

Report. HW 808012.2.25.1988

RIFS Addendum 3

**KENTUCKY AVENUE WELLFIELD SITE
REMEDIAL INVESTIGATION AND
FEASIBILITY STUDY
TOWN OF HORSEHEADS, NEW YORK**



**New York State
Department of
Environmental Conservation**

50 Wolf Road, Albany, New York 12233
Henry G. Williams, *Commissioner*

Division of Solid and Hazardous Waste
Norman H. Nosenchuck, P.E., *Director*

SUPPLEMENTAL AGREEMENT NO. 3

TO CONTRACT NO. D001028

THIS AGREEMENT entered into this day of , 19 , by
and between the NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
(hereinafter referred to as the DEPARTMENT) and Dames and Moore
(hereinafter referred to as the ENGINEER).

WITNESS:

WHEREAS the parties hereto entered into a prior agreement which was
duly assigned Contract No. D001028 by the Comptroller of the State of
New York and amended by Supplemental Agreement No. 1 which was approved
by the Comptroller on 8/5/86 and by Supplemental Agreement No. 2
approved by the Comptroller on 2/4/87.

WHEREAS the parties desire to amend said agreement; and

WHEREAS the DEPARTMENT is empowered by law to obtain technical and
professional services; and

WHEREAS the performance of this service is essential to the
DEPARTMENT; and

WHEREAS the DEPARTMENT has fully examined all of its internal
capabilities and has thoroughly investigated all possible alternative
methods of accomplishing this project within the DEPARTMENT, and has
determined that it must accomplish this work through consultant
services; and

WHEREAS the ENGINEER hereby represents that it is professionally
capable of providing the desired technical and professional services
which are the subject matter of this AGREEMENT, and is licensed to
practice engineering in the State of New York.

Now, therefore, the parties agree as follows:

1. The ENGINEER will be reimbursed for costs incurred to perform these additional services requested by the DEPARTMENT. These additional costs are \$11,205.32 and are detailed in "Description of Additional Services", attached hereto and made a part hereof.
2. The amount of the lump sum fixed fee described in ITEM V of ARTICLE 10 of the prior agreement is hereby revised to \$37,271.45.
3. The maximum amount payable described in ITEM IX of ARTICLE 10 of the prior agreement is hereby revised to \$561,026.32.
4. This agreement may not be extended or amended.
5. This agreement is a settlement under ARTICLE 14 of the prior agreement. The ENGINEER'S acceptance of these additional sums shall constitute a final payment. Acceptance of this final payment shall constitute and operate as a release to the STATE for all claims and liabilities of the ENGINEER, its representatives and assigns for any and all work done, furnished or relating to the services rendered by the ENGINEER under or in connection with this agreement or any part thereof.


6. Revised Appendix A, attached hereto, replaces the original Appendix A in Schedule 2 of the prior agreement.

7. All other terms and conditions of the prior agreement remain in full force and effect.

IN WITNESS WHEREOF, this AGREEMENT has been executed by the DEPARTMENT and ENGINEER on the day and year first above written.

Recommended By:

FOR THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION:


Michael J. O'Toole, Jr., P.E.
Acting Director, Division of
Hazardous Waste Remediation


Richard Forkelson
Deputy Commissioner

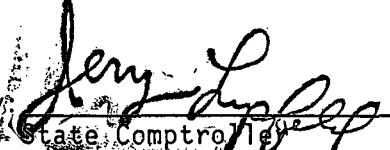
Approved as to Form:

Approved: **FEB 25 1988**

Date: _____


Date: _____

By: _____
Attorney General


By: 
State Comptroller
Under Section 112, Finance Law

**APPROVED AS TO FORM
NEW YORK STATE
ATTORNEY GENERAL**


FEB 19 1988


**ASSOCIATE ATTORNEY
STATE OF NEW YORK**)
COUNTY OF *Onon.*) SS:

FOR DAMES AND MOORE:


Alan Gogan-Tilstone
Associate

On this 16th day of December, 1987, before me came Alan Gogan-Tilstone to me known, being duly sworn, did dispose and say that he resides in Baldwinsville, NY, that he is an Associate with Dames & Moore, A Professional Limited Partnership described in and executed the foregoing instrument in the firm name of Dames & Moore and he had the authority to sign same as the act and deed of said firm of Dames & Moore for uses and purposes mentioned therein.


NOTARY PUBLIC **VICKI S. MacDONALD**
Notary Public in the State of New York
Qualified in Onon. Co. No. 4831906
My Comm. Expires Dec. 31, 1989

DESCRIPTION OF ADDITIONAL SERVICES

Contract No. D001028
Kentucky Avenue Wellfield Site
Remedial Investigation/Feasibility Study
Supplemental Agreement No. 3

Task I-A Hydrogeological Investigation

Additional activities were necessary under this task in order to satisfactorily complete the Remedial Investigation. The following are subtasks in which additional work was necessary which was not specified in the original AGREEMENT.

Sampling and Testing, Well CW-7D

During the installation of monitoring well CW-7D, oil was discovered floating on the watertable surface. Additional costs were incurred by the ENGINEER in the collection and chemical analysis of a sample of the oil. The additional costs totalled: \$256.49.

Cost Breakdown

| <u>Employee</u> | <u>Salary Rate</u> | <u>Hours</u> | <u>Total Cost</u> |
|-----------------|---------------------------|--------------|-------------------|
| L. Brannaka | \$16.35 | 3.0 | \$49.05 |
| D. Chason | 11.73 | 1.0 | <u>11.73</u> |
| | Total Direct Labor | | 60.78 |
| | Overhead (@ 119%) | | <u>72.33</u> |
| | | | 133.11 |
| | Fixed Fee (@ 15%) | | <u>19.97</u> |
| | | | \$153.08 |
| | <u>Other Direct Costs</u> | | |
| | Federal Express | | 28.41 |
| | Chemical Analysis | | <u>75.00</u> |
| | Total Cost | | \$256.49 |

EPA Sampling

At the request of the DEPARTMENT, the ENGINEER provided technical support to the USEPA for the sampling of monitoring wells. This work was beyond the scope of the original AGREEMENT. The total additional cost is \$1,114.56.

COST BREAKDOWN

| <u>Employee</u> | <u>Salary Rate</u> | <u>Hours</u> | <u>Total Cost</u> |
|---------------------------|--------------------------------|--------------|-------------------|
| L. Brannaka | \$16.35 | 3.5 | \$ 57.23 |
| L. Keefe | 10.43 | 24.0 | <u>250.32</u> |
| | Total Direct Labor | | \$307.55 |
| | Overhead (@ 119%) | | <u>365.98</u> |
| | | | 673.53 |
| | Fixed Fee (@ 15%) | | <u>101.03</u> |
| | | | \$774.56 |
| <u>Other Direct Costs</u> | | | |
| | Travel: 500 mi. x .23/mile | | 115.00 |
| | Subsistence: 3 days x \$35/day | | 105.00 |
| | Equipment | | <u>120.00</u> |
| | Total Cost | | \$1,114.56 |

Project Status Meeting

The original AGREEMENT budget included costs for seven (7) meetings between the ENGINEER and the DEPARTMENT to discuss project status. It was necessary to hold one additional meeting beyond the specified seven. The additional cost to the ENGINEER to attend and prepare for this meeting was \$524.03.

COST BREAKDOWN

| <u>Employee</u> | <u>Salary Rate</u> | <u>Hours</u> | <u>Total Cost</u> |
|-------------------|--------------------|--------------|-------------------|
| A. Gogan-Tilstone | \$26.44 | 6.0 | <u>\$158.64</u> |
| | Total Direct Labor | | 158.64 |
| | Overhead (@ 119%) | | <u>188.78</u> |
| | | | 347.42 |
| | Fixed Fee (@ 15%) | | <u>52.11</u> |
| | Total Cost | | \$399.53 |

Other Direct Costs

| | |
|--|-------------|
| Travel 500 miles @ \$.23/mi. (Syracuse to Elmira) | 115.00 |
| Subsistence (dinner @ \$9.50) | <u>9.50</u> |
| Total Cost | \$524.03 |

Task I-F Remedial Investigation Report

This task includes activities related to the production of the Remedial Investigation Report. Additional, out-of-scope activities were approved in previous Supplemental Agreements which resulted in the generation of more data than was planned in the original AGREEMENT. The increased volume of data required greater report preparation than originally planned. The additional cost to the ENGINEER for this work is \$9,310.24.

