



DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON, DC 20350-2000

IN REPLY REFER TO

5090
Ser N45C/N5U901200

JAN 7 2005

From: Chief of Naval Operations (N45)
To: Commanding Officer, Engineering Field Activity, Northeast
Naval Facilities Engineering Command

Subj: FEDERAL FACILITIES SITE REMEDIATION AGREEMENT (FFSRA) FOR NAVAL
WEAPONS INDUSTRIAL RESERVE PLANT (NWIRP) BETHPAGE NEWYORK
BETWEEN DEPARTMENT OF THE NAVY AND NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION (NYSDEC)

Ref: (a) CO, Engineering Field Activity Northeast ltr 5090 Code
EV21/JLC of 21 Dec 04

Encl: (1) NWIRP Bethpage FFSRA

1. As requested by reference (a), enclosure (1) has been reviewed for conformance with Navy policy concerning Federal Facility Site Remediation Agreement. The Agreement has been signed and is returned for continuing action.

2. My point of contact for this matter is Mr. Dave Olson. Mr. Olson can be contacted at (703) 602-2571.

A handwritten signature in cursive script, reading "M. S. Boensel", is positioned above the typed name.

M. S. BOENSEL
Captain U. S. Navy
Director, Environmental
Readiness Division (OPNAV N45)

Copy to:
NAVFACENGCOM (ENV)
NAVAIRSYSCOM

STATE OF NEW YORK
AND THE
UNITED STATES DEPARTMENT OF THE NAVY
IN THE MATTER OF

The Naval Weapons Industrial
Reserve Plant Bethpage, New
York, NYCRR Part 375 Inactive
Hazardous Waste Disposal Site 1-
30-003B

Federal Facility Site
Remediation Agreement

Based on the information available to the Parties on the effective date of this Federal Facility Site Remediation Agreement ("Agreement"), and without trial or adjudication of any issues of fact or law, New York State, as represented by the Department of Environmental Conservation ("NYSDEC") and the U.S. Department of the Navy ("Navy") (collectively, the "Parties") agree as follows:

1. JURISDICTION

1.1 Each Party enters into this Agreement pursuant to the following authorities:

a. The NYSDEC is responsible for enforcement of Article 27, Title 13 of the Environmental Conservation Law ("ECL") entitled "Inactive Hazardous Waste Disposal Sites".

b. The Navy enters into this Agreement pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") sections 120(a)(4), 120(f) and 121 (42 USC §§9620(a)(4) and 9621), the National Environmental Policy Act, 42 USC §4321 et seq., the Defense Environmental Restoration Program (DERP), 10 USC §2701 et seq. and Executive Order 12580 (as amended);

2. DETERMINATIONS

2.1 The following constitutes a summary of the determinations relied upon by the parties

a. The United States Department of the Navy is a "person" as defined in CERCLA section 101(21), (42 U.S.C. Section 9601(21)) and is a person as defined in Article 27, Title 13 of the

Environmental Conservation Law of the State of New York entitled "Inactive Hazardous Waste Disposal Sites".

b. The Naval Weapons Industrial Reserve Plant Bethpage is a "facility" as defined by CERCLA section 101(9) (42 U.S.C. §9601(9)), 10 U.S.C. §2701 et seq.

c. Northrop Grumman Corporation (NGC) was the operator, the United States is the owner, and the Department of the Navy the responsible federal cleanup agency, for the NWIRP, which is listed by NYSDEC as Inactive Hazardous Waste Site ("IHWS") 1-30-003B ("Site B").

d. NGC is the property owner and responsible party for IHWS 1-30-003A ("Site A").

e. NYSDEC issued its Record of Decision (ROD) (Exhibit A) for Operating Unit 2 ("OU 2") associated with Sites A & B in March 2001.

f. In April 2003 the Navy issued its ROD (Exhibit B) for OU 2 associated with IHWS 1-30-003B which acknowledges releases of hazardous wastes from Site B;

g. With deed restrictions and institutional controls in place, no further investigation or remediation is needed for the approximately 97-acre portion of the NWIRP, which is no longer part of Site B, prior to its divestiture by the Navy.

h. The Navy ROD and NYSDEC ROD agree in so far as they apply to the Navy's responsibilities associated with contamination of OU 2 from Site B.

i. The RODs agree that groundwater contamination associated with Sites A and B that has not passed the original boundary of Site A is being remediated by a treatment system (the "ONCT", discussed further in the next paragraph) owned and operated by NGC and located on property included in site A. As of the effective date of this Agreement, NYSDEC agrees that the system is operating properly and effectively.

j. The Navy recognizes that continued operation of the Onsite Containment System ("ONCT") is paramount to ensuring that the Navy's selected remedy for the on site groundwater remains protective of human health and the environment. In the event the ONCT system fails to continue to operate along with the corresponding long-term maintenance and monitoring program for the ONCT system, the Navy also recognizes that its on site groundwater remedy would no longer be protective of human health or the

environment. In this case the Navy will re-evaluate the protectiveness of the onsite groundwater remedy and implement all requisite measures as determined by the Navy in consultation with NYSDEC to ensure the continued protection of human health and the environment.

k. The Department of Defense has entered into a Department of Defense and State Memorandum of Agreement (DSMOA) with the State of New York. The Navy, including its activities at the NWIRP Bethpage facility, participates in the DSMOA program. Nothing in this agreement circumvents or affects the terms set forth in the DSMOA.

l. For further background information of the investigation and development of the remedy for Site B see Exhibits A & B.

3. PURPOSE

The parties recognize that actions taken pursuant to this agreement will expedite the cleanup of OU 2, protect the public health and welfare, coordinate the Navy's satisfaction of its responsibilities under CERCLA §120(i), Executive Order 12580, the Defense Environmental Restoration Program, the National Contingency Plan and Article 27, Title 13 of the Environmental Conservation Law ("ECL") of the State of New York, and may avoid litigation between the parties. This agreement is mutually acceptable, fair, reasonable, and in the public interest.

4. SCOPE OF AGREEMENT

4.1 This Agreement is to enable the Navy to implement CERCLA action obligations that relate to the releases of hazardous substances, hazardous wastes, hazardous constituents, pollutants, or contaminants at or from the Site B facility.

4.2 The scope of this Agreement extends to the Site B facility as it is listed in the New York Registry of Inactive Hazardous Waste Disposal Sites and, where necessary, shall extend beyond Site B facility boundaries as necessary to effectuate the purposes of this Agreement.

4.3 Any action in progress on the Effective Date of this Agreement shall be subject to the obligations and procedures of this Agreement.

4.4 Releases or other hazardous waste activities not covered by this Agreement remain subject to all applicable New York and Federal environmental requirements.

4.5 The NYSDEC execution of this Agreement does not constitute an apportionment of liability as between the Navy and NGC with respect to either Site A or Site B.

5. RCRA-CERCLA COORDINATION

5.1 Remediation conducted pursuant to this agreement satisfies any remediation that could be required for OU2 pursuant to that portion of the NYSDEC Part 373 Permit No. 1-2824-100112/00002-0 that applies to the Navy as it is currently written or as it may be modified by future revisions issued by NYSDEC.

5.2. The NYSDEC will coordinate its oversight of the Navy's RCRA corrective action obligations with all the other appropriate New York State agencies.

6. DEFINITIONS

"Agreement": this Agreement and all appendices attached hereto.

"Antideficiency Act": 31 U.S.C. section 1341.

"CERCLA": the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.

"Day": a calendar day unless expressly stated to be a Business Day. "Business Day" shall mean a day other than a Saturday, Sunday or Federal/State holiday. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday or Federal/State holiday, the period shall run until the close of business of the next working day.

"DSMOA" means the agreement referred to in paragraph 2.k. of this agreement.

"ECL": the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended.

"National Contingency Plan" or "NCP": the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. 9605 and codified at 40 C.F.R. Part 300, and any amendments thereto.

"NYSDEC": the New York State Department of Environmental Conservation.

"RCRA" means the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§6901 to 6992k) and any laws or regulations of the State of New York's hazardous waste program authorized pursuant to 42 U.S.C. §6926.

"Record of Decision" or "ROD": the document reflecting the NYSDEC's or Navy's selection of a remedy relative to the Site or any Operable Unit thereof. The NYSDEC and Navy RODs for OU 2 shall be attached to this Agreement as Exhibits "A & B".

"Remedial Action": those activities, except for OM&M, to be undertaken under this Agreement to implement the ROD.

"Remedial Investigation": a process undertaken to determine the nature and extent of contamination. The remedial investigation emphasizes data collection and site characterization, and generally is performed concurrently with the feasibility study. It includes sampling and monitoring, as necessary, and includes the gathering of sufficient information to determine the necessity for, and the proposed extent of, the program and to support the evaluation of proposed alternatives. (See 6 NYCRR 375-1.3(t))

"Site B Facility": The NWIRP Bethpage as listed in the NYSDEC Registry of Inactive Hazardous Waste Sites.

"State Costs": all the State's response expenses related to this Site, including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for reviewing and developing work plans, reports or other items pursuant to this Agreement, verifying or otherwise implementing, or overseeing, this Agreement and any other response costs as defined under CERCLA. Approved agency fringe benefit and indirect cost rates will be applied.

"Termination Date": the date that this Agreement is terminated.

7. WORK TO BE PERFORMED

7.1 In March 2001, NYSDEC issued a Record of Decision ("ROD") for Operable Unit 2, groundwater contamination associated with Northrop Grumman and NWIRP Bethpage Site Numbers 1-30-0003A & B. In April 2003, the Navy issued a ROD that describes those tasks of the NYSDEC ROD that would be implemented by the Department of

Navy. Exhibit B contains the Navy's ROD. The Navy's ROD for Groundwater includes a number of measures to remediate and monitor the regional groundwater contaminant plume and to protect public water supplies. Pursuant to the terms of this agreement, the Navy agrees to take the actions set forth below in the implementation of the Navy's ROD. The agreement to perform this work is subject to funding restraints and the Anti-deficiency Act considerations as set forth in Paragraph 9. The activities and submittals under this Agreement shall address both on-Site and off-Site contamination resulting from the disposal of hazardous wastes at Site B.

7.2 The Navy shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and third party data validators ("Navy's Contractors") in accordance with the requirements of the Navy's Installation Restoration Manual to perform the technical, engineering, and analytical obligations required by this Agreement. The responsibility for the performance of the professionals retained by the Navy shall rest solely with the Navy. The Navy retains the right to select or change firms or individuals at its sole discretion.

7.3 The Navy shall use "best efforts" to obtain all Site access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations necessary to perform the Navy's obligations under this Agreement, except that the Navy may be exempted from the requirement to obtain any permit issued by the NYSDEC for any activity that is conducted on the Site and that the NYSDEC determines satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit. If any necessary Site access, permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations required to perform this Agreement are not obtained despite best efforts, The Navy shall promptly notify the NYSDEC, and shall include in that notification a summary of the steps the Navy has taken to obtain access. The NYSDEC may, as it deems appropriate and within its authority, assist the Navy in obtaining access.

7.4 The Navy's agreement to perform work under this Agreement shall not be deemed to constitute any type of fine or penalty.

7.5 Groundwater Remedial Program

a. The Navy agrees to install monitoring wells that will be routinely sampled by Northrop Grumman Corporation (NGC) in order to gather data that will be used to update the groundwater

modeling effort and will also be used to support the preparation of a Groundwater Monitoring Plan.

The Navy has completed installation of off-site monitoring wells as documented in a report entitled "Off-Site Monitoring Well Installation Summary Report", dated April 2002 which was submitted to NYSDEC in a letter dated 15 April 2002. The data from this report was forwarded to ARCADIS Geraghty & Miller (AGM) who, on behalf of NGC, incorporated the data and issued the Draft-Final Operable Unit 2 Groundwater Monitoring Plan dated 11 May 2001. NYSDEC is in receipt of this report and has given their verbal concurrence to NGC and AGM.

b. The Navy agrees to conduct a predesign investigation to determine the optimum location(s) for the GM38 area groundwater extraction system. This predesign investigation will derive the data necessary to determine the screen zones of the extraction wells and will be used to substantiate the number of extraction wells.

A workplan documenting the Navy's plans to install vertical profile borings (VPBs) in the GM-38 Area was submitted to NYSDEC in a letter dated 5 April 2001. This workplan was subsequently approved by the NYSDEC in a letter dated May 2, 2001.

The Navy's predesign investigation has been completed and the data referenced above was presented in a Report entitled "GM-38 Area Vertical Profile Boring Installation Summary Report", dated February 2002, which was submitted to NYSDEC on 15 February 2002. Additional VPBs were subsequently installed and the results of this field effort were presented in a Revision to the Report dated May 2002, which was submitted to NYSDEC in a letter dated 2 May 2002.

c. The Navy will install at least two groundwater extraction wells, within the approximate area known as the GM38 area, depicted in Figure 4 of the Navy's ROD for Groundwater dated April 2003, with all necessary piping to install the wells and properly run the discharge to the groundwater treatment system.

d. Utilization of an existing storm water collection and groundwater recharge system or groundwater re-injection wells for discharge of treated groundwater.

e. The installation of the necessary air stripping systems or comparable remedial technology designed to remove VOCs from all the extracted groundwater to meet the State Pollutant Discharge

Elimination System (SPDES) discharge limitations for the GM-38 area.

f. The Navy agrees to the long-term operation and maintenance (O&M) of the GM38 area extraction system.

g. The Navy agrees to conduct a specific investigative task that includes, but is not necessarily limited to, installation of additional groundwater monitoring wells, vertical profile borings, and groundwater sampling to determine the extent of contamination in the vicinity of monitoring well GM-75D2. After the area is assessed, a determination will be made regarding the necessity for implementation of a contaminant mass removal program. If a determination is made by either the Navy and/or NYSDEC, that a significant threat to a downgradient public water supply exists, then a plan of action will be documented in a report and forwarded to NYSDEC.

h. The Navy agrees to conduct a specific investigative task that includes, but is not necessarily limited to, installation of additional groundwater monitoring wells, vertical profile borings, and groundwater sampling to determine the extent of contamination in the vicinity of any other area where additional groundwater investigations have been determined to be required in order to assess whether that area represents a significant threat to a downgradient public water supply. The trigger value used to determine if such additional groundwater investigations are necessary is a detection of 1 part per million (ppm) of total volatile organic compounds (TVOCs) in three consecutive sampling events in any one well.

i. The Navy agrees to continue participation in the technical advisory committee (TAC) meetings with the NYSDEC, New York State Department of Health (NYSDOH), Nassau County Department of Health, participating local water districts, and Northrop Grumman. The main purpose is to review and provide input on all materials relating to the implementation of the Northrop Grumman and Navy OU2 Groundwater Remedial Program and Public Water Supply Protection Program.

j. The Navy agrees to prepare a workplan for the installation of outpost monitoring wells, to be located upgradient of potentially affected public water supply wells, associated with the Districts

of South Farmingdale, Levittown, Hempstead and the New York Water Service.

This workplan has been completed on behalf of the Navy by Tetra Tech NUS and included as Appendix B to the Public Water Supply Contingency Plan (PWSCP) which was submitted to NYSDEC as Final on 24 July 2003.

The installation of outpost wells has also been completed and a summary of the installation effort has been documented in a report entitled "Outpost Monitoring Well Installation Summary Report", dated March 2004 and submitted to NYSDEC in a letter dated 2 March 2004.

k. The Navy agrees to work with NGC and its environmental consultant(s) in creating trigger values for the outpost monitoring wells through the use of computer modeling.

This effort has been completed on behalf of the Navy by ARCADIS Geraghty & Miller (AGM) and documented as part of the PWSCP which was submitted to NYSDEC as Final on 24 July 2003 (see Item j above).

l. If any evaluation performed by the Navy of the long term groundwater monitoring or the outpost well data indicates that a trigger value has been exceeded, then the Navy will notify the NYSDEC and the potentially impacted water district and will begin to evaluate the rate of movement of the contaminant(s) towards the public supply well(s).

m. If VOC concentrations in the outpost well(s) approach or exceed a predetermined trigger value, a minimum of one and a maximum of three confirmatory samples will be collected and the results evaluated by the NYSDEC and the State and County Health Departments with input from the affected water district(s). If the NYSDEC's and the Health Departments' evaluation indicates that wellhead treatment, or comparable alternative measure(s) are necessary, then discussions between the Navy and the impacted water district will begin.

n. The Department of the Navy agrees to establish a goal for any given wellhead treatment or comparable technology for affected drinking water supplies which will provide water that is non-detect using USEPA Method 502.2 to a detection limit of 0.5 micrograms per liter (ug/l) with respect to VOCs for site related contamination as cited in the 2001 Water Quality Monitoring Requirements for Nassau County Public Water Systems.

o. In accordance with an agreement dated August 1996 between the Navy and the Bethpage Water District (BWD), the Navy has provided a one time payment to BWD and BWD has sole responsibility for the continued public water supply wellhead treatment to meet appropriate drinking water quality performance objectives at BWD Plant 5.

8. COMMUNICATIONS

8.1 The Parties shall transmit all required documents and comments thereon, and all required notices by next day mail, hand delivery, or facsimile (and followed by an original by first-class mail), or by certified mail if transmitted sufficiently ahead of the applicable deadline. Notifications shall be deemed effective upon receipt.

8.2 Notice to the individual Parties pursuant to this Agreement shall be sent to the addresses specified by the Parties. Initially these shall be as follows:

a. Communication from Navy to NYSDEC shall be sent to:

Steven Scharf

Division of Environmental Remediation

New York State Department of Environmental
Conservation 625 Broadway
Albany, New York 12233

Note: four copies (one unbound) of work plans are
required.

with copies to:

Richard Fedigan Chief, Long Island Section Bureau of
Environmental Exposure Investigation New York State
Department of Health
Flanigan Square 547 River Street Troy,
New York 12180-2216

Note: two copies of work plans are
required to be sent, and

Peter A. Scully, Regional
Director Region 1
New York State Department of Environmental
Conservation SUNY Campus

Loop Road, Building 40 Stony Brook, New York 11790

Rosalie K. Rusinko, Esq. Division of Environmental
Enforcement New York State Department of Environmental
Conservation 200 White Plains Road, 5th Floor
Tarrytown, New York 10591

- b. Communication to be made from NYSDEC to the Navy shall
be sent to:

James Colter Engineering Field Activity, Northeast
Naval Facilities Engineering Command
10 Industrial Highway, Mail Stop No. 82
Lester, PA 19113-2090

With copies to:

Joe Kaminski Naval Air Systems Command AIR 8.3
Building 404, Suite 200 22145
Arnold Circle, Unit 7 Patuxent
River, MD 20670-1541

8.3 All routine correspondence may be sent via first class mail
to the above addressees.

8.4 The Navy and NYSDEC reserve the right to designate additional
or different addressees for communication upon written notice to
the other.

8.5 Each party shall notify the other party in writing of any
change in the addresses for communications purposes as set forth
in this paragraph.

9. AVAILABILITY OF FUNDS

9.1 The Parties intend that all the Navy's obligations arising
under this Agreement will be fully funded. The Navy agrees to seek
sufficient funding through the Department of the Navy budgetary
process to fulfill its obligations under this Agreement.

9.2 The Navy believes that funds authorized and appropriated
annually by Congress under the Environmental Restoration, Navy
(ER,N) appropriation in the Department of Defense Appropriation
Act to the Navy will be the exclusive source of funds for
activities required by this Agreement consistent with SARA section
211, 10 U.S.C. Chapter 160.

9.3 In accordance with CERCLA section 120(e)(5) (42 U.S.C.
section 9620(e)(5)) and 10 U.S.C. section 2706, the Navy shall
submit the specific cost estimates and budgetary proposals

associated with the implementation of this Agreement to Department of Defense for inclusion in its annual report to Congress.

9.4 Any requirement for the payment or obligation of funds by the Navy established by the terms of this Agreement shall be subject to the availability of appropriated funds and the provisions of 10 U.S.C. section 2703. No provision of this Agreement shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. section 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.

9.5 During any year in which the portion of the ER,N appropriation allocated to facilities in the State of New York is inadequate to meet the Navy CERCLA implementation requirements for facilities in the State of New York, the Navy will, in consultation with NYSDEC, prioritize and allocate that year's appropriation.

10. EXTENSIONS

10.1 The Navy may request an extension of any deadline for good cause. The request shall be made at least 7 days prior to the deadline, if practicable, and shall specify:

- a. the timetable, deadline or schedule that is sought to be extended;
- b. the length of the extension sought;
- c. the good cause for the extension; and
- d. the extent to which any related timetable and deadline or schedule would be affected if the extension were granted.

10.2 Good cause means:

- a. an event of force majeure
- b. a delay caused by NYSDEC's failure to meet any requirement of this Agreement provided that the delay is directly related to the matter that is the subject of the proposed extension;
- c. a delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;
- d. a delay caused, or likely to be caused, by an extension of another timetable and deadline or schedule;

- e. a delay in NYSDEC's review of a permit application or issuance of a permit or other forms of authorization required to perform activities undertaken pursuant to this Agreement;
- f. a stop-work order issued by NYSDEC;
- g. unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance;
- h. unusual delay in transportation;
- i. 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 Navy;
- j. delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; or
- k. any other event or series of events mutually agreed to by the Parties as constituting good cause.

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

10.4 Within seven (7) days of receipt of a request for an extension of a timetable, deadline or schedule, NYSDEC shall advise the Navy in writing of its position on the request. If NYSDEC does not concur in the requested extension, it shall include in its statement of nonoccurrence an explanation of the basis for its position.

10.5 If NYSDEC concurs in the extension, the Navy shall extend the affected timetable and deadline or schedule accordingly. If NYSDEC disapproves the requested extension, the timetable and deadline or schedule shall not be extended. The Navy may submit NYSDEC's decision to dispute resolution.

11. FORCE MAJEURE

11.1 A force majeure shall mean any event arising from a cause not foreseeable and beyond the control of the Navy, which could not be avoided or overcome by due diligence and which delays or prevents performance by a deadline that exists because of this Agreement. An event of force majeure shall excuse the Navy from compliance with the schedules in the work plan. Examples of force majeure include:

- a. acts of God, fire, war, insurrection, civil disturbance, or explosion;
- b. adverse weather conditions that could not be reasonably anticipated;
- c. national conflict or emergency declared by the President or Congress and affecting the Navy;
- d. restraint by court order or order of public authority;
- e. a strike, lockout or other labor difficulty, or
- f. insufficient availability of appropriated funds due to Congressionally mandated cuts or rescissions.

11.2 For purposes of the paragraph above, force majeure does not include increased costs or expenses of response actions.

11.3 When circumstances that may delay or prevent the completion of the Navy's obligation under this Agreement are caused by a force majeure event, the Navy shall notify NYSDEC's project manager orally of the circumstances within forty-eight (48) hours after the Navy first became aware of these circumstances. Within fifteen (15) days of the oral notification, the Navy shall deliver a written explanation of the cause(s) of any actual or expected delay and the anticipated duration of any delay to NYSDEC. The Navy shall exercise its best efforts to avoid or minimize any such delay and any effects of such delay.

12. ENTRY UPON SITE

12.1 In accordance with Public Law 105-85, § 2853; 111 Stat. 1629 (1997), the Navy intends to convey, without consideration, all right, title and interest of the United States in and to parcels consisting of approximately 105 acres comprising the NWIRP Bethpage. During its ownership, the Navy hereby consents, upon reasonable notice under the circumstances presented, to entry upon the Site or areas in the vicinity of the Site which may be under the control of the Navy by any duly designated officer or employee of the NYSDEC or any State agency having jurisdiction with respect to matters addressed pursuant to this Agreement, and by any agent, consultant, contractor, or other person so authorized by the Commissioner, all of whom shall abide by the health and safety rules in effect for the Site for (i) inspecting, sampling, and copying records related to the contamination at the site; (ii) implementing the activities under this Agreement; and (iii) testing and any other activities necessary to ensure Navy's compliance with this Agreement. Upon request, the Navy shall permit the NYSDEC full access to all nonprivileged records relating to matters addressed by this Agreement.

12.2 The NYSDEC shall have the right to take its own samples and scientific measurements and the Navy shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled. The NYSDEC shall make the results of all sampling and scientific measurements taken under this paragraph available to the Navy.

13. PAYMENT OF STATE COSTS

13.1 The Parties recognize that the Department of Defense has entered into a Department of Defense and State Memorandum of Agreement (DSMOA) with the State of New York, executed on June 6, 1991. The DSMOA covers reimbursement of the costs associated with providing State services to Department of Defense installations for activities funded under the Environmental Restoration, Defense appropriation. NWIRP Bethpage is listed as a DOD Installation covered by the DSMOA.

13.2 NYSDEC will submit an accounting of State costs in accordance with the DSMOA and the DSMOA Cooperative Agreement.

13.3 Nothing in this Agreement circumvents or affects the terms set forth in the DSMOA or DERP (10 U.S.C. §2701 et seq.).

13.4 NYSDEC reserves all its rights to take any action it is entitled to take, including actions to recover costs, absent this Agreement, in the event of any of the following:

- a. Lack of appropriated funds to fulfill the Navy's obligations under the Agreement,
- b. Unresolved dispute as to whether any State cost incurred can be reimbursed through the DSMOA,
- c. Lack of reimbursement from appropriated funds, or
- d. Any other failure or refusal by the Navy to reimburse costs incurred by NYSDEC in connection with the subject matter of this Agreement.

14. RESERVATION OF RIGHTS

14.1 Notwithstanding anything in this Agreement, NYSDEC may initiate any action or pursue any legal or equitable remedies available to it, including requiring additional response actions by the Navy in the event that: (a) conditions previously unknown or undetected by NYSDEC arise or are discovered at the Facility; or (b) NYSDEC receives additional information not previously available concerning the premises which it employed in reaching

this Agreement; or (c) NYSDEC determines that the implementation of the requirements of this Agreement are no longer protective of public health and the environment; or (d) NYSDEC discovers the presence of conditions on the Facility which may constitute an imminent and substantial danger to the public health, welfare, or the environment; or (e) the Navy fails to meet any of its obligations under this Agreement; or (f) the Navy fails or refuses to comply with any applicable requirement of CERCLA or RCRA or State laws.

14.2 NYSDEC reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to the Navy's failure to comply with any of the requirements of this Agreement. This Agreement shall not be construed as a covenant not to sue, release, waiver, or limitation on any rights, remedies, powers, or authorities, civil or criminal, that NYSDEC has under any statutory, regulatory, or common law authority.

14.3 NYSDEC reserves the right to disapprove work performed by the Navy pursuant to this Agreement and to request that the Navy perform additional tasks.

14.4 NYSDEC reserves the right to perform any portion of the work consented to herein or any additional site characterization, feasibility study, and/or remedial actions it deems necessary to protect human health and/or the environment. NYSDEC may exercise its authority under any applicable State or federal law or regulation to undertake response actions at any time. NYSDEC reserves its right to seek reimbursement from the Navy for costs incurred by the State of New York with respect to such actions. NYSDEC will notify the Navy in writing as soon as practicable regarding the decision to perform any work described in this section.

14.5 If NYSDEC determines that activities in compliance or noncompliance with this Agreement have caused or may cause a release of hazardous waste and/or hazardous waste constituents, or a threat to human health and/or the environment, or that the Navy is not capable of undertaking any of the work required, NYSDEC reserves its rights to order the Navy to stop further implementation of this Agreement for such period of time as NYSDEC determines may be needed to abate any such release or threat. The deadlines for any actions required of the Navy under this Agreement affected by the order to stop work shall be extended to take into account NYSDEC's actions.

14.6 This Agreement is not intended to be nor shall it be construed to be a permit. NYSDEC's approval of any workplan, plan, and/or specification does not constitute a warranty or representation that the workplans, plans, and/or specifications will achieve the required cleanup or performance standards. The Navy's compliance with the terms of this Agreement shall not relieve the Navy of its obligations to comply with any applicable local, State, or federal statute or regulation.

14.7 The Parties, after exhausting their remedies under this Agreement, reserve any and all rights, including the right to raise or assert any defense they may have under any law, where those rights are not inconsistent with the provisions of this Agreement.

15. MODIFICATION OF AGREEMENT

15.1 The terms of this Agreement constitute the complete and entire agreement between the NYSDEC and the Navy concerning implementation of the activities required by this Agreement. No term, condition, understanding, or agreement purporting to modify or vary any term of this Agreement shall be binding unless made in writing and subscribed by the party to be bound. In the event of a conflict between the terms of this Agreement and any Work Plan submitted pursuant to this Agreement, the terms of this Agreement shall control over the terms of the Work Plan(s).

16. DISPUTE RESOLUTION

16.1 The Parties will use their best efforts to resolve all disputes informally. Except as specifically set forth elsewhere in this Agreement, the procedures contained in this section shall apply to resolution of disputes arising under this Agreement.

16.2 Within fifteen (15) days after NYSDEC notifies the Navy in writing that NYSDEC disapproves a document, or within fifteen (15) days after an action that generates a dispute, the Navy shall submit a written statement of the dispute, setting forth the nature of the dispute, the work affected by the dispute and the technical, legal or factual information upon which the Navy is relying to support its position, to the Chief of Remedial Bureau A (or to his/her designee). The NYSDEC and the Navy shall consult together in good faith and exercise best efforts to resolve any differences or disputes. The period for informal negotiations shall not exceed thirty (30) Days from the Navy's request for informal negotiation. If the parties cannot resolve a dispute by informal negotiations during this period, either party may invoke the formal dispute resolution provisions provided below.

16.3 The Navy or NYSDEC may submit a request for formal dispute resolution which shall be in the form of a written statement of the issues in dispute, the relevant facts upon which the dispute is based, factual data, analysis, or opinion supporting its position, and all supporting documentation upon which the party relies (hereinafter called the "Statement of Position") to the Assistant Division Director, Division of Environmental Remediation ("ADD"). A copy of such request and written statement shall be provided to the parties listed under paragraph 8.2.

16.4 The responding party shall have twenty (20) Days to submit its Reply.

16.5 The party invoking the formal dispute resolution shall have the burden of proving by a preponderance of the evidence that the other party's position is not in accordance with law or otherwise should not prevail. The ADD can conduct meetings, in person or via telephone conferences and request additional information from either party if such activities will facilitate a resolution of the issues. If a resolution cannot be made, the ADD will issue a written final decision in a timely manner.

16.6 Within fifteen (15) days after the Navy receives the ADD's written decision, the Navy may seek additional review of NYSDEC's written decision by forwarding a copy of NYSDEC's written decision to both the Office of the Chief of Naval Operations, Environmental Readiness Division (N45) and to the NYSDEC Director of the Division of Environmental Remediation (or to his/her designee), along with a request for review. These Navy and NYSDEC representatives, or their respective designees, shall meet and attempt to resolve the dispute within twenty-one (21) days after receipt of NYSDEC's ADD decision.

16.7 If the Navy and NYSDEC are ultimately unable to resolve the issue in dispute in accordance with this section, NYSDEC shall issue a written statement of the status of the dispute. NYSDEC reserves its rights to take any action available to it to enforce the Environmental Conservation Law of the State of New York or take any other action under applicable state and federal law. The Navy reserves its rights to take any action or to assert any defense available to it under applicable state and federal law.

16.8 Within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this section, the Navy shall incorporate the resolution and final determination into the appropriate plan, schedule, document or action.

16.9 For purposes of this section, each party's representative must be authorized to bind that party to any resolution reached jointly by the parties.

16.10 The invocation of dispute resolution shall not extend, postpone, or modify the Navy's obligations under this Agreement with respect to any item not in dispute unless or until the NYSDEC agrees or a court determines otherwise.

16.11 The NYSDEC shall keep an administrative record, which shall be available, consistent with Article 6 of the Public Officers Law.

17. OTHER CLAIMS

17.1 Nothing in this Agreement shall restrict the State from taking any action under RCRA, CERCLA, State law, or other environmental statutes for any matter not specifically part of the work performed under this Agreement.

17.2 Nothing in this Agreement shall constitute or be construed as a bar, or a discharge, or a release, from any claim, cause of action or demand in law or equity by or against any person, firm, partnership, or corporation not a signatory to this Agreement for any liability it may have arising out of, or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous waste, pollutants, or contaminants found at, taken to, or taken from the Facility. Specifically, this Agreement does not bar any claim for:

a. natural resources damage assessments, or for damage to natural resources; or

b. liability for disposal of any Hazardous Substances or waste material taken from the Facility; or

c. enforcement actions by the Navy against other Potentially Responsible Parties (PRPs) to compel such party to perform any part of the work the Navy has agreed to perform or may be obligated to perform pursuant to the terms of this agreement; or

d. any other claims by the Navy against any PRPs for damages sustained by the Navy for response actions undertaken at this site for which those PRPs are liable under federal or state laws.

18. REAL PROPERTY TRANSFER

18.1 Except as otherwise specifically provided in CERCLA section 120(h)(3)(B), in other applicable State or federal law, or by written agreement with NYSDEC, no change or transfer of any interest in the Facility or any part thereof shall in any way alter the status or responsibility of the Navy under this Agreement.

18.2 The Navy agrees to comply with section 120 (h) of CERCLA (42 U.S.C. Section 9620 (h)), including the Community Environmental Response Facilitation Act (CERFA), and any additional amendments thereof, and with 40 C.F.R. Part 373, if applicable.

18.3 In accordance with section 120(h) of CERCLA (42 U.S.C. section 9620(h)) and 40 C.F.R. Part 373, the Navy shall include notice of this Agreement in any Agreement or Memorandum of Understanding that permits any non-Navy activity to function as an operator on any portion of the Facility.

18.4 In 1997, Congress enacted the National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85, § 2853; 111 Stat. 1629 (1997), authorizing the Secretary of the Navy to convey, without consideration, to the County of Nassau, New York, all right, title and interest of the United States in and to parcels or real property consisting of approximately 110 acres comprising the NWIRP Bethpage, Plant No. 464. In accordance with this special legislation, the Navy intends to convey its ownership interest in NWIRP Bethpage to Nassau County. The Navy has prepared a Finding of Suitability to Transfer which has been concurred in by NYSDEC. By entering into this agreement, NYSDEC agrees that no further actions than the remedial measures that the Navy has agreed to perform as set forth above in paragraph 7 are necessary to affect transfer. The Navy will notify the NYSDEC in writing of the proposed date of conveyance or other divestiture of the property and shall notify the transferee in writing, with a copy to the NYSDEC, of the applicability of this Agreement.

19. TERMINATION OF AGREEMENT

19.1 This Agreement may be terminated pursuant to either (a) or (b) below.

a. Acknowledgement of Satisfaction.

(1) The provisions of this Agreement shall be deemed satisfied and this Agreement will terminate upon the execution by both parties of an Acknowledgment of Satisfaction (Acknowledgment). NYSDEC will prepare the Acknowledgment for the Parties' signature. The Acknowledgment will specify that the Navy

has demonstrated to NYSDEC's satisfaction that the terms of this Agreement have been satisfactorily completed.

(2) The Navy may request in writing that NYSDEC prepare the Acknowledgement. Within sixty (60) days after receiving the request, NYSDEC shall either approve the request and prepare the Acknowledgement or shall deny the request and provide a written explanation of its denial to the Navy.

b. Either party to this Agreement may terminate the Agreement by giving ninety (90) days notice to the other party.

c. If the Agreement is terminated under paragraph 19.1.b., neither this Agreement nor its termination shall affect any liability of the Navy to remediate the Site.

20. COMPLIANCE WITH APPLICABLE LAWS

20.1 All actions required to be taken pursuant to this Agreement shall be undertaken in accordance with the applicable requirements of all local, state, and federal laws and regulations. The Navy shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations. This Agreement shall not in any way relieve the Navy from its obligation to comply with any of the applicable provisions of RCRA or CERCLA or their implementing regulations, or any permit, closure or post closure plan, hazardous waste management requirement, order or agreement issued or entered into thereunder. This Agreement shall not relieve the Navy from its obligation to comply with any other applicable federal, state or local law, regulation, order, permit or any other agreement.

20.2 Nothing herein shall be construed as limiting EPA's or the State's statutory authority for access or information gathering, except as that right may be limited by applicable national security regulations or other state or federal law.

21. ENFORCEABILITY

21.1 All timetables and deadlines shall be enforceable.

21.2 Any final resolution of a dispute pursuant to section 16 (Dispute Resolution), which establishes a term, condition, timetable, deadline or schedule shall be enforceable, consistent with section 7 (Work to Be Performed) and section 14 (Reservation of Rights) of this Agreement.

21.3 Nothing in this Agreement shall be construed as a restriction or waiver of any rights or defenses, including sovereign immunity, that the State or the Navy may have under federal or State law.

21.4 The Navy and the NYSDEC's successors and assigns shall be bound by this Agreement.

22. EFFECTIVE DATE

22.1 The effective date of this Agreement shall be the date on which all the parties sign this Agreement.

23. SEVERABILITY

23.1 If any provision of this Agreement is ruled invalid, illegal, or unconstitutional, the remainder of the Agreement shall not be affected by such a ruling.

24. SECTION HEADINGS

24.1 The section headings set forth in this Agreement are included for convenience and reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Agreement.

25. REPRESENTATIVE AUTHORITY

25.1 The undersigned representative of each party to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind that party to this Agreement.

Dated: New York Department of Environmental Conservation

3/18/05

By: Denise M. Steel

Dated: U.S. DEPARTMENT OF THE NAVY

1/7/05

By: Mark A. Benschel

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