DEPARTMENT OF DEFENSE AND STATE MEMORANDUM OF AGREEMENT (DSMOA)

In order to expedite the cleanup of hazardous waste sites on Department of Defense (DoD) installations within the State of New York and ensure compliance with the applicable State law and regulations of the State, DoD and the New York State Department of Environmental Conservation (NYSDEC) on behalf of the State of New York enter into this Agreement.

Except as otherwise specified, the terms in this document are unique to this document only.

SECTION I
REIMBURSEMENT OF STATE COSTS

A. COVERAGE

1. This Agreement covers reimbursement of the costs associated with providing State services to Department of Defense installations for activities funded under the Environmental Restoration, Defense (ER,D) appropriation. Installations covered by this Agreement are those owned by the Federal government on the effective date of the Agreement including installations with sites on the National Priorities List (NPL) and installations with sites not on the NPL. The installations covered by this Agreement are listed in Attachment A. This Agreement does not cover the costs of services rendered prior to October 17, 1986; services at properties not owned by the Federal government; and activities funded from sources other than ER,D appropriation.

2. Unless a site-specific agreement provides otherwise, this Agreement is the mechanism for payment of the costs incurred by the State in providing the services listed in Paragraph B of this Agreement in relation to ER,D funded activities at the installations covered by this Agreement. Full payment of State costs pursuant to this Agreement constitutes final settlement of any claims the State of New York may have for performance of services outlined in Section I(B) with respect to ER,D funded work carried out after October 17, 1986, at all of the installations covered by this Agreement, except for those State costs covered by a site-specific agreement.

3. DoD agrees to seek sufficient funding through the DoD budgetary process in accordance with Section II and to pay the State of New York for the services specified in paragraph B for all ER,D funded activities at installations covered by this Agreement, subject to the conditions and limitations set forth in this section.

4. This agreement includes the following Attachments:

A. "DoD Installations Covered by this Agreement";

B. "Procedures for State Reimbursement";

C. DoD memorandum dated July 18, 1989, "DoD Components' Cooperation with the States for Cooperative Agreements on Site Cleanups";

D. DoD letter dated May 22, 1991, from Mr. Thomas Baca to Mr. Thomas Jorling, clarifying issues and concerns.

B. SERVICES

State services that qualify for payment under this Agreement include the following types of assistance provided by the State at any installation listed in Attachment A, commencing at site identification and continuing through construction, as well as any other activities that are funded by ER,D:

1. Technical review, comments and recommendations on all documents or data required to be submitted to the State under an agreement between the State and a DoD Component, all documents or data that a DoD Component requests the State to review, and all documents or data that are provided by a DoD Component to the State for review as a result of a request from the State made under applicable State or Federal law. Such services are covered regardless of whether the site is listed on the National Priorities List, or is covered by an Inter-agency Agreement.

2. Identification and explanation of State applicable or relevant and appropriate requirements related to response actions at DoD installations.

3. Site visits to review DoD assessment, investigation and response actions and ensure their consistency with appropriate State requirements, or in accordance with site-specific requirements established in other agreements between the State and DoD Component. The term response action includes removals, interim response actions, remedial investigations, feasibility studies, design and construction of remedial action systems, and operation and maintenance funded by the ER,D appropriation.

4. Participation in cooperation with DoD in the conduct of public education and public participation activities in accordance with Federal and State requirements for public involvement.

5. Services provided at the request of DoD in connection with participation in Technical Review Committees, including administrative and travel expenses.

6. Preparation and administration of a cooperative Agreement (CA) to implement this Agreement including the estimation and documentation of State costs.

7. Preparation, negotiations, amendments and/or administration of this agreement (including determination of scope and legal and technical applicability).

8. Determination of scope of agreements, determination of legal and technical applicability of agreements, and assurance of satisfactory performance of Inter-agency Agreements, but excluding any costs incurred which may be incurred preparing for litigation against the United States Government.

9. Technical review, comments and recommendations on all documents regarding prioritization of sites, including model development, testing and application.

10. Costs associated with independent quality assurance/quality control (QA/QC) efforts by the State for up to ten (10) percent of samples collected at each DoD installation covered by this Agreement.

11. Obtaining and analyzing split samples.

12. Participation in dispute resolution.

13. Participation in determining the extent of off-installation contamination resulting from on-installation contamination.

14. Participation in training, conferences or workshops relevant to environmental compliance at federal facilities or the preparation, implementation or administration of the DSMOA and the CA.

15. Subcontracting to private consultants to perform any of the services listed herein.

16. Other services that the State will provide that are set out in this Agreement or are included in installation-specific Agreements including the Griffiss AFB and Plattsburgh AFB Inter-agency Agreements.

C. ACCOUNTING PROCEDURES

1. Subject to the provisions of paragraphs D and E, reimbursement of eligible State costs incurred between October 17, 1986, and the date of this Agreement shall be paid if the costs have been documented using accounting procedures and practices that reasonably identify the nature of the costs involved, the date the costs were incurred, and show that the costs were entirely attributable to activities at an installation covered by this Agreement.

2. Payment of eligible State costs for services provided after the effective date of this Agreement must comply with all applicable Federal procurement and auditing requirements.

D. MAXIMUM REIMBURSEMENT

Reimbursement for services provided under paragraph B for all installations included in Attachment A shall not exceed one (1) percent of the estimated total costs for all of the work that has been funded by ER,D since October 17, 1986, and that will in the future be funded by ER,D or a total of $50,000, whichever is greater. Estimates of cleanup costs developed under this Agreement are provided solely for the purpose of calculating the amount of funding the State is eligible to receive.

E. ANNUAL BUDGET LIMITS

The State may ordinarily request that up to a maximum of twenty-five (25) percent of the total State services funds for all installations listed in Attachment A be provided in accordance with Section II during any fiscal year. DoD may approve an annual budget limit that exceeds twenty-five (25) percent of the total State services funds if the State demonstrates the need for a higher percentage based on the scope of the work projected during the fiscal year. At least ten (10) percent of a State's services funding request will be provided in accordance with Section II of this agreement during a fiscal year if the State requests an allocation of ten (10) percent or more for services under this Agreement. The State may carry over unused funds into subsequent years. If the cost of State services during a fiscal year exceeds the annual budget limit, the State may expend its own funds to pay the cost of those

services. To the extent allowable under Federal procedures for cooperative agreements, the State may then seek reimbursement of these costs in a subsequent year through a cooperative agreement as long as the total amount of the payments to the State does not exceed the one (1) percent ceiling, or the annual budget limit for that fiscal year. A payment schedule for reimbursement of past costs will be devised by the State of New York and the DoD.

F. ADJUSTMENT OF COST ESTIMATES

The State or DoD may request a review of total estimated ER,C funded project costs covered by this Agreement once during the terms of a cooperative agreement. The total project costs shall be revised to reflect the new estimates. The ceiling of one (1) percent of the total project costs shall be adjusted based on the revisions of the total project costs since October 17, 1986. If the total project costs following the Record of Decision (ROD) or equivalent document are lower than previously estimated, the State remains entitled to payment as follows:

a. the State is entitled to payment of all services rendered prior to completion of the new estimate so long as they are within the ceiling of the previous estimate; and,

b. reimbursement of future incurred costs for providing services, at the option of the State, in an amount either:

1. up to a total of previous and future costs of one (1) percent of the revised estimate; or,

2. the lesser of:

i) one quarter (1/4) of one (1) percent of the post ROD or equivalent documents costs; or,

ii) the remaining balance of the one (1) percent entitlement under the previous estimate.

G. PROCEDURES FOR REIMBURSEMENT

Procedures for State reimbursement through CAs are as described in Attachment B and in accordance with Office of Management and Budget (OMB) Circulars A-102, A-87, and A-128. After a CA is awarded, the NYSDEC may submit a request for advance or reimbursement to DoD on a quarterly basis. DoD will process the request and transfer funds in accordance with Circular A-102. Within sixty (60) days after the end of each quarter, the NYSDEC shall submit to DoD a status report, including cost summaries which directly relate allowable costs actually incurred by the State under this Agreement during the

quarter for services at each installation. Allowable costs shall be determined in accordance with this Agreement and Circular A-87. DoD shall reconcile continuing awards and close out completed awards in accordance with Circular A-102. Auditing of the State's programs shall be accomplished in accordance with Circular A-128.

H. ADDITIONAL WORK

When an installation requests that a State perform a specific technical study or similar technical support that could otherwise be done by a contractor, and NYSDEC agrees to do the work, funding will be negotiated between the installation and the State outside of this Agreement.

I. EMERGENCIES

In an emergency situation involving a threat to public health or the environment, the State must, unless the nature of the emergency does not permit notification, notify the DoD Component prior to taking removal action in order to be reimbursed for its reasonable costs. Reimbursement of the State for its work will be handled directly between the DoD component and the State, and outside of this Agreement. Disagreements that arise under this paragraph are subject to the Dispute Resolution process in Section IV.

Consistent with this Agreement, the State agrees to exhaust fully the procedures provided in Section IV, Dispute Resolution prior to taking any enforcement action it may have authority to exercise relative to remediation of the installation; except, however, that if the State determines that conditions or activities at the installation present an imminent and substantial endangerment to public health and welfare, or are likely to result in irreversible or irreparable damage to the natural resources, the State reserves any rights it may have to issue summary abatement orders, undertake removals, or take such other enforcement, judicial or remedial action.

SECTION II
FUNDING AND THE PRIORITY SYSTEM

A. The Office of the Deputy Assistant Secretary of Defense (Environment), as the designee of the Office of the Secretary of Defense responsible for carrying out the Defense Environmental Restoration Program, and the DoD components shall seek sufficient funding through the DoD budgetary process to carry out their obligations for response actions at DoD installations within the State. Funds authorized and appropriated annually by Congress

under the ER,D appropriation in the DoD Appropriations Act shall be the source of funds for all work contemplated by this Agreement.

B. Should the ER,D appropriation be inadequate in any year to meet the total DoD requirements for cleanup of hazardous or toxic contaminants, DoD shall establish priorities among sites in a manner which maximizes the protection of human health and the environment. In the prioritization process, DoD shall employ a model which has been and will be further developed with the assistance of the States and the EPA. Future enhancements or refinements to the model shall occur in consultation with the States and the EPA. DoD shall also involve the States and the EPA in its use of this prioritization model through review of technical site data. The DoD components shall receive and give full consideration to information provided by the States regarding factors to be considered in decisionmaking in the annual prioritization process for allocating resources available for cleanups. The State accepts that a DoD prioritization system developed and operated as described in this subparagraph is needed and provides a reasonable basis for allocating funds among sites in the interest of a national worst first cleanup program. To that extent, the State will make every effort to abide by the priorities developed thereunder.

C. Nothing in this Agreement shall be interpreted to require obligation or payment with regard to a site remediation in violation of the Anti-Deficiency Act (31 U.S.C. 1341).

SECTION III
LEAD AGENCIES

Each DoD Component shall designate an individual responsible for managing remedial and removal actions for each installation within the State. This individual shall be responsible for coordinating all tenant activities at the installation with regard to the remedial and removal action program. The individual will also act as remedial project manager (RPM) within the meaning of the National Contingency Plan (40 CFR Part 300).

The State shall designate a lead State agency for each DoD installation within the State. (This agency may vary by installation). The lead State agency for an installation shall coordinate among other State agencies to represent a single State position as to remedial/removal actions at the installation. The lead State agency shall designate a State Agency Coordinator (SAC) who shall be the single point-of-contact between the appropriate DoD component installation and the State regarding State involvement in the remedial and removal actions program at the installation.

SECTION IV
DISPUTE RESOLUTION

A. The Remedial Project Manager (RPM) and the State Agency Coordinator (SAC) shall be the primary points of contact to coordinate the remedial and removal program at each military installation within the State, including the resolution of disputes. With regard to installations or sites for which there are executed Federal Facility Agreements under CERCLA Section 120, or other agreements, orders, decrees, dispute resolution provisions as specified in those agreements shall govern in lieu of this section. Except where other statutory or regulatory requirements may prescribe, it is the intention of the parties that all disputes shall be resolved at the lowest possible level of authority as expeditiously as possible within the following framework. All time frames for resolving disputes below may be lengthened by mutual consent.

1. Should the RPM and SAC be unable to agree, the matter shall be referred in writing as soon as practicable but in no event to exceed ten (10) working days after the failure to agree, to the installation commander and the chief of the designated program office of the lead State agency or their mutually agreed upon representatives designated in writing.

2. Should the installation commander and the chief of the designated program office of the lead State agency or their mutually agreed upon representatives designated in writing be unable to agree within ten (10) working days, the matter shall be elevated to the head of the lead State agency and a counterpart member of the lead Service involved who shall be a general/flag officer or a member of the senior executive service.

3. Should the head of the lead State agency and the counterpart DoD representative fail to resolve the dispute within twenty (20) working days the matter shall be referred to the Governor or his (her) designate, and the Service Secretary concerned for resolution.

B. It is the intention of the parties that all disputes shall be resolved in this manner. Alternative dispute resolution methods may be used. In the event that the Governor or his (her) designate and the Service Secretary are unable to resolve a dispute, the State retains any administrative or enforcement authority it may have under State and/or Federal law.

SECTION V
REOPENER

The terms of this Agreement may be modified at any time by mutual Agreement of the parties. If a party requests the Agreement to be reopened but the other party does not concur, the matter will be referred to an individual designated in writing by each of the signatories to this agreement. In the event they fail to agree within ten (10) working days the matter will be referred to the signatories of this agreement or their successors in office. If no resolution is reached within twenty (20) days, the Agreement shall not be reopened.

SECTION VI
TERMINATION

This Agreement may be terminated by either party at the expiration of any cooperative agreement entered into pursuant to this Agreement if the party seeking termination has notified the other party in writing at least ninety (90) days prior to the expiration of the cooperative agreement. After receiving a notice of termination, a party may invoke the dispute resolution process in Section IV. Each signatory of the agreement may involve other officials to whom they report in the process of resolution. The parties by mutual agreement may also refer the matter to the Governor of the State of New York and his(her) counterpart within the Department of Defense. Alternative dispute resolution methods may be used. Failing their agreement, this Agreement shall be considered terminated as of the date the cooperative agreement expires. Upon termination of this

agreement, existing funding provisions in any Interagency agreements or other agreements that reference this Agreement for funding will become effective.

Thomas C. Jorling, Commissioner
New York State Department of
Environmental Conservation

DATE: 5/28/91

Thomas E. Baca
Deputy Assistant Secretary
of Defense (Environment)

DATE: 6/2/91

Robert Abrams, Attorney General
State of New York
By: David A. Munro
Assistant Attorney General
New York State Department of Law
Environmental Protection Bureau

DATE: 5/30/91

ATTACHMENT A TO DSMOA

DOD INSTALLATIONS COVERED BY THIS AGREEMENT

State of New York

Army

1. Fort Drum
2. Seneca Army Depot
3. Watervliet Arsenal
4. West Point Military Reservation
5. Fort Hamilton

Navy

1. NWIRP Bethpage
2. NWIRP Calverton
3. NUSC Fishers Island
4. NS Fort Wadsworth

Air Force

1. Griffiss Air Force Base
2. Plattsburgh Air Force Base
3. Hancock Field
4. Stewart IAP
5. Scenectady County Airport
6. Suffolk County Airport
7. AF Plant #38, Porter
8. AF Plant #59, Binghampton
9. Niagara Falls Air National Guard Base
10. Youngstown Test Annex

Defense Logistics Agency

1. DFSP Verona (Stock Fund)

INSTALLATIONS MAY BE ADDED TO THIS LIST PERIODICALLY AS NECESSARY IN ACCORDANCE WITH SECTION V, REOPENER.

ATTACHMENT B to DSMOA
PROCEDURES FOR STATE REIMBURSEMENT

- The Deputy Assistant Secretary of Defense for Environment (DASD(E)) and the Head of the Agency signing on behalf of the State will sign the DSMOA.

- The DSMOA is the overarching agreement of commitment between the DoD and the State, but does not obligate or commit funds.

- Reimbursement will be accomplished, using Federal Procedures for cooperative agreements (CAs), with States that have signed DSMOAs. Eligible activities are limited to those authorized for the Defense Environmental Restoration Program (DERP), and funded by the Defense Environmental Restoration Account (DERA), Sections 2701 et seq., of Title 10 U.S.C., and as specified in the DSMOA.

  - Reimbursement will commence as soon as possible with DERA funds.

- DoD policies and procedures for processing CA applications and payments will be developed with input from the States and announced in a Federal Register notice.

  - In general, these activities will be centralized in the ODASD(E).

  - It is anticipated that these policies and procedures will encompass the following: who may apply, what can be funded, evaluation criteria for awards, submission procedures and closing dates for receipt of applications, and State responsibilities.

  - Within this framework, it is anticipated that monitoring and quarterly reporting procedures for States' program status and financial status will be developed.

- Administration of CAs will be in accordance with Office of Management and Budget (OMB) Circular A-102, Grants and Cooperative Agreements with State and Local Governments, and Title 32 CFR 278, Office of the Secretary of Defense, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

  - A State will submit a complete application package for Federal assistance, consisting of Standard Form 424 (SF 424) and attachments, including a proposal narrative, the signed DSMOA, and a project management plan. The State's application must also include a description of the type and amount of support services

that the State plans to provide for each installation covered in the DSMOA for the specific award period of the CA.

- CAs will awarded for a term of two (2) years, based on an annual estimate of requirements. Applications will be accepted after signature of the DSMOA by both parties; DoD processing time for applications is expected to be two months.

- The DASD(E) will accept the application, review it, and make a decision as to the award. This CA agreement, when signed by both the DASD(E) and the Head of the Agency signing on behalf of the State, comprises the contractual relationship between the DoD and the State.

- States may request funds in accordance with the methods outlined in OMB Circular A-102 and 32 CFR 278. These documents provide for the following methods of payment: (1) Advances (Letter of Credit), (2) Reimbursement, and (3) Working Capital Advances. A State may request a payment method in its cooperative agreement application.

- Allowable costs will be determined in accordance with OMB Circular A-87, Cost Principles for State and Local Governments. Specific services to be provided by the States will be as described in the DSMOA.

- Auditing of States programs will be accomplished in accordance with OMB Circular A-128, Audits of State and Local Governments.

The following is additional information regarding the general procedures that DoD plans to use in implementing DSMOAs and CA's with the States:

1. DoD DASD(E) will invite States to sign DSMOAs and submit applications for CAs.

2. DASD(E) will send a memorandum (Attachment C) to the DoD Components (Army, Navy, Air Force, DLA, and other DoD agencies) asking them to cooperate with the States and compile necessary data. The States and Installations will communicate directly on response activities anticipated to take place over the next two years and on the total DERA cost estimate.

3. DoD Components will use their Chain-Of-Command to develop and pass on data to DASD(E): Component Headquarters will give the message to their Major Commands (e.g., Army Materiel Command), and the Major Commands will forward the message to their Installations (e.g., Sacramento Army Ammunition Depot).

4. The Components will provide information, obtained from their Installations and Major Commands, to DASD(E) by State.

5. Each State contacts DASD(E) about its desire to have a DSMOA and CA, and works with DoD to have State-specific information inserted into the provisions where indicated in the model language and to fill out the CA application.

6. DASD(E) and the State sign the DSMOA and the CA.

7. The State submits requests for payment in advance based on anticipated workload or for reimbursement of services provided under the CA, on a quarterly basis.

8. Quarterly In-Process Reviews (IPRs), or alternative arrangements by mutual consent, will be held between DASD(E) staff and the State agency. IPRs will include State progress reports concerning activities and funding.

9. CA audits will be carried out in accordance with OMB Circular A-128.

THE OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
WASHINGTON D.C. [illegible]

PRODUCTION AND LOGISTICS

ATTACHMENT 3

JUL 18 1989

E

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF THE ARMY, ENVIRONMENT, SAFETY AND OCCUPATIONAL HEALTH, OASA (I&L)
DEPUTY DIRECTOR FOR ENVIRONMENT, OASN (S&L)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE, (E,S&OH), SAF/RQ
DIRECTOR, DEFENSE LOGISTICS AGENCY (DLA-W)

SUBJECT: DoD Components' Cooperation with the States for Cooperative Agreements on Site Cleanups

I am sending letters to the directors of State environmental agencies inviting them to enter into DoD and State Memoranda of Agreements (DSMOAs). There has been a recent strong State expression of interest in them. I request that you inform the appropriate people in your Component that they should be ready by mid-July to respond to requests from the States for information necessary for the States to prepare applications for cooperative agreements (CAs) in accordance with Attachment B of the model DSMOA language.

Once a State and I have signed a DSMOA or started the process towards signature, the lead State agency can be expected to contact persons or offices designated by the Components as being "lead" for the Installation Restoration Program (IRP) for the installations listed in Attachment A of the DSMOA. States will need to determine what DERA-funded activities the installations have planned for the period of the proposed CAs (FY90/91). Each State will use this information to help prepare its application for a cooperative agreement and its request for funds. The designated installation representative should also give information to the State regarding probable DERA-funded activities through the life of the program, including total estimated cost. This will help the State plan its activities under the lifetime cap. The cost information should be acceptable to you before it is provided to the States.

This information is generally available from your program planning activities, FY90/91 DERA budget development data, and anticipated RI/FS results. States should also have much of this information if they are receiving notice of program activities and participating in such areas as: review of program planning and IRP documents, meetings of technical review committees,

negotiation and implementation of interagency agreements, and public participation activities.

Since the CAs will be centrally administered by DoD, we request Components to give my office the same total DERA cost information you provide the States. We would also like a summary of planned activities for the next two years (FY90/91) that the installation IRP representatives give to the States. Please try to provide this within four weeks of giving it to the States. Since the CAs are envisioned to encompass two years, the information on planned program activities and cost estimates will need to be updated every two years. During the CA period, if there is a significant change in response activities or estimated costs, the Component should notify the State as soon as possible. I will be providing you additional guidance on this matter in the next two weeks.

Please provide a copy of the attached model DSMOA language to those who will be responsible for providing the necessary information to the States.

We will also provide more detailed information in the following documents as they are developed:

- o DoD Policies and Procedures for the Cooperative Agreements Program under DSMOAs
- o Federal Register notice announcing the program and the availability of funds.

Cooperation and communication are paramount to the success of this program. I encourage you and your installations to make every effort to continually build a good working relationship with your counterparts in the State agencies. I believe that a cooperative effort with the States, to include mutual consideration of each others comments and program objectives, is the key to cost-effective and timely execution of the Defense Environmental Restoration Program.

Thank you for your continuing efforts in making the program a success. If you have questions or comments, Sam Napolitano remains my point of contact for DSMOAs, and LtCol Ken Cornelius has the lead in carrying out the CA Program. You may reach either of them at (202) 325-2211 (Autovon: 221-2214) in our offices in Alexandria, Virginia.

William H. Parker, III, P.E.
Deputy Assistant Secretary of Defense
(Environment)

Attachment

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, DC 20301-8000

PRODUCTION AND LOGISTICS

MAY 22 1991

ATTACHMENT D

Mr. Thomas C. Jorling, Commissioner
New York State Department of
Environmental Conservation
50 Wolf Road
Albany, NY 12233

Dear Mr. Jorling:

This letter clarifies the concerns and issues raise: during meetings between my staff and yours concerning the Defense and State Memorandum of Agreement (DSMOA). It also supplements the DSMOA as Attachment D.

1. ***Basis for Cost Estimates and Reservation of Rights*** - The one percent cap applies to all costs for State reimbursement for technical services provided for Defense Environmental Restoration Account funded activities from October 17, 1986, to the end of DERA expenditures. The DSMOA covers all State services listed in §I.B. for all installations that are currently owned by the Defense Department and are listed on Attachment A of the DSMOA. Reimbursement under the DSMOA covers the entire period of DERA funded DoD activity including site discovery, the initiation of the preliminary assessment and site inspection through the installation of a remedial action system and operation and maintenance (O&M) expenses. It also includes all response actions (removal, remedial, and interim response actions) that are undertaken by Department of Defense (DoD) on the installations. The Office of the Deputy Assistant Secretary of Defense for Environment (ODASD(E)) is only authorized to enter into agreements and provide reimbursement for funds under its direct control -- the DERA fund, as provided for in 10 U.S.C. 2701 ***et seq.*** Any other expenditures or claims for reimbursement of funds not specified in this agreement are specifically not included in the DSMOA. The State retains any rights it may have to seek reimbursement for claims not covered by the DSMOA, and for claims covered by the DSMOA if such claims were submitted to DoD pursuant to the DSMOA and reimbursement was denied in full or in part due to insufficient funds. Entering into a DSMOA does not constitute a waiver of such claims by the State of New York, nor does the DSMOA constitute an acceptance by the Office of the

Secretary of Defense of the validity of such claims. The State agrees to use administrative procedures outlined in any installation specific agreements or in the DSMOA prior to seeking judicial remedies for such claims. The State also reserves any rights it may have to seek reimbursement of claims based on services provided or costs incurred after termination of the DSMOA.

2. ***Reimbursement Ceiling*** - The DSMOA provides for a reimbursement ceiling of one (1) percent of the estimated total costs of all work funded by DERA from October 17, 1986, through program completion. DoD understands that the State believes all legitimate and documented expenditures falling within the scope of the DSMOA (as detailed in §I.B.) should be reimbursed. DoD intends to reevaluate the one (1) percent ceiling at the end of this DSMOA's two year term. DoD will not lower the one (1) percent ceiling during this DSMOA's two year term. The one (1) percent ceiling does not apply to reimbursement claims for response actions undertaken by the State of New York in connection with releases of pollutants or contaminants on or from DoD installations, reimbursement claims for activities or services not covered by this Agreement or claims based on services provided or expenses incurred after the termination of the DSMOA.

3. ***Site Eligibility*** - All currently owned DoD installations where DERA funds are being spent, will be spent, or were spent from October 17, 1986, are eligible for inclusion on Attachment A. This includes all installations listed on the National Priorities List (NPL) as well as sites not listed on the NPL. This also includes off-installation impacts that originate from the installations. Entry into a site-specific Inter-Agency Agreement (IAG) pursuant to §120 of CERCLA for NPL sites is not a prerequisite for the receipt of funds under a DSMOA, although it is our intent that the provision of funding under a DSMOA will facilitate the State's entry into IAGs at NPL sites. The State may add additional sites to the DSMOA if they meet the criteria listed above with the consent of the ODASD(E): DERA funded, and currently owned by DoD. It is DoD's intent that all sites meeting these criteria be included in Attachment A.

4. ***Defense Priority Model*** - State entry into a DSMOA signifies only that the State acknowledges that DoD will use a system to rank funding priorities for remedial actions in the event of a funding shortfall. To the extent that the State agrees, subject to the limitations set forth in the DSMOA, to try to abide by the priorities developed under the prioritization system, such agreement is effective only for the duration of this Agreement, and is predicated on the State's expectation that DERA will be fully funded, and that the system will be implemented in a manner

which avoids inconsistent application and gives due consideration to general and site-specific State concerns. DoD currently provides and will continue to provide funding to the components to fully support work at all NPL sites. The broader Defense Prioritization System and its component, the Defense Priority Model (DPM), will be used to facilitate the ranking of remedial actions and will solicit and incorporate, to the extent possible, comments from all States, the U.S. Environmental Protection Agency (EPA), and the public. Ranking will also be based upon the NPL status, compliance with IAGs and other agreements that are entered into between DoD, the State, and/or EPA. The DoD commits to link funding available under the DSMOA to DERA funding in the State. Funding for State reimbursement will be available if DERA funds for installation response actions are being used. Entering into a DSMOA does not constitute a waiver of any claims that New York believes it may have to require that DoD undertake response actions, regardless of the ranking of a particular site and regardless of the funding source for the response action, nor does the DSMOA constitute an acceptance by the Office of the Secretary of Defense for the validity of such claims not covered by this agreement. The State agrees to first exhaust all administrative courses of action pursuant to this or other installation agreements that reference the DSMOA before pursuing judicial remedy due to a lack of DERA funding.

5. ***Past Costs*** - Past costs included in the one (1) percent cap of reimbursement costs under a DSMOA include those State costs within the definition of services listed in §1.B. of the DSMOA and incurred after the enactment of SARA, October 17, 1986, and prior to the execution date of the DSMOA by both parties.

6. ***Adjustment of Cost Estimates*** - There are two types of adjustments which may occur. The duration of this DSMOA and cooperative agreement is for two years. The State may request once during this initial two year period that the cost estimates be revised. This may or may not occur after the first year of the term depending upon when the State requests the reevaluation of costs. If the cost estimates increase, the reimbursement covered by the one percent ceiling will also increase, and the cooperative agreement amount will increase if substantiated by the cooperative agreement review process. If the cost estimates decrease as determined by the selection of a final remedy, in a Record of Decision or equivalent document, the procedures detailed in §I.F. of the DSMOA are used. The State is not penalized for expenditures made up to the annual allocation as approved in the cooperative agreement. The State will not be required to return funds (except as specified in OMB-Circular A-128 or through other audit procedures as specified in the referenced documents in Attachment B).

7. **Installation-specific Agreements** - If IAGs exist or are negotiated and entered into in the future, any dispute resolution provisions in those agreements take precedence over the dispute resolution procedures in §IV of this Agreement.

I hope this addresses your concerns. I have enclosed for your signature a DSMOA. Please let me know if you need further assistance preparing the cooperative agreement application or your staff may contact Mr. Kevin Doxey of my staff. If you need further assistance regarding the DSMOA or the cooperative agreement, please contact Ms. Debby Swichkow. Both of them may be reached at (703)325-2214. I look forward to the award of the cooperative agreement.

Sincerely,

Thomas E. Baca
Deputy Assistant Secretary of Defense
(Environment)