COST BREAKDOWN

| <u>Employee</u> | <u>Salary Rate</u> | <u>Hours</u> | <u>Total Cost</u> |
|--------------------|--------------------|--------------|-------------------|
| L. Brannaka | \$16.35 | 50.0 | \$817.50 |
| D. Chason | 11.73 | 50.0 | 586.50 |
| A. Gleeson | 5.29 | 100.0 | 529.00 |
| L. Ryan | 9.18 | 150.0 | <u>1,377.00</u> |
| Total Direct Labor | | | \$3,310.00 |
| Overhead (@ 119%) | | | <u>3,938.90</u> |
| | | | \$7,248.90 |
| Fixed Fee (@ 15%) | | | <u>1,087.34</u> |
| | | | \$8,336.24 |

Other Direct Costs

| | |
|------------|-----------------|
| Printing | <u>\$974.00</u> |
| Total Cost | \$9,310.24 |

Summary of Additional Costs

Task Breakdown

Task I-A Hydrogeological Investigation

| | |
|--|-----------------|
| Sampling and Testing, Well DW-7D | \$ 256.49 |
| EPA Sampling | 1,114.56 |
| Project Status Meetings | 524.03 |
| Task I-F Remedial Investigation Report | <u>9,310.24</u> |
| TOTAL | \$11,205.32 |

Direct Cost Breakdown

| | |
|----------------------------------|-----------------|
| Direct Labor | \$3,836.97 |
| Overhead (@ 119%) | <u>4,565.99</u> |
| Subtotal Direct Labor & Overhead | \$8,402.96 |

Other Direct Costs

| | |
|-----------------------------|-----------------|
| Travel and Subsistence | \$344.50 |
| Federal Express | 28.41 |
| Printing | 974.00 |
| Equipment | 120.00 |
| Chemical Analysis | <u>75.00</u> |
| Subtotal Other Direct Costs | \$1,541.91 |
| Fixed Fee (@ 15%) | <u>1,260.45</u> |
| TOTAL | \$11,205.32 |

APPENDIX A

The parties to the attached contract further agree to be bound by the following, which are hereby made a part of said contract:

I. This contract may not be assigned by the contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or disposed of without the previous consent, in writing, of the State.

II. This contract shall be deemed executory only to the extent of money available to the State for the performance of the terms hereof and no liability on account thereof shall be incurred by the State of New York beyond moneys available for the purpose thereof.

III. The contractor specifically agrees, as required by the provisions of the Labor Law, Section 220-e as amended, that

(a) In hiring of employees for the performance of work under this contract or any subcontract hereunder, or for the manufacture, sale or distribution of materials, equipment or supplies hereunder, no contractor, subcontractor nor any person acting on behalf of such contractor or subcontractor, shall by reason of race, creed, color, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates.

(b) no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under his contract on account of race, creed, color, sex or national origin.

(c) there may be deducted from the amount payable to the contractor by the State under this contract a penalty of five dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract, and

(d) this contract may be cancelled or terminated by the State or municipality and all moneys due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of the contract, and

(e) the aforesaid provisions of this section covering every contract for or on behalf of the state or a municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.

IV. During the performance of this contract, the contractor agrees as follows:

(a) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status.

(b) If directed to do so by the Commissioner of Human Rights, the contractor will send to each labor union or representative or workers with which the contractor has or is bound by a collective bargaining or other agreement or understanding, a notice, to be provided by the State Commissioner of Human Rights, advising such labor union or representative of the contractor's agreement under clauses (a) through (g) (hereinafter called "nondiscrimination clauses"). If the contractor was directed to do so by the contracting agency as part of the bid or negotiation of this contract, the contractor shall request such labor union or representative to furnish a written statement that such labor union or representative will not discriminate because of race, creed, color, sex, national origin, age, disability or marital status, and that such labor union or

representative will cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these nondiscrimination clauses and that it consents and agrees that recruitment, employment and the terms and conditions of employment under this contract shall be in accordance with the purposes and provisions of these nondiscrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, the contractor shall promptly notify the State Commissioner of Human Rights of such failure or refusal.

(c) If directed to do so by the Commissioner of Human Rights, the contractor will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Commissioner of Human Rights setting forth the substance of the provisions of clauses (a) and (b) and such provisions of the State's laws against discrimination as the State Commissioner of Human Rights shall determine.

(d) The contractor will state, in all solicitations or advertisement for employees placed by or on behalf of the contractor, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, sex, national origin, age, disability or marital status.

(e) The contractor will comply with the provisions of Sections 290-299 of the Executive Law and with the Civil Rights Law, will furnish all information and reports deemed necessary by the State Commissioner of Human Rights under these nondiscrimination clauses and such sections of the Executive Law, and will permit access to the contractor's books, records and accounts by the State Commissioner for the purposes of investigation to ascertain compliance with these nondiscrimination clauses and such sections of the Executive Law and Civil Rights Law.

(f) This contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the contracting agency upon the basis of a finding made by the State Commissioner of Human Rights that the contractor has not complied with these nondiscrimination clauses, and the contractor may be declared ineligible for future contracts made by or on behalf of the State or a public authority or agency of the State, until the contractor satisfies the State Commissioner of Human Rights that the contractor has established and is carrying out a program in conformity with the provisions of these nondiscrimination clauses. Such finding shall be made by the State Commissioner of Human Rights after conciliation efforts by the Commissioner have failed to achieve compliance with these nondiscrimination clauses and after a verified complaint has been filed with the Commissioner, notice thereof has been given to the contractor and an opportunity has been afforded the contractor to be heard publicly in accordance with the Executive Law. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by law.

(g) The contractor will include the provisions of clauses (a) through (f) in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to operations to be performed within the State of New York. The contractor will take such action in enforcing such provisions of such subcontract or purchase order as the State Commissioner of Human Rights or the contracting agency may direct, including sanctions or remedies for noncompliance. If the contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the State Commissioner of Human Rights or the contracting agency, the contractor shall promptly so notify the Attorney General, requesting the Attorney General to intervene and protect the interest of the State of New York.

V. The agreement shall be void and of no force or effect unless the contractor shall provide coverage for the benefit of, and keep covered during the life of this agreement, such employees as are required to be covered by the provisions of the Worker's Compensation Law.

VI. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law and the regulations of the Comptroller of the State of New York promulgated thereunder, the contractor agrees, as a material condition of the Contract

A. That neither the contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the provisions of the United States Export Administration Act of 1969, as amended, or the Export Administration Act of 1979, as amended, or the regulations of the United States Department of Commerce promulgated thereunder;

B. That if the contractor or any substantially owned or affiliated person, firm, partnership or corporation has been convicted or subjected to a final determination by the United States Department of Commerce or any other appropriate agency of the United States of a violation of the United States Export Administration Act of 1969, as amended, or the Export Administration Act of 1979, as amended, or the regulations of the United States Department of Commerce promulgated thereunder, the contractor shall notify the Comptroller of such conviction or determination in the manner prescribed by the Comptroller's regulations.

VII. For a period of three years after the termination of this AGREEMENT, the State, DEPARTMENT, and the Comptroller of the State of New York shall have access at such reasonable times and for such reasonable periods as may be mutually agreed upon, to any of the CONTRACTOR'S books, documents, papers and records directly pertinent to the subject matter of this AGREEMENT for the purpose of making audits, examinations, excerpts or transcripts.

VIII. The DEPARTMENT shall have the right to postpone, suspend, abandon or terminate this AGREEMENT, and such actions shall in no event be deemed a breach of contract. The CONTRACTOR may terminate this AGREEMENT upon 30 (thirty) days' notice in writing to the DEPARTMENT. In the event of any termination, postponement, delay, suspension or abandonment, the CONTRACTOR shall deliver to the DEPARTMENT all data and reports pertaining to the study. In any of these events, the DEPARTMENT shall make settlement with the CONTRACTOR upon an equitable basis as determined by the DEPARTMENT, which shall fix the value of the work which was performed by the CONTRACTOR prior to the postponement, suspension, abandonment or termination of this AGREEMENT.

IX. The CONTRACTOR agrees that it will indemnify and save harmless the DEPARTMENT and the STATE OF NEW YORK from and against all losses and all claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recovered against it by reason of any omission or act of the CONTRACTOR, its agents, employees, or subcontractors in the execution of this AGREEMENT.

X. If this AGREEMENT was awarded after solicitation of bids or negotiation of cost, the provisions contained in this paragraph shall be applicable.

(a) By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

1) The prices in this bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor;

3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

(b) A bid shall not be considered for award nor shall any award be made where (a) (1) (2) and (3) above have not been complied with provided, however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefore. Where (a) (1) (2) and (3) above have not been complied with provided, however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid signed statement which sets forth in detail the reasons therefore. Where (a) (1) (2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the State, public department or agency to which the bid is made, or his designee, determined that such disclosure was not made for the purpose of restricting competition.

The fact that a bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of paragraph VI (a).

XI. If this AGREEMENT involves public work, Labor Law §§220 and 220-d shall be applicable. In such case, the contractor specifically agrees that:

(a) no laborer, workman or mechanic, in the employ of the contractor, subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week, except in the emergencies set forth in the Labor Law.

(b) the wages paid for a legal day's work shall be not less than the prevailing rate of wages as defined by law.

(c) the minimum hourly rate of wage to be paid shall not be less than that stated in the specifications, and any redetermination of the prevailing rate of wages after the contract is approved shall be deemed to be incorporated herein by reference as of the effective date of redetermination and shall form a part of these contract documents.

1) The Labor Law provides that the contract may be forfeited and no sum paid for any work done thereunder on a second conviction for willfully paying less than

(a) the stipulated wage scale as provided in Labor Law, Section 220, subdivision 3, as amended, or

(b) less than the stipulated minimum hourly wage scale as provided in Labor Law, Section 220-d, as amended.

XII. If the maximum contract price herein equals or exceeds \$20,000, the affirmative action provisions contained in this paragraph shall be applicable.

As utilized hereinafter, the following definitions shall be applicable:

Minority business enterprise (MBE): A business at least 51 percent of which is owned and controlled by minority male/female members or in the case of publicly-owned business, at least 51 percent of the stock of which is owned and controlled by minority male/female members. The minority ownership must exercise actual day-to-day management.

Minority group members: Black American, Hispanic Americans, Asian Americans, American Indians, American Eskimos, and American Aleuts.

Black (not of hispanic origin) - A person having origins in any of the black racial groups.

Hispanic - A person of Mexican, Puerto Rican, Cuban Central or South American, or other Spanish culture or origin, regardless of race.

Asian or Pacific Islander - A person having origins in any of the original peoples of the Far East, Southeast Asia, Indian subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Phillipine Islands, and Samoa.

American Indian or Alaskan Native - A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

Women's Business Enterprise (WBE): A business at least 51 percent of which is owned and controlled by female partner(s), or in the case of a publicly-owned business, at least 51 percent of the stock of which is owned and controlled by female group members. The female ownership must exercise actual day-to-day management.

White: A person with origins in any of the original peoples of Europe, North Africa, or the Middle East who is not of hispanic origin.

NYSDEC/OAA - New York State Department of Environmental Conservation/Office of Affirmative Action.

The Contractor agrees that it will make good faith efforts to subcontract at least (10% MBE and at least (5) % WBE of the total value of this contract. Failure to obtain these percentages or demonstrate positive efforts to do so may lead to withholding of payments. Within 15 days of authorization to begin work or signing of the contract, whichever occurs first, the Contractor must submit an MBE/WBE utilization plan with a detailed description of the services to be provided as well as an estimated dollar amount of each subcontract. This MBE/WBE utilization plan shall identify how the contractor proposes to achieve the MBE/WBE goals stated in the Contractor's approved MBE/WBE work plan. The Contractor's proposed utilization plan shall be submitted to the Department's MBE/WBE officer.

The NYSDEC/OAA will review and approve the utilization plan if it clearly delineates methods to achieve the required MBE/WBE goals. Failure to submit and receive NYSDEC/OAA approval of the MBE/WBE utilization plan prior to the first request for payment by the Contractor shall result in the withholding of this payment by the Department. Such withholding of payments shall not relieve the Contractor of any requirements of the contract including the completion of the project. Submission of an approvable plan shall be determined a prerequisite to invocation of the provisions of the "prompt payment" bill (L. 1984 c, 153).

Within 30 days of approval of the utilization plan by NYSDEC/OAA, the Contractor shall submit copies of signed MBE/WBE subcontracts to the Department's MBE/WBE officer. These subcontracts must include the following: actual dollar amount, job description, signature of both parties - prime and MBE/WBE, dates of execution.

Note - If the work to be done by the MBE/WBE subcontractors is not expected to commence within the first year of the project, the prime contractor may submit signed MBE/WBE subcontracts 60 days prior to the work being done. This will be allowed only if the contractor has clearly identified in the utilization plan a time schedule for work to be performed by MBE/WBE subcontractors and has secured a letter of intent signed by the respective parties.

MBE/WBE must be registered with the New York State Department of Commerce and listed with NYSDEC/OAA before they can be approved for project participation provided that out-of-State MBE/WBE's who register and meet the requirements of NYSDEC/OAA are eligible for participation in projects.

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THIS AGREEMENT, ENTERED INTO THIS 8th DAY OF January 1985, BY AND BETWEEN THE STATE OF NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION, (hereinafter referred to as the "DEPARTMENT"), acting by and through Henry G. Williams, Commissioner of the Department of Environmental Conservation (hereinafter referred to as "COMMISSIONER"), having offices at 50 Wolf Road, Albany, New York, 12233 and DAMES & MOORE having offices at 2996 Belgium Rd., hereinafter referred to as the "ENGINEER," Baldwinsville, NY 13027

WITNESSETH:

WHEREAS the DEPARTMENT is empowered by law to obtain technical and professional services; WHEREAS the performance of this service is essential to the DEPARTMENT; WHEREAS the DEPARTMENT has fully examined all its internal capabilities and has thoroughly investigated all possible alternative methods of accomplishing this project within the DEPARTMENT, and has determined that it must accomplish this work through consultant services; and WHEREAS the ENGINEER hereby represents that it is professionally capable of providing the desired technical and professional services which are the subject matter of this AGREEMENT, and is licensed to practice engineering in the State of New York;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

For the purposes of the AGREEMENT the following definitions shall apply:

- a) CONTRACTOR - The person, firm or corporation with whom the DEPARTMENT has executed an agreement to perform the remedial construction at the Hazardous Waste Site.
- b) CONTRACT DOCUMENTS - The contract, including Notice to Bidders, Bidding Information, Bid, Bid Bond, Agreement, Payment Bond, Performance Bond, Notice of Award, Notice to Proceed, Change Orders, Drawings, Specifications and Addenda.
- c) COOPERATIVE AGREEMENT - Written agreement between the New York State Department of Environmental Conservation and the United States Environmental Protection Agency concerning the investigation, design and cleanup of inactive hazardous waste sites in New York State.
- d) COSTS - An amount determined in conformance with State and Federal guidelines defined as the sum of wages, direct overhead, allocated overhead, and direct expenses.
- e) DEPARTMENT - New York State Department of Environmental Conservation

- f) DEPARTMENT'S AUTHORIZED REPRESENTATIVE - The person authorized by the COMMISSIONER to act for the DEPARTMENT in all matters related to this AGREEMENT.
- g) ENGINEER - The consulting engineer engaged to perform the work stipulated in this agreement. (See Page 1.)
- h) PRICE - The amount of money to be paid to the ENGINEER upon satisfactory completion of the work stipulated in this AGREEMENT.
- i) PROFIT (FIXED FEE) - An amount which includes that portion of the annual net earnings of the ENGINEER. Return over and above allowable billable costs.
- j) PROJECT - The work to be performed at the Kentucky Avenue Wellfield Site designated in this AGREEMENT.
- k) STATE - The State of New York.
- l) UPSET PRICE (CEILING PRICE) - The maximum total price allowed in the AGREEMENT. Any increase above this amount requires a Supplemental Agreement. (See Article 7, Item III)

ARTICLE 2 GENERAL DESCRIPTION OF WORK TO BE DONE

The DEPARTMENT agrees to retain and hereby does retain the ENGINEER to perform the services hereinafter described, and the ENGINEER agrees to furnish and perform such services upon the following described PROJECT:

The ENGINEER shall render all services and furnish all materials and equipment necessary to provide the DEPARTMENT with consulting services more specifically described in SCHEDULE 1.

ARTICLE 3 STANDARD PRACTICES AND REQUIREMENTS

The ENGINEER shall ascertain the standard practices of the DEPARTMENT prior to beginning any of the work on this PROJECT. All work required under this AGREEMENT shall be performed in accordance with these standard practices, and as set forth in SCHEDULE 1 which is attached hereto and made a part hereof. The ENGINEER shall be responsible for performing all work at the highest possible level and to conduct it professionally throughout the duration of the contract.

ARTICLE 4 DEPARTMENT APPROVAL

All services performed by the ENGINEER shall be subject to the approval of the DEPARTMENT. Such services shall be performed in a prompt manner as described in ARTICLE 3. The duly authorized representatives of the DEPARTMENT and the United States Environmental Protection Agency have the right at all times to inspect the work of the ENGINEER and the CONTRACTOR.

ARTICLE 5 MEETINGS AND CONFERENCES

The services performed by the ENGINEER shall include those necessary meetings and conferences with the DEPARTMENT and its representatives, as determined by the DEPARTMENT and more specifically set forth in SCHEDULE 1.

ARTICLE 6 CHANGE ORDERS

If the ENGINEER feels a change order to the CONTRACT DOCUMENTS is necessary, the DEPARTMENT shall be notified immediately. If the DEPARTMENT concurs, plans shall be prepared by the ENGINEER in pencil on paper, and prints thereof with outline specifications, and preliminary cost estimates, in duplicate, shall be submitted for approval to the DEPARTMENT.

ARTICLE 7 MODIFICATIONS TO PROJECT SCOPE

ITEM I- The progress of the work under this AGREEMENT shall be continuously reviewed by the ENGINEER. The ENGINEER shall notify the DEPARTMENT of the results of those reviews in writing by submittal of a monthly Cost Control Report similar to EXHIBIT E. This report shall also update the cost information in SCHEDULE 1.

ITEM II If any claims are made or any actions are brought in connection with the PROJECT by parties outside this AGREEMENT, which requires work not specified in SCHEDULE I, the ENGINEER agrees to render to the DEPARTMENT all assistance required by the COMMISSIONER.

Compensation for work performed and costs incurred in connection with such requirement shall be made based on fee schedules contained in this AGREEMENT and mutually agreed to in advance.

In all cases provided for in this AGREEMENT for the additional services above described, the COMMISSIONER's directions must be exercised by the execution of a Supplemental Agreement.

ITEM III Supplemental Agreement - If the ENGINEER is of the opinion that any work it has been directed to perform is beyond the scope of the AGREEMENT, it shall promptly notify the DEPARTMENT, in writing of this fact prior to beginning any of the extra scope work. The DEPARTMENT shall be the sole judge as to whether or not such work is in fact

beyond the scope of this AGREEMENT. In the event that the DEPARTMENT determines that such work is beyond the original scope of work, it will provide extra compensation to the ENGINEER in a fair and equitable manner. A Supplemental Agreement detailing the compensation and the authorized extra work must be issued by the DEPARTMENT and agreed to by the ENGINEER prior to receipt of payment for the extra work. Approvals will have to be obtained from other State officials and from the United States Environmental Protection Agency.

ARTICLE 8 SITE DATA

The DEPARTMENT shall furnish the ENGINEER all available site data in its possession. It is expressly understood that in soils investigation work and in determining subsurface conditions for any PROJECT, the characteristics may vary greatly between successive test points and sample intervals. The ENGINEER will coordinate the performance of this work in accordance with generally accepted soils engineering practices.

ARTICLE 9 DISPOSITION OF DOCUMENTS AND DATA

At the time of completion of the work, the ENGINEER shall deliver to the DEPARTMENT the original copies, two (2) reproducible copies plus eight (8) paper copies of all plans, drawings, specifications, computations, designs, construction data, reports, record drawings, and all other documents and data pertaining to the work of the PROJECT. Said material shall at all times be the property of the DEPARTMENT. In the event that this AGREEMENT is terminated for any reason, the ENGINEER shall deliver to the DEPARTMENT all of the aforementioned documents and data pertaining to the work on the project within ten (10) days after such termination. All sets of maps, plans, specifications and other engineering data submitted to the DEPARTMENT shall bear thereon the signature and stamp of the ENGINEER. The ENGINEER signing the above documents must be a Professional Engineer currently licensed in New York State.

The ENGINEER shall be permitted to retain copies of all material given to the DEPARTMENT for the ENGINEER's records.

ARTICLE 10 PROVISION FOR PAYMENT

The DEPARTMENT shall pay to the ENGINEER, and the ENGINEER agrees to accept as full compensation for its services under this AGREEMENT, payment as hereinafter described. The ENGINEER may vary the budgeted costs associated with Phases of the services described herein with prior approval of the DEPARTMENT; however, the total price must not exceed the upset price established by this AGREEMENT. All payments are subject to the New York State "Prompt Payment Bill" (L. 1984, c. 153). A payment request shall be deemed received when the work has been inspected and accepted by the DEPARTMENT Division of Solid & Hazardous Waste or on the Eighth day following receipt by the division of said request if no inspection has been made.

ITEM I Actual Direct Salaries - The ENGINEER shall be compensated for the services of its personnel on the basis of direct labor cost (chargeable salaries without fringe benefits) as incurred by the ENGINEER's personnel for the time such personnel are directly utilized on the work. The salaries of any personnel assigned are fixed

throughout the term of this AGREEMENT. Any proposed revisions in salaries for which the ENGINEER is to seek agreement must be approved by the DEPARTMENT in writing. Salaries shall not exceed the limitations presented in the COOPERATIVE AGREEMENT* or the limitations of the New York State Department of Audit and Control.

The ENGINEER shall keep a job cost ledger for direct labor cost as incurred by the ENGINEER's personnel for the time such personnel are directly utilized on the PROJECT, during the life of this AGREEMENT.

The costs of Principals' salaries (productive time) included in Direct Technical Salaries are eligible for reimbursement if their comparable time is also charged directly to other projects in the same manner. Otherwise, Principals' salaries are only eligible as an overhead cost, subject to the current limitations.

Actual Overtime premium portion of direct labor cost is eligible for reimbursement for non-salaried employees, provided that such employees are reimbursed for overtime.

If, within the term of the AGREEMENT stated herein, any direct salary rates are paid in excess of the maxima shown in EXHIBIT A, the excess amount shall be borne by the ENGINEER without reimbursement either as a direct cost or as part of the overhead allowance. These maxima may only be revised by an executed Supplemental Agreement.

ITEM II Actual Direct Non-Salary Costs incurred in fulfilling the terms of this AGREEMENT, all subject to audit. Such costs are limited to those shown in EXHIBIT B. All reimbursement for travel, meals and lodging shall not exceed the prevailing maximum rates established by the State Comptroller. (See Exhibit G.)

Items purchased under this PROJECT shall become the property of the DEPARTMENT at the completion of the work, or at the option of the DEPARTMENT, appropriate value shall be established as a credit to the DEPARTMENT.

ITEM III Overhead Allowance based on actual expenses during the terms of this AGREEMENT, subject to audit by the DEPARTMENT or the United States Environmental Protection Agency (USEPA).

Submitted overhead amounts will be audited based upon the Federal Procurement Regulations and State Comptroller's regulations in effect during the term of this AGREEMENT. The overhead allowances shall be established as a percentage of Item I (Actual Direct Salaries) of this ARTICLE, but limited to a maximum of 119 Percent.

Overhead allowances shall not be applied to overtime portions of direct cost or to overtime portions of subconsultant costs. For the purpose of this AGREEMENT, an accounting period shall be the

* Refers to Cooperative Agreement I.D. No. V002490-83 between the United States Environmental Protection Agency and the New York State Department of Environmental Conservation.

ENGINEER's Fiscal year. An audit of the accounting record of the ENGINEER may be made by the STATE for any accounting period during the term of this AGREEMENT. For monthly billing purposes, the latest available overhead percentage established by such audit shall be applied to the charges made under Item I of this Article to determine the charge to be made under this Item but such percentage shall not exceed 119%. For the purpose of establishing the final payment under this AGREEMENT, the actual allowable overhead percentage determined by audit for each accounting period shall be applied to that accounting period but such percentage shall not exceed 119%. Should the current STATE policy on overhead limitation change to allow an increase during the life of this AGREEMENT, then the new policy would apply to the remainder of the AGREEMENT, if authorized by the new policy. Such increase shall not be a reason for a change in the Maximum Amount Payable or the Fixed Fee.

ITEM IV Subconsultant Costs incurred in fulfilling the terms of this AGREEMENT, all subject to audit by the DEPARTMENT or the U.S. EPA, shall be reimbursed to the ENGINEER at cost. Such costs shall not exceed those shown in the subconsultant contract submitted to the DEPARTMENT as provided herein. All subconsultants performing work under this AGREEMENT are subject to all of the cost guidelines in this AGREEMENT.

ITEM V Fixed Fee - A negotiated Lump Sum fee in this AGREEMENT shall equal ~~\$34,481.00~~. This Fixed Fee is not subject to audit, and is not subject to review or modification. In no case shall the Fixed Fee exceed the total direct and overhead costs. Direct non-salary costs and subconsultant costs shall not be considered in determining the Fixed Fee unless the STATE determines that consideration of such costs is justified and advisable. A summary of the money due the ENGINEER under Item I, II, III and IV is attached and listed as EXHIBIT C.

\$ 31,988
SR

ITEM VI This AGREEMENT shall be reviewed by the ENGINEER, when 33% and 66% of the allocated project costs outlined in Exhibit E of the AGREEMENT have been expended to determine if any changes or Supplemental Agreements are warranted by the actual work performed up to the time of review.

The ENGINEER is required to submit a monthly Cost Control Report in the form of EXHIBIT E. A copy shall be submitted to the DEPARTMENT'S AUTHORIZED REPRESENTATIVE.

ITEM VII The ENGINEER specifically agrees that the AGREEMENT shall be deemed executory only to the extent of the money available, and no liability shall be incurred by the STATE beyond the moneys available for the purpose.

ITEM VIII Partial Payments - The ENGINEER shall be paid in monthly progress payments based on actual allowable costs incurred during the period in accordance with ARTICLE 4 of this AGREEMENT. Bills are subject to approval of the DEPARTMENT'S AUTHORIZED REPRESENTATIVE. A percentage

of the Fixed Fee defined in Item V of ARTICLE 10 shall be paid with each payment. The percentage to be used in calculating the payment under ARTICLE 10, Item V, shall equal the ratio of the cost expended during the billing period to the Total Estimated Cost allocated to fulfill the terms of this AGREEMENT as established herein.

Accounts of the ENGINEER shall clearly identify the costs of the work performed under this AGREEMENT and shall be subject to periodic and final audit by the STATE and the United States Environmental Protection Agency. Such audit shall not be a condition of partial payment.

The DEPARTMENT shall retain 5% from each CONSULTANT'S progress payment until completion of all work.

All payment requests must be prepared and documented in accordance with the DEPARTMENT'S Division of Solid and Hazardous Waste Policy dated January 1, 1983 included in this agreement as Exhibit F. Five (5) copies of applications with three (3) copies of supporting documentation are required.

ITEM IX Final Payment - Payment for all costs including the 5% retainage and excepting the Post Construction Inspection and Post Construction Inspection Report shall be made in an expeditious manner after acceptance by the DEPARTMENT of the Final Engineering Report. Final payment shall be made after submittal and acceptance of the final report as described in SCHEDULE I. The acceptance by the ENGINEER of the final payment shall constitute and operate as a release to the STATE for all known claims and liabilities of the ENGINEER, its representatives and assigns for any and all work done, furnished or relating to the services rendered by the ENGINEER under or in connection with this AGREEMENT or any part thereof, except as otherwise provided in ARTICLE 10, ITEM VII, herein.

The maximum amount payable under this AGREEMENT shall be \$496,741 unless an executed Supplemental Agreement indicates a change in the scope, character or complexity of the work.

The ENGINEER shall maintain all books, documents, papers, accounting records and other evidence pertaining to cost incurred and make such materials available at its office at all reasonable times during the period of this AGREEMENT and for three years from the date of Final Payment under this AGREEMENT, for inspection or audit by the DEPARTMENT, United States Environmental Protection Agency, New York State Department of Audit and Control or any other authorized representatives.

ARTICLE 11 QUALIFICATIONS FOR DUTIES, COMPLIANCES AND PERMITS

The ENGINEER specifically agrees that (a) its subcontractors, agents or employees shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform, (b) it will comply with the provisions of the Labor Law and all State laws and federal and local statutes, ordinances and regulations that are applicable to the performance of the Agreement, and (c) it will procure all necessary licenses and permits.

ARTICLE 12 LIABILITY

ITEM I The ENGINEER shall be responsible for all damage to life and property due to negligent activities of the ENGINEER, its subcontractors, agents or employees, in connection with its services under this AGREEMENT. The ENGINEER specifically agrees that its subcontractors, agents or employees shall possess the experience, and knowledge necessary to qualify them individually for the particular duties they perform. Moreover, the ENGINEER shall indemnify and save harmless the DEPARTMENT and the STATE OF NEW YORK from and against all losses and all claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recovered against it by reason of any negligent omission or negligent act of the ENGINEER, its agents, employees, or subcontractors in the execution of this AGREEMENT.

Negligent performance of service, within the meaning of this ARTICLE, shall include, in addition to negligence founded upon tort, negligence based upon ENGINEER's failure to meet professional standards and resulting in obvious or patent errors in the progression of his work. The ENGINEER shall have in force professional liability insurance in the amount of \$1,000,000 for the duration of the project. ✓

ITEM II Nothing in this ARTICLE or in this AGREEMENT shall create or give to third parties any claim or right of action against the ENGINEER or the DEPARTMENT beyond such as may legally exist irrespective of this ARTICLE or this AGREEMENT.

ARTICLE 13 WORKERS' COMPENSATION AND LIABILITY INSURANCE

The ENGINEER agrees to procure and maintain at its own expense and without direct expense to the DEPARTMENT until final acceptance by the DEPARTMENT of the services covered by this AGREEMENT, insurance of the kinds and in the amounts hereinafter provided by insurance companies acceptable to the DEPARTMENT and authorized to do business in the State of New York, covering all operations under this AGREEMENT whether performed by it or its subcontractors. Before commencing work, the ENGINEER shall furnish to the DEPARTMENT, a certificate or certificates, in a form satisfactory to the DEPARTMENT, showing that it has complied with this ARTICLE, which certificate or certificates shall provide that the policies shall not be

changed or cancelled until thirty (30) days' written notice has been given to the DEPARTMENT.

The ENGINEER shall obtain and maintain in full force and effect the types and amounts of insurance listed below:

- a) Policy covering the obligations of the ENGINEER in accordance with the provisions of the Workers' Compensation Law for any employees rendering services within the State of New York, and this AGREEMENT shall be void and of no effect unless the ENGINEER procures such policy and maintains it until acceptance of the work;
- b) Policies of bodily injury liability and property damage liability insurance of the types hereinafter specified, each with limits of liability of not less than for all damages arising out of bodily injury, including death at any time resulting therefrom, sustained by one person in any one accident and, subject to that limit for each person, not less than \$5,000,000 for all damages arising out of bodily injury, including death at any time resulting therefrom, sustained by two or more persons in any one accident, and not less than for all damages arising out of injury to or destruction of property during the policy period.
 - 1) Liability insurance issued to and covering the liability of the ENGINEER with respect to all work performed by it under this AGREEMENT;
 - 2) Liability insurance issued to and covering the liability of each of the ENGINEER's subcontractors with respect to all work performed by said subcontractors under this AGREEMENT;
 - 3) Protective general liability insurance issued to and covering the liability of the ENGINEER with respect to all work under this AGREEMENT performed for the ENGINEER by its subcontractors;
 - 4) Protective general liability insurance for the benefit of the People of the State of New York, and all officers and employees of the DEPARTMENT, both officially and personally with respect to all operations under this AGREEMENT by the ENGINEER or by its subcontractors.
 - 5) The DEPARTMENT shall be named as "additional insured" in all insurance policies.

ARTICLE 14 POSTPONEMENT, ABANDONMENT, SUSPENSION AND TERMINATION

The DEPARTMENT shall have the right to postpone, suspend, abandon or terminate this AGREEMENT, and such actions shall in no event be deemed a breach of contract. In any of these events, the DEPARTMENT shall make

settlement with the ENGINEER upon an equitable basis as determined by the DEPARTMENT, which shall fix the value of the work performed by the ENGINEER prior to the postponement, suspension, abandonment or termination of the AGREEMENT. In determining the value of the work performed, the DEPARTMENT shall consider the following:

- a) The ratio of the amount of work performed by the ENGINEER prior to the termination of the AGREEMENT to the total amount of work contemplated by this AGREEMENT;
- b) The amount of the expense to which the ENGINEER was put in performing the work prior to the termination, in proportion to the amount of expense to which the ENGINEER would have been put had he been allowed to complete the total work contemplated by this AGREEMENT;
- c) The actual cost incurred by the ENGINEER as verified by audit acceptable to the DEPARTMENT plus a portion of the fixed fee equal to the percent of work completed.
- d) The DEPARTMENT shall not be liable for extra costs associated with delays in the PROJECT which are directly attributed to any illegal or unethical actions(s) by the ENGINEER.

In determining the value of the work performed by the ENGINEER prior to termination, no consideration will be given to profit which the ENGINEER might have made on the uncompleted portion of the work. If the termination is brought about as a result of unsatisfactory performance on the part of the ENGINEER, the value of the work performed by the ENGINEER prior to the termination shall be fixed solely on the ratio of the cost of such work to the total costs contemplated by this AGREEMENT.

ARTICLE 15 DEATH OR DISABILITY

In case of the death or disability of one or more but not all persons herein referred to as ENGINEER, the rights and duties of the ENGINEER shall be transferred to the survivor or survivors of them, who shall be obligated to perform the services required under this AGREEMENT, and the DEPARTMENT shall make all payments due to him or them.

In the case of death or disability of all the persons herein referred to as ENGINEER, all data and records pertaining to the project shall be delivered within sixty (60) days to the DEPARTMENT'S AUTHORIZED REPRESENTATIVE. In case of the failure of the ENGINEER's successors or personal representatives to make such delivery on demand, then and in that event, the representatives of the ENGINEER shall be liable to the DEPARTMENT for any damage it may sustain by reason thereof. Upon the delivery of all such data to the DEPARTMENT, the DEPARTMENT will pay to the representatives of the ENGINEER all amounts due to the ENGINEER, including those to the date of the death of the last partner.

ARTICLE 16 STATE FINANCE AND LABOR LAWS

The ENGINEER agrees to comply with the provisions of the New York State Finance and Labor Laws and all other State laws and federal and local statutes, ordinances and regulations that are applicable to the performance of the AGREEMENT.

ARTICLE 17 REMOVAL OF PERSONNEL

All personnel assigned to the PROJECT by the ENGINEER, shall be subject to the approval of the DEPARTMENT and required to be cooperative with the personnel assigned to the PROJECT by the DEPARTMENT, and in the event the ENGINEER'S personnel fail to perform their assigned tasks in a reasonable manner or so to cooperate, the ENGINEER shall relieve them of their duties on the PROJECT when required by the DEPARTMENT.

ARTICLE 18 SUBCONSULTANT CONTRACT

All work to be performed under this AGREEMENT shall be performed with the ENGINEER'S own employees, except that the ENGINEER may be permitted to sublet any areas of services to be performed, provided that the qualifications of the subconsultant have been approved by the DEPARTMENT prior to performance of any work. A copy of the proposed agreement between the ENGINEER and the subconsultant shall be submitted to the DEPARTMENT along with the presentation of the subconsultant's qualifications.

All subconsultants performing work under this AGREEMENT are subject to all provisions of this AGREEMENT.

The amount of work to be performed by subconsultants in this Contract is limited to 50% of the total cost of the PROJECT, unless the DEPARTMENT gives explicit approval to exceed this limit.

ARTICLE 19 ADDRESS FOR NOTICES

It is understood and agreed between the parties that the DEPARTMENT'S AUTHORIZED REPRESENTATIVE for the implementation of this AGREEMENT, or for approval and direction called for therein, shall be Mr. Norman H. Nosenchuck, P.E., Director of the Division of Solid and Hazardous Waste or his designee. Whenever it is provided in this AGREEMENT that notice shall be given or other communications sent to the DEPARTMENT or ENGINEER, such notices or communications shall be delivered or sent to:

STATE

New York State Department of Environmental Conservation
Division of Solid and Hazardous Waste
Room 207
50 Wolf Road
Albany, New York 12233

Attention: Mr. Norman H. Nosenchuck, P.E., Director

ENGINEER

Arthur M. Seanor
Attention: Dames & Moore
2996 Belgium Rd., Baldwinsville, NY 13027

Notices so delivered or sent shall be deemed for all purposes notice to all persons who are parties to this AGREEMENT as DEPARTMENT or ENGINEER.

ARTICLE 20 INDEPENDENT CONTRACTOR

The ENGINEER, in accordance with its status as an independent contractor, covenants and agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the DEPARTMENT by reason hereof, and that it will not, by reason hereof, make against the Department, any claim, demand or application to or for any right or privilege applicable to an officer or employee of the DEPARTMENT, including but not limited to workers' compensation coverage, unemployment insurance benefits, Social Security coverage, or retirement membership or credit.

ARTICLE 21 EMPLOYMENT OF DEPARTMENT PERSONNEL

This AGREEMENT may be cancelled or terminated by the DEPARTMENT, and all monies due, or to become due hereunder may be forfeited if the ENGINEER shall knowingly employ either directly or indirectly, in any capacity, any person who at the time of such employment is also an employee of the DEPARTMENT.

ARTICLE 22 ADDITIONAL STATE REQUIREMENTS

A summary of certain STATE terms and conditions which may apply to this AGREEMENT are contained in SCHEDULE 2, attached hereto and incorporated herein and made a part hereof.

ARTICLE 23 FEDERAL REQUIREMENTS

Both parties to this AGREEMENT agree to comply with all applicable federal law, rules, regulations, and the COOPERATIVE AGREEMENT. A summary of certain federal rules and regulations which apply to this AGREEMENT is contained in SCHEDULE 3, attached hereto and incorporated herein and made a part hereof.

This AGREEMENT directly incorporates Sub-parts A through G of Title 40 CFR Part 33 of the Federal Rules and Regulations dated Monday, March 28, 1983.

ARTICLE 24 COVENANT AGAINST CONTINGENT FEES

The ENGINEER warrants that it has not employed or retained any company or person, other than a bona fide employee working for the ENGINEER, to solicit or secure this AGREEMENT, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this AGREEMENT. For breach or violation of this warranty, the STATE shall have the right to annul this AGREEMENT without liability, or, at its discretion, to deduct from the AGREEMENT price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

ARTICLE 25 PROPRIETARY RIGHTS

The ENGINEER agrees that if patentable discoveries or inventions should result from work described herein, such inventions or discoveries shall be disclosed promptly to the Department and USEPA pursuant to federal grant regulations. The ENGINEER agrees that if it is authorized to patent such inventions or discoveries, it will and does hereby grant to the United States Government and the State of New York a nonexclusive, nontransferable, paid-up license to make, use, and sell each subject invention throughout the world by and on behalf of the Government of the United States and State and domestic governments, all in accordance with the provisions of 41 CFR 1-9.107-5(b).

ARTICLE 26 RESPONSIBILITIES OF THE DEPARTMENT

The DEPARTMENT, without cost to the ENGINEER shall:

- a) Provide full information as to its requirements for the PROJECT.
- b) Assist ENGINEER by placing at its disposal all available information pertinent to the PROJECT including previous reports and any other data relative to construction of the PROJECT.
- c) Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform its services.
- d) Examine all studies, reports, sketches, drawings, specifications, proposals, and other documents presented by the ENGINEER, obtain advice of an attorney, insurance counselor and other consultants as the DEPARTMENT deems appropriate for such examination, and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of ENGINEER.

- e) Provide such legal, accounting, insurance and other counseling services as may be required for the PROJECT, and such auditing service as the DEPARTMENT may require to ascertain how or for what purpose any CONTRACTOR has used the money paid to it under the construction contract, and such inspection services as the DEPARTMENT may require to ascertain that CONTRACTOR(s) is/are complying with any law, rule or regulation applicable to their performance of the work.
- f) Designate in writing any change in the person to act as the DEPARTMENT'S AUTHORIZED REPRESENTATIVE with respect to the work to be performed under this AGREEMENT. Such person shall have complete authority to transmit instructions, receive information, interpret and define the DEPARTMENT'S policies and decisions with respect to materials, equipment, elements and systems pertinent to ENGINEER'S services.
- g) Give prompt written notice to ENGINEER whenever the DEPARTMENT observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER'S services, or any defect in the work of Contractor(s).

ARTICLE 27. EXEMPTION OF SALES AND COMPENSATING USE TAXES

The DEPARTMENT is exempt from payment of sales and compensating use taxes of the State of New York and of cities and counties on all materials to be incorporated into the work.

The DEPARTMENT will furnish the required certificates of tax exemption to the CONSULTANT for use in the purchase of supplies and materials to be incorporated into the work.

The DEPARTMENT'S exemption does not apply to construction tools, machinery, equipment or other property purchased by or leased by the CONSULTANT or to supplies or materials not incorporated into the work. The CONSULTANT shall be responsible for and shall pay any and all applicable taxes, including sales and compensating use taxes, on such tools, machinery, equipment or other property, or such supplies and materials not incorporated into the work.

ARTICLE 28 TIME OF COMPLETION

It is presently estimated that the work described in SCHEDULE I of this AGREEMENT will be completed and the final report submitted within 56 weeks of the official notice to proceed. ✓

ARTICLE 29 OPTION TO MODIFY THE LEVEL OF EFFORT WITHIN THE BASE PERIOD OF THE CONTRACT

At the option of the DEPARTMENT, the level of effort as specified in SCHEDULE 1 may be modified during the base period of the contract. The adjusted level of effort may be unilaterally ordered by the DEPARTMENT provided it gives preliminary notice of its intention to exercise an option at least thirty (30) days prior to the exercise of such option. (Such a preliminary notice will not be deemed as committing the DEPARTMENT to exercise an option.) If the option to increase is exercised, the increased level of effort will be negotiated prior to commencement of any such increase in the level of effort. Payment for any negotiated level of effort increase shall be made at the rates included in SCHEDULE 1.

ARTICLE 30 OPTION TO EXTEND THE TERM OF THE CONTRACT

- A. At the option of the DEPARTMENT, this contract may be extended for two one-year periods by giving written notice of extension to the ENGINEER prior to the expiration date of this contract; provided, that such notice shall have no effect if given less than sixty (60) days before this contract is to expire. (Such a preliminary notice will not be deemed to commit the DEPARTMENT to renewals.) If the DEPARTMENT exercises such options, the contract as extended shall be deemed to include this option provision; provided, however, that the total duration of this contract, including the exercise of any options under this article, shall not exceed thirty-six (36) months.
- B. If the first and/or second option period is exercised in accordance with Paragraph A of this Article, the ENGINEER shall continue the effort described in SCHEDULE 1 during the twelve (12) month period immediately following that set forth in ARTICLE 28. The parties hereto agree that upon issuance of the order exercising this option, the following modifications will be made to the contract schedule, in effect as of the date that such issuance is made:
- i) The time of completion specified in ARTICLE 28 will be increased by the period specified therein.
 - ii) The ENGINEER'S compensation for the extended contract will be negotiated at the time of extension and prior to the commencement of work under the extended contract.

ARTICLE 31 CONFIDENTIALITY

The CONTRACTOR agrees that any and all data, analyses materials or other information, oral, or written, made available to the CONTRACTOR with respect to this AGREEMENT, and any and all data, analyses, materials, reports or other information, oral or written, prepared by the CONTRACTOR with respect to this AGREEMENT shall, except for information which has been

or is publicly available, be treated as confidential, and shall not be utilized, released, published or disclosed by the CONTRACTOR at any time for any purpose whatsoever other than to provide consultation or other services to the New York State Department of Environmental Conservation or the New York State Department of Law.

ARTICLE 32 CONFLICT OF INTEREST

The CONTRACTOR hereby agrees to report to the DEPARTMENT prior to the start of work, any known potential conflicts of interest resulting from work performed within New York State in the past for any party(ies) which are known to be partially or wholly responsible for deposition of hazardous waste at sites where cleanup work is performed under this AGREEMENT. The DEPARTMENT will then advise on whether or not it believes a conflict of interest does exist. In the event that a conflict of interest is deemed to exist, the DEPARTMENT has the option to amend the AGREEMENT.

The CONTRACTOR also hereby agrees that in the event that a known potential conflict of interest becomes apparent at any of the hazardous waste sites during the course of the work, the CONTRACTOR will immediately notify the DEPARTMENT and at the DEPARTMENT'S option the AGREEMENT may be amended.

ARTICLE 33 ANALYTICAL LABORATORY SERVICES

The analytical laboratory contracted to perform chemical analysis must be acceptable to the DEPARTMENT and the United States Environmental Protection Agency. In the event that the laboratory fails to meet the proficiency requirements established by the DEPARTMENT at any time during the term of this contract, the DEPARTMENT reserves the right to require replacement with an acceptable laboratory at no additional expense to the DEPARTMENT.

IN WITNESS WHEREOF, this AGREEMENT has been executed by the DEPARTMENT, acting by and through the COMMISSIONER, and by the ENGINEER on the day and year first above written.

Recommended by

Norman H. Nosenchuck
Norman H. Nosenchuck, P.E.
Director, Division of Solid and Hazardous Waste

THE NEW YORK STATE DEPARTMENT
OF ENVIRONMENTAL CONSERVATION

BY *Richard Torkelson*
Richard Torkelson
Deputy Commissioner

APPROVED AS TO FORM BY
Approved as to form NEW YORK STATE
ATTORNEY GENERAL

DATE FEB 12 1985 APPROVED _____ 19__

Attorney General _____
Sr. Attorney _____

BY *Met R. Murray Joseph Conah* **MAR 20 1985**
Assistant _____

State Comptroller
Under Section 112, Finance Law

(Acknowledgment by Contractor if an individual)

STATE OF NEW YORK)
) SS: _____
) Authorized Signature

COUNTY OF _____

On this _____ day of _____ 19 __, before me personally came _____ to me known and known to me to be the person described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

NOTARY PUBLIC

(Acknowledgment by Contractor, if a Partnership)

STATE OF NEW YORK)

Arthur M. Seanor
Arthur M. Seanor for
SS: DAMES & MOORE
2996 Belgium Rd.
Baldwinsville, NY 13027

COUNTY OF ONONDAGA

On this 8th day of JANUARY 19 85, before me personally came ARTHUR M. SEANOR to me known and known to me to be the person who executed the above instrument, who, being duly sworn by me, did for himself depose and say that he is a member of the firm of DAMES & MOORE, consisting of himself and eighty-nine partners and that he executed the foregoing instrument in the firm name of DAMES & MOORE and that he had authority to sign same, and he did duly acknowledge to me that he executed the same as the act and deed of said firm of DAMES & MOORE for uses and purposes mentioned therein.

Pat Johnston
NOTARY PUBLIC

PATRICK JOHNSTON
NOTARY PUBLIC, State of New York
No. 4646098Qual. in Onondaga Co.
Commission Expires March 30, 1985

(Acknowledgment by Contractor, if a Corporation)

STATE OF NEW YORK)

) SS:

COUNTY OF

On this _____ day of _____ 19 ____, before me personally came _____ to me known, being duly sworn, did depose and say that he resides in _____, that he is the _____ of the _____, the corporation described in and which executed the foregoing instrument; that he knew the seal of said corporation, that the seal affixed to said instrument was such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation and that he signed his name thereto by like order.

NOTARY PUBLIC

SCHEDULE 1

SCOPE AND COSTS OF ENGINEERING SERVICES

TO BE PROVIDED

FOR

Kentucky Avenue Wellfield Site
Remedial Investigation and
Feasibility Study

Town of Horseheads, New York

New York State Department of
Environmental Conservation

INTRODUCTION

This section describes the approach to the Kentucky Avenue Well Field Remedial Investigation and Feasibility Study as requested in the RFP. This approach was prepared based upon an understanding of the project and project objectives and based upon the current understanding of the subsurface conditions in the study area. Three areas requiring investigation have been identified. These are: 1) Hydrogeology, 2) Source Identification, and 3) Remedial Alternative Evaluation and Preliminary Engineering Design.

The above study areas were combined into two discrete tasks with each task being subdivided as follows:

Task I Remedial Investigation

- Task I-A Hydrogeologic Investigation
- Task I-B Numerical Simulation Groundwater Flow Systems
- Task I-C Assessment of Contamination on the Environment
- Task I-D Identification of Contamination Sources and Migration Pathways
- Task I-E Focused Feasibility Study
- Task I-F Remedial Investigation Report
- Task I-G Southern Perimeter Wells (Optional)

Task II Feasibility Study

- Task II-A Characterize Contaminated Groundwater, Surface Water and Soils
- Task II-B Identify Potential Hazards Requiring Remedial Action
- Task II-C Define Corrective Action Strategies
- Task II-D Identify Remedial Action Alternatives
- Task II-E Conduct Bench-Scale Treatability Investigations
- Task II-F Detailed Analysis of Remedial Action Alternatives
- Task II-G Prepare Feasibility Reports
- Task II-H Review Report with NYSDEC
- Task II-I Final Remedial Investigation Report

Each task and subtask has a specific purpose which relates back to the overall goals of the project. The technical approach permits the feasibility studies and field investigation studies to be performed concurrently as data from each study area is input into a central decision-making group. A computerized data management system will be used to optimize interdisciplinary coordination. Prior to initiating the field activities described below, a detailed work plan will be prepared for review with NYSDEC.

TASK I REMEDIAL INVESTIGATION

This remedial investigation is being proposed to provide the necessary detailed information for the selection and design of a plan to remediate the contamination problem of the Kentucky Avenue Wellfield and the Newtown Creek aquifer. The

investigation consists of several subtasks which are interrelated and may be performed concurrently. Each of the subtasks are further discussed below.

Task I-A Hydrogeologic Investigation

The hydrogeologic investigation will be conducted as a multistep effort with the following objectives:

1. A thorough understanding of the subsurface geology.
2. A detailed understanding of surface and subsurface hydrologic regime.
3. A definition of aquifer hydraulic characteristics.
4. An analysis of groundwater and surface water chemistry.
5. An understanding of the movement of contaminants through the subsurface.

The hydrogeologic field investigation was designed to accomplish the following:

1. To provide estimates of the aquifer geometry and hydraulic properties necessary for the calibration of a groundwater flow computer model. These properties include:
 - a) Delineation of the geologic units making up the aquifer.
 - b) The effective aquifer thickness and base geometry.
 - c) Transmissivity, porosity and specific yield.
 - d) Adsorption coefficients for the contaminants in the subsurface environment.
2. To confirm the lateral extent and nature of the contaminant plume.
3. To delineate the vertical profile of contaminant migration.

Prior to beginning the field investigation, a thorough literature search will be performed to compile available information regarding the geology, hydrology, and waste disposal history of the area. In addition, aerial photographs will be examined to assess surface activities and drainage characteristics.

The geological results of the investigation will be presented as top-of-unit and isopach maps. Of special interest will be the lateral extent of the "lacustrine silt and clay" unit, as noted by Miller, 1982. A low permeability unit such as the "lsc" could significantly affect the movement of groundwater and contaminants through the site subsurface.

Task I-A-1 Geophysical Surveys

On the basis of the Remedial Action Master Plan and the results of a detailed literature search, selected possible contaminant sources will be identified. At these potential source sites, and in selected regions outside these sites, geophysical surveys will

be performed to provide additional information regarding:

1. Site stratigraphy, including depth and volume of waste material.
2. Existence of contaminant plumes.
3. Information related to subsurface stratigraphy including depths to units.
4. Selection of locations for placement of both regional and source site wells.

The geophysical techniques proposed include:

- a) Electromagnetic (EM) Studies conducted with the disposal of organic chemicals generally have revealed the presence of relatively large numbers of free ions. By tracing the intensity of the conductive nature of these ions (and other metal ions), the aerial extent of contamination may be evaluated and the plume traced back to its source.
- b) Resistivity surveys will provide additional information regarding lateral and vertical distribution of contaminants, based on their electrical characteristics. In addition, vertical "electrogeologic" cross sections can be prepared from the survey measurement, which would help define the subsurface geologic units.

Based on the present understanding of waste disposal practices in the study area, the geophysical survey will be concentrated on the area north of the Kentucky Avenue well, in the vicinity of the municipal landfill (see Figure 1-1). Surveys in other areas may be required. The geophysical surveys will be performed over an area of approximately two square miles.

Task I-A-2 Surface Water and Sediment Sampling

Surface water and stream/lake sediment and stream/lake infiltration water will be sampled and analyzed for contamination at the locations indicated on Figure 1-1. The purpose of this sampling effort is to 1) identify possible sources of contamination at, or upgradient of, the sampling points; 2) define the occurrence and extent of contamination for environmental and health reasons; and 3) provide information for remediation programs.

Two surface water samples will be taken; one from a point upstream from the suspected contamination source; and one from a point downstream along Newtown Creek. The surface water samples will be collected by submerging the sampling bottles immediately below the water surface. Sediment samples will be collected from the water/sediment interface using a stainless steel scoop. Ten sediment samples are proposed for analysis. Infiltration water samples will be collected using seepage meters installed at eight

locations along the stream/lake. During the course of each sampling event, two types of trip blanks will be taken to check for proper sample preparation and handling, and to evaluate the atmospheric contamination of the samples.

The water and sediment samples collected during this sampling effort will be analyzed for the same indicator parameters as in the regional sampling wells (Task I-A-3). If indicator analyses indicate extensive surface water and sediment contamination, an additional set of surface water or infiltration water samples will be collected as necessary for complete priority pollutant analysis. For budgetary purposes, assume two water samples will be analyzed for a complete priority pollutant scan.

In conjunction with the installation of the seepage meters, piezometers will be installed along the stream to measure the piezometric elevation of the aquifer underneath the stream. All piezometers will be surveyed to enable the piezometric elevations established along the stream to be incorporated into the preparation of piezometric surface maps from the monitoring wells.

Information from these analyses will be input into the computer model (Task I-B).

Task I-A-3 Installation and Sampling of Regional Cluster Wells

Five cluster wells will be installed in the Horseheads, NY area in order to define the regional hydrogeology of the area. The stratigraphic and hydrologic information derived from these borings will be used to:

1. Characterize regional geology and groundwater flow patterns.
2. Calibrate the TARGET groundwater model.
3. Evaluate the potential of each EPA identified source site to contribute to the contamination of the well fields.
4. Provide sampling wells for groundwater chemistry analysis.

The locations of the five proposed regional cluster wells (as shown on Figure 1-1) were chosen to provide information regarding the function of two major valleys in the area. Cluster wells CW-1 and CW-2 are planned to be upgradient wells. Cluster wells CW-3 and CW-4 are inside the intended study area and may show detectable contaminant levels. Cluster well CW-5 is the furthest downgradient well and may define the edge of the contaminant plume. Based on the present understanding of area geology, it is anticipated that each cluster will consist of two wells, with maximum depