall state that, in the opinion of EPA and NYSDEC, the Army has satisfied all of the terms of this Agreement in accordance with the requirements of CERCLA, RCRA, the NCP and all related regulations, guidance, and applicable State laws, and that the work performed by the Army was consistent with the agreed upon remedial actions. The Army may propose in writing the termination of this Agreement upon a showing that the objectives of this Agreement have been satisfied.

41.2 If EPA determines that the terms of this Agreement have not been satisfied, EPA will respond to the Army in writing as to the reasons why that notice of completion has not been provided. The Army may invoke Dispute Resolution for sixty (60) days following the Army's receipt of EPA's written denial of completion.

42. EFFECTIVE DATE

This Agreement is effective upon issuance of a notice to the Parties by EPA in accordance with Part 40 (Public Comment).

43. EXECUTION OF DOCUMENT

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

IT IS SO AGREED:

8/12/92
Date

FOR THE DEPARTMENT OF THE ARMY
Lewis D. Walker
Deputy Assistant Secretary of the Army for Environment, Safety & Occupational Health

9/8/92
Date

FOR SENECA ARMY DEPOT
James B. Cross
Colonel, U.S. Army
Commander of Seneca Army Depot, Romulus, N.Y.

12/4/92
Date

FOR THE STATE OF NEW YORK
Thomas C. Jorling
Commissioner
New York State Department of Environmental Conservation, Albany, N.Y.

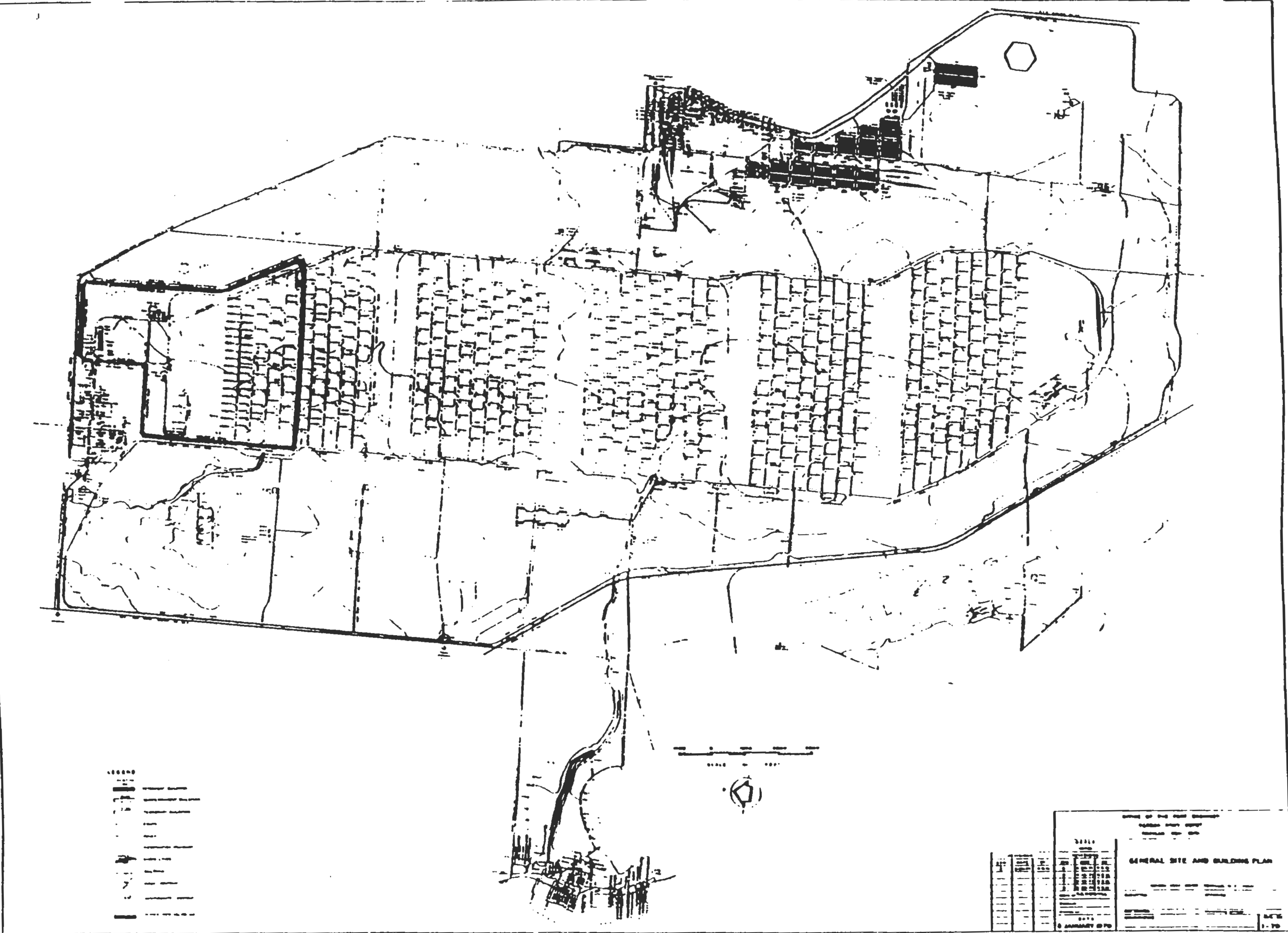
1/8/93
Date

David A. Munro
FOR THE STATE OF NEW YORK
Robert Abrams
Attorney General of the State of New York
by: David Munro
Assistant Attorney General
New York State Department of Law
Environmental Protection Bureau

1/21/93
Date

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY
Constantine Sidamon-Eristoff
Regional Administrator
U.S. Environmental Protection Agency
Region II, New York, N.Y.

ATTACHMENT 1
FACILITY MAP


LEGEND
GENERAL SITE AND BUILDING PLAN

<u>ATTACHMENT 2</u>
<u>DELIVERABLES</u>

The deliverables to be furnished by the Army pursuant to this Agreement include, but are not limited, to the following:

1. <u>SWMU CLASSIFICATION REPORT</u>. The SWMU Classification Report (SCR) shall list and describe all currently identified SWMUs at the Site including the following:

(a) Operational and disposal history. Include past and present practices. State whether the SWMU is still operational, and if not, when operations ceased;

(b) Design and/or construction details, if applicable;

(c) Waste profile, including types and amounts of wastes;

(d) Appropriate monitoring information, including contaminants, with sampling date(s) and location(s) (including depth) found near the unit. This should be a summary, in table form, referenced to detailed information. Include groundwater, surface water, air, sediments, soils, and other media, as appropriate;

(e) Environmental concerns, targets and pathways;

(f) Corrective measures instituted;

(g) Detailed maps, if needed; and

(h) Releases to the environment.

The SCR will comply with the requirements of the RCRA Facility Assessment (RFA) Guidance to the extent practicable. The SCR shall propose for each SWMU a classification of either "no action" or "Area of Concern." The SCR shall also contain a general map of all SWMU locations and a detailed facility map which will indicate any SWMUs from which hazardous waste or hazardous constituents may migrate or may have migrated.

2. <u>RI/FS WORK PLAN(S):</u> Any Remedial Investigation/ Feasibility Study (RI/FS) Work Plan(s) will describe the organization of the project or Operable Unit, identify the appropriate administrative guidance, and outline the elements of work planned to complete any RI/FS(s) in accordance with CERCLA. The documents will be consistent with CERCLA, the NCP, and the <u>Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA</u>, EPA, Interim Final, October, 1988, any subsequent revisions of these documents thereof and any other applicable or relevant EPA guidance. Any RI/FS Work Plan(s) will includea Scope of Work, a Health and Safety Plan (HSP), and a Sampling and Analysis Plan (SAP).

(a) <u>SCOPE OF WORK(S):</u> The purpose of the Scope of Work is to evaluate existing data and to develop a conceptual site model; to examine the extent and frequency of samples to determine the nature and extent of contamination; to identify the type and quality of data quality objectives (DQOs) needed to support those decisions; to describe the methods by which the required data will be obtained and analyzed; and to prepare project plans to document methods and procedures. These activities relate directly to the establishment of DQOs - statements that specify the type and quality of the data needed to support decisions regarding remedial response activities. The establishment of DQOs is discussed in detail in <u>Data Quality Objectives for Remedial Response Activities</u>, (U.S. EPA, March 1987). Any Scope of Work (SOW) will be consistent with CERCLA, the NCP, and guidance such as the <u>Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA</u>, EPA, Interim Final, October, 1988, any subsequent revisions of these documents thereof (where such revisions are provided to the Army prior to submittal of the subject deliverable), and any other applicable or relevant EPA guidance.

(b) The HSP should be prepared concurrently with the SAP to identify potential problems early, such as the availability of adequately trained personnel and equipment. OSHA requires that the HSP include maps and a detailed site description, results of previous sampling activities, and field reports. Appendix B of the <u>Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities</u> (NIOSH/OSHA USCG/USEPA, 1985) provides an example of a generic format for a HSP that could be tailored to the needs of a specific site. The specific information required in a HSP is listed in 29 CFR 1910.120.

(c) The SAP consists of two parts: (1) a Quality Assurance Project Plan (QAPP) that describes the policy, organization, functional activities and quality assurance and quality control protocols necessary to achieve DQOs dictated by the intended use of the data; (2) the Field Sampling Plan (FSP) that provides guidance for all fieldwork by defining in detail the sampling and data-gathering methods to be used on a project.

RI/FS(s) will address all Areas of Concern (AOCs) as identified by EPA and NYSDEC.

3. <u>COMMUNITY RELATIONS PLAN</u>: In accordance with CERCLA guidance, a Community Relations Plan (CRP) shall be developed which provides a framework for presenting understandable and consistent information to interested parties during any RI/FS(s) and remedial action(s) at the Site. The CRP documents the history of community involvement and community concerns regarding the Site and provides an explanation of the Community Relations Program. It is meant to assist the Army in determining the concerns of the community while informing the community of the Army's environmental restoration activities at the Site. Implementation of the CRP ensures that all concerned parties are involved in the CERCLA process in a meaningful manner. The CRP

will be consistent with CERCLA, the NCP, the Community Relations in Superfund: A Handbook, Interim Version, EPA, June, 1988, any revisions thereof, and any other applicable or relevant EPA guidance.

4. REMEDIAL INVESTIGATION(S): Any such report(s) will be consistent with CERCLA, the NCP, the Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA, EPA, Interim Final, October, 1988, any subsequent revisions thereof, the Compendium of Superfund Field Operations Methods, EPA, December, 1987, and any other applicable or relevant EPA guidance. The Remedial Investigation report shall include a Risk Assessment. Through the identification of potential pathways, appropriate solute transport modeling, and the use of available toxicological data, the Risk Assessment(s) analyzes the potential risks to the public for the "no action" alternative(s). The Risk Assessment shall be consistent with guidance such as Risk Assessment Guidance for Superfund,EPA, July 1989, any revision thereof and any other applicable or relevant EPA guidance.

5. FEASIBILITY STUDY(S): The Feasibility Study occurs in three phases: The development of alternatives, the screening of alternatives, and the detailed analysis of alternatives. However, in actual practice the specific point at which the first phase ends and the second begins is not so distinct. The development and screening of alternatives are discussed together to better reflect the interrelatedness of these efforts. The Feasibility Study report(s) will be consistent with CERCLA, the NCP, the Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA, EPA, Interim Final, October, 1988, any subsequent revisions thereof and any other applicable or relevant EPA guidance.

6. PROPOSED REMEDIAL ACTION PLAN(S) (PRAPs): The PRAP draws from the information in an RI/FS and is designed to identify the preferred alternative and the rationale for its choice, for the purpose of public participation. The PRAP shall satisfy the requirements of a PRAP as that term is used in CERCLA §117 and as such are subject to a formal public review period. The documents shall be consistent with CERCLA, the NCP, the draft Guidance on Preparing Superfund Decision Documents: The Proposed Plan and Record of Decision, EPA, Interim Final, October, 1988, any subsequent revisions thereof and any applicable or relevant EPA guidance.

7. RECORD(S) OF DECISION: Any Record(s) of Decision (ROD(s)) will document the final remedy(s) selected for the Site. Any ROD shall be based on the material contained within the Administrative Record and shall include a responsiveness summary which addresses major comments, concerns, criticisms, or new data raised during the comment period on the Proposed Remedial Action Plan(s), including those that may have led to significant changes from the proposal(s) contained in the Proposed Remedial Action

Plan(s). Any ROD shall be consistent with CERCLA, the NCP, the draft Guidance on Preparing Superfund Decision Documents: The Proposed Plan and Record of Decision, EPA, Interim Final, October, 1988, any subsequent revisions thereof and any applicable or relevant EPA guidance, and shall describe, as stated in §121 of CERCLA, a remedy(s) that:

(a) Is protective of human health or welfare or the environment,

(b) Attains all ARARs or provides the grounds for invoking a waivers under CERCLA,

(c) Is cost-effective, and

(d) Utilizes permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practical.

8. REMEDIAL DESIGN WORK PLAN: The Remedial Design Work Plan describes the Army's proposed activities for designing the selected remedy. Any such report(s) shall be consistent with CERCLA, the NCP and Guidance, such as EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties, (EPA, Interim Final, April, 1990). If additional data collection activities have to be conducted during the Remedial Design, the DQO process must be utilized.

The Remedial Design Work Plan is a primary document subject to the review and comment process in Part 17 (Consultation). The Remedial Design Work Plan shall contain at a minimum the following: (a) the tentative formation of the design team; (b) a Health and Safety Plan for design activities; (c) the requirements for additional field data collection; (d) the requirements for treatability studies; (e) a schedule for completion of the design; (f) tentative treatment schemes; and (g) permitting requirements. Upon approval of the Remedial Design Work Plan by EPA and NYSDEC, the Army will implement the Work Plan in accordance with the Remedial Design schedule contained therein. Such implementation shall include the review and approval of the design by EPA and NYSDEC which shall be submitted in two reports. The two reports are:

(a) Preliminary Design Report, which is a secondary document that begins with an initial design and ends with the completion of approximately thirty percent (30%) of the design effort.

(b) Pre-Final/Final Design Report, which is a primary document that includes the following: (1) final design plans, specifications, or performance standards; (2) a remediation schedule; (3) an Operation and Maintenance (O&M) plan; (4) a Field Sampling Plan; (5) Contractor Quality

Assurance Plan; (6) a Contingency Plan; and (7) a Waste Management Plan.

The Remedial Design(s) (RD(s)) will provide detailed engineering design and/or performance as appropriate specifications which will allow the Parties an opportunity to review and comprehend all aspects of the selected remedy(s). Any such report(s) shall be consistent with CERCLA, the NCP and Guidance such as, EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties, (EPA, Interim Final, April, 1990).

9. REMEDIAL ACTION WORK PLAN: The Remedial Action Work Plan describes the Army's proposed activities for implementing designed Remedial Action. If additional data collection activities have to be conducted during the Remedial Action, the DQO process must be utilized. The Remedial Action Work Plan shall at a minimum contain, (a) a Contractor Quality Control Plan which is a description of the method by which the Contractor Quality Assurance Plan shall be implemented, including criteria and composition of the Independent Quality Assurance Team, (b) a schedule for the Remedial Action and the process to continuously update the project schedule, (c) a Health and Safety Plan for field activity, (d) the strategy for implementing the Contingency Plan, (e)the requirements for project closeout, (f) a description of the roles and relationships of the Army Project Manager, Contractor, Independent Quality Assurance Team, remedial design professional, and the remedial action contractor; (g) the process for the selection of the remedial action contractor; and (h) the procedure for data collection during the Remedial Action to validate the completion of the project. The Remedial Action Work Plan is a primary document subject to the review and comment process in Part 17 (Consultation). Any such report(s) shall be consistent with CERCLA, the NCP and Guidance such as EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties, (EPA, Interim Final, April, 1990).

10. PROJECT CLOSEOUT REPORT: At the completion of the Remedial Action, the Contractor prepares a Project Closeout Report which certifies that all items contained in this Federal Facility Agreement and any incorporated documents have been completed. Any such report(s) shall be consistent with CERCLA, the NCP and Guidance such as EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties, (EPA, Interim Final, April, 1990).

ATTACHMENT 3

LIST OF SOLID WASTE MANAGEMENT UNITS (SWMUs)

1. Bldg 307 - Hazardous Waste Container Storage (SEAD-1)
2. Bldg 301 - PCB Transformer Storage (SEAD-2)
3. Incinerator Cooling Water Pond (SEAD-3)
4. Munitions Washout Facility Leach Field (SEAD-4)
5. Sewage Sludge Waste Pile (SEAD-5)
6. Abandoned Ash Landfill (SEAD-6)
7. Shale Pit (SEAD-7)
8. Noncombustible Fill Area (SEAD-8)
9. Old Scrap Wood Site (SEAD-9)
10. Present Scrap Wood Site (SEAD-10)
11. Old Construction Debris Landfill (SEAD-11)
12. Radioactive Waste Burial Site (3) (SEAD-12)
13. IRFNA Disposal Site (SEAD-13)
14. Refuse Burning Pits (2) (SEAD-14)
15. Bldg 2207 - Abandoned Solid Waste Incinerator (SEAD-15)
16. Bldg S-311 - Abandoned Deactivation Furnace (SEAD-16)
17. Bldg 367 - Present Deactivation Furnace (SEAD-17)
18. Bldg 709 - Classified Document Incinerator (SEAD-18)
19. Bldg 801 - Classified Document Incinerator (SEAD-19)
20. Sewage Treatment Plant No. 4 (SEAD-20)
21. Sewage Treatment Plant No. 715 (SEAD-21)
22. Sewage Treatment Plant No. 314 (SEAD-22)
23. Demolition Ground (SEAD-23)
24. Abandoned Powder Burning Pit (SEAD-24)
25. Fire Training and Demonstration Pad (SEAD-25)
26. Fire Training Pit (SEAD-26)
27. Bldg 360 - Steam Cleaning Waste Tank (SEAD-27)
28. Bldg 360 - Underground Oil Tanks (2) (SEAD-28)
29. Bldg 732 - Underground Oil Tank (SEAD-29)
30. Bldg 118 - Underground Oil Tank (SEAD-30)
31. Bldg 117 - Underground Oil Tank (SEAD-31)
32. Bldg 718 - Underground Oil Tanks (2) (SEAD-32)
33. Bldg 121 - Underground Oil Tank (SEAD-33)
34. Bldg 319 - Underground Oil Tank (SEAD-34)
35. Bldg 718 - Waste Oil-Burning Boilers (3) (SEAD-35)
36. Bldg 121 - Waste Oil-Burning Boilers (2) (SEAD-36)
37. Bldg 319 - Waste Oil-Burning Boilers (2) (SEAD-37)
38. Bldg 2079 - Boiler Blowdown Leach Pit (SEAD-38)
39. Bldg 121 - Boiler Blowdown Leach Pit (SEAD-39)
40. Bldg 319 - Boiler Blowdown Leach Pit (SEAD-40)
41. Bldg 718 - Boiler Blowdown Leach Pit (SEAD-41)
42. Preventive Medicine Lab (SEAD-42)
43. Old Missile Propellant Test Lab (Bldg 606) (SEAD-43)
44. Quality Assurance Test Area (SEAD-44)
45. Demolition Area (refer to SEAD-23) (SEAD-45)
46. Small Arms Range (SEAD-46)
47. Radiation Calibration Source Storage Bldgs 804, 807, 815 (SEAD-47)

LIST OF SOLID WASTE MANAGEMENT UNITS (SWMUs)
(Continued)

48. Pitchblende Storage Igloos (SEAD-48)
49. Columbite Ore Storage (Bldg 356) (SEAD-49)
50. Dry Storage Tank Farm (SEAD-50)
51. Herbicide Usage - Perimeter of High Security Area (SEAD-51)
52. Ammunition Breakdown Area (Bldgs 608, 612) (SEAD-52)
53. Munitions Storage Igloos (SEAD-53)
54. Asbestos Dry Storage Tanks (SEAD-54)
55. Tannin Storage Bldg 357 (SEAD-55)
56. Herbicide and Pesticide Storage (SEAD-56)
57. Explosive Ordinance Disposal (EOD) Range (SEAD-57)
58. Debris Area near Booster Station 2131 (SEAD-58)
59. Fill Area West of Bldg 135 (SEAD-59)
60. Oil Discharge Adjacent to Building 609 (SEAD-60)
61. Building 718 - Underground Waste Oil Tank (SEAD-61)
62. Nicotine Sulfate Disposal Area near Bldg 606 or 612 (SEAD-62)
63. Miscellaneous Components Burial Sites (SEAD-63)
64. Garbage Disposal Areas (SEAD-64)
65. Acid Storage Areas (SEAD-65)
66. Pesticide Storage Near Bldgs 5 and 6 (SEAD-66)
67. Dump Site East of Sewage Treatment Plant No. 4 (SEAD-67)
68. Bldg S-335 - Old Pest Control Shop (SEAD-68)
69. Bldg 606 - Disposal Area (SEAD-69)
70. Bldg 2110 - Fill Area (SEAD-70)
71. Alleged Paint Disposal Area (SEAD-71)
72. Bldg 803 - Mixed Waste Storage Facility (SEAD-72)

ATTACHMENT 4

LIST OF AREAS OF CONCERN

3. Incinerator Cooling Water Pond (SEAD-3)
4. Munitions Washout Facility Leach Field (SEAD-4)
5. Sewage Sludge Waste Pile (SEAD-5)
6. Abandoned Ash Landfill (SEAD-6)
8. Noncombustible Fill Area (SEAD-8)
11. Old Construction Debris Landfill (SEAD-11)
12. Radioactive Waste Burial Site (3) (SEAD-12)
13. IRFNA Disposal Site (SEAD-13)
14. Refuse Burning Pits (2) (SEAD-14)
15. Bldg 2207 - Abandoned Solid Waste Incinerator (SEAD-15)
16. Bldg S-311 - Abandoned Deactivation Furnace (SEAD-16)
17. Bldg 367 - Present Deactivation Furnace (SEAD-17)
23. Demolition Ground (SEAD-23)
25. Fire Training and Demonstration Pad (SEAD-25)
26. Fire Training Pit (SEAD-26)
45. Demolition Area (refer to SEAD-23) (SEAD-45)
46. Small Arms Range (SEAD-46)
48. Pitchblende Storage Igloos (SEAD-48)
52. Ammunition Breakdown Area (Bldgs 608, 612) (SEAD-52)
57. Explosive Ordinance Disposal (EOD) Range (SEAD-57)
59. Fill Area West of Bldg 135 (SEAD-59)
60. Oil Discharge Adjacent to Building 609 (SEAD-60)
63. Miscellaneous Components Burial Sites (SEAD-63)
64. Garbage Disposal Areas (SEAD-64)
71. Alleged Paint Disposal Area (SEAD-71)

ATTACHMENT 5
SCHEDULES

The schedule of IRP work completed to date and planned through completion of all restoration work at SEDA is as follows:

RELEVANT MILESTONES (1)(2)

ASH LANDFILL (SEAD-003, 006, 008, 014, and 015) OV1

Draft Work Plan	(04 Dec 90)
Draft RI	(20 Oct 93)
Draft FS	(19 Sep 94)
Draft PRAP	(26 Jul 96)
Draft ROD	(01 Oct 96)

OPEN BURNING GROUNDS (SEAD-23) OV2

Draft Work Plan	(29 Aug 91)
Draft RI	(28 Jan 94)
Draft FS	(09 Mar 94)
Draft PRAP	(04 Jul 96)
Draft ROD	(01 Aug 96)

REMEDIAL INVESTIGATIONS/FEASIBILITY STUDIES (3)(4) OV3

SEAD-025, 026 Fire Training Areas

Draft RI/FS Work Plan	(29 Mar 95)
Draft RI Submission	(28 Jun 96)
Draft FS Submission	(30 Oct 96)
Draft PRAP	(17 Feb 97)
Draft ROD	(30 Aug 97)

SEAD-016, 017 Deactivation Furnaces

Draft RI/FS Work Plan	(29 Mar 95)
Draft RI Submission	(19 Nov 96)
Draft FS Submission	(02 Jun 97)
Draft PRAP	(14 Nov 97)
Draft ROD	(28 Apr 98)

SEAD-012, 063 RAD Sites

Draft RI/FS Work Plan	(19 Dec 95)
Draft RI Submission	(26 May 97)
Draft FS Submission	(07 Dec 97)
Draft PRAP	(21 May 98)
Draft ROD	(02 Nov 98)

~~AD~~-004 Munitions Washout Facility

Draft RI/FS Work Plan	(25 Oct 95)
Draft RI Submission	(27 Mar 97)
Draft FS Submission	(08 Oct 97)
Draft PRAP	(22 Mar 98)
Draft ROD	(03 Sep 98)

SEAD-011, 064 Old Construction Debris Landfills

Draft RI/FS Work Plan	(15 Jun 95)
Draft RI Submission	(26 Jul 97)
Draft FS Submission	(06 Feb 98)
Draft PRAP	(21 Jul 98)
Draft ROD	(02 Jan 99)

SEAD-013 IRFNA Disposal Site

Draft RI/FS Work Plan	(14 Nov 95)
Draft RI Submission	(28 Jan 97)
Draft FS Submission	(08 Apr 98)
Draft PRAP	(20 Sep 98)
Draft ROD	(04 Mar 99)

SEAD-052, 060 608/612/609 Spill

Draft RI/FS Work Plan	(19 Jan 96)
Draft RI Submission	(25 Nov 97)
Draft FS Submission	(08 Jun 98)
Draft PRAP	(20 Nov 98)
Draft ROD	(04 May 99)

SEAD-005, 059, 071 Sludge Piles/Fill Area/Paint Disposal

Draft RI/FS Work Plan	(30 Jan 96)
Draft RI Submission	(25 Jan 98)
Draft FS Submission	(08 Aug 98)
Draft PRAP	(20 Jan 99)
Draft ROD	(04 Jul 99)

SEAD-045, and 057 Demo Area/EOD (5)

Draft RI/FS Work Plan	(26 Feb 96)

046 Small Arms Range (5)

Draft RI/FS Work Plan	(09 May 96)

SEAD-045, 046, and 057 Demo Area/EOD/Small Arms Range (5)

Draft RI/FS Work Plan	(See above)
Draft RI Submission	(28 Mar 98)
Draft FS Submission	(09 Oct 98)
Draft PRAP	(23 Mar 99)
Draft ROD	(04 Sep 99)

SEAD-048 Pitch Blend Storage

Draft Work Plan	(19 Dec 95)
Draft RI Submission	(27 Mar 99)
Draft FS Submission	(28 Oct 99)
Draft PRAP	(27 Mar 2000)
Draft ROD	(03 Sep 2000)

COMMUNITY RELATION PLAN (Oct 92)

FOOTNOTES:

(1) Draft and Draft-Final submissions are based on the InterAgency Agreement (IAG) stipulation of 45 days for Army preparation and 30 days for regulatory review. Final dates are based upon the IAG stipulation that all documents become final automatically within 30 days of the Draft-Final submission if no comments are received.

(2) Multiple document submittals will be likely considering the amount of work required and the tight schedules for performance. All schedules assume that regulatory reviews will be conducted concurrently, if required, as is assumed in the IAG.

(3) All schedules for RIs to be performed assume that two phases of fieldwork will be required. If Phase II RI fieldwork is unnecessary for SEADs 25 and 26, SEADs 16 and 17, SEAD 4, SEADs 12, 48, and 63; all draft documents for these operable units shall be submitted to the USEPA and NYSDEC earlier than the deadlines in Attachment 5: Facility Master Schedule. The Army shall submit a revised Attachment 5 to the USEPA and NYSDEC to

ject the new deadlines within 30 days of NYSDEC and USEPA icating that Phase II RI fieldwork would not be needed for the ove-mentioned SEADs.

(4) Operable unit designation will be assigned after project has been funded and consistent with definition, Section 2, paragraph 14.

(5) SEAD-045, and 057 (Demo Area/EOD) have been combined with SEAD-046 (Small Arms Range) for Draft RI Submission.

ATTACHMENT 6
PROJECT MANAGERS AND ALTERNATES

The Project MAnager for the Army is:

Randy Battaglia
Acting Program Manager
Directorate of Engineering and Housing
Seneca Army Depot, Romulus NY 14541-5001

Alternate FFA Program Manager (to be announced)
Directorate of Engineering and Housing
Seneca Army Depot, Romulus NY 14541-5001

The Project Manager for EPA is:

Carla Struble
Seneca Army Depot Project Manager (ERRD)
U.S. Environmental Protection Agency,
Region II
26 Federal Plaza, Room #2930
New York, New York 10278

The Alternate Project Manager for EPA is:

Robert Wing, Chief
Federal Facilities Section
U.S. Environmental Protection Agency,
Region II
26 Federal Plaza, Room #2930
New York, New York 10278

The Project Manager for the NYSDEC is:

Kamal Gupta P.E.
Seneca Army Depot Project Manager
Bureau of Eastern Remedial Action
Division of Hazardous Waste Remediation
N.Y.S. Dept. of Environmental Conservation,
Rm. 208
50 Wolf Road
Albany, NY 12233-7010

The Alternate Project Manager for the NYSDEC is:

Marsden Chen
Bureau of Eastern Remedial Action
Division of Hazardous Waste Remediation
N.Y.S. Dept. of Environmental Conservation,
Rm. 208
50 Wolf Road
Albany, NY 12233-7010

ATTACHMENT 7
GENERIC SCHEDULE

Seneca Army Depot
RI/FS to ROD

Event Description	Best Case Schedule
Draft Work Plan Submitted for Review	Day 0
Draft Work Plan Comments Received by Army	Day 30
Draft Final Work Plan Submitted for Review	Day 75
Final Work Plan Comments Received by Army	Day 105
Prepare Draft Contract Statement of Work and Complete	
Informal EPA & NYSDEC Review	Day 150
Contract Statement of Work Finalized	Day 165
Request for Proposals Issued to Contractor	Day 175
Proposal Received from Contractor	Day 190
Negotiate and Award Contract to Execute RI/FS Work Plan	Day 205
Contractor Mobilization Completed and Field Work Starts	Day 245
Draft RI Report Submitted	Day 395
Draft RI Comments Due to Army	Day 425
Draft Final RI Report Submitted	Day 470
Final RI Report (No Disputes)	Day 500
Draft FS Report Submitted	Day 540
Draft FS Report Comments to Army	Day 570
Draft Final FS Report Submitted	Day 615
Final FS Report (No Disputes)	Day 645

Event Description	Best Case Schedule
Draft PRAP Submitted	Day 650
Draft PRAP Comments to Army	Day 680
Draft Final PRAP Submitted	Day 725
Issue PRAP for 30 Day Public Comment Plus 30 Day Extension if requested	Day 755
Close of Public Comment Period	Day 815
Draft ROD Submitted	Day 845
Draft ROD Comments to Army	Day 875
Draft Final ROD Submitted	Day 905
Final ROD (No Disputes)	31 Months

Assumptions for Best Case Schedule:

1. The schedule will not require any delay in field work activities as a result of winter weather (approximately 1 December through 1 April annually).

2. Comments are submitted and incorporated consistent with this Agreement without any extensions or reiterations.

3. Additional field work is not required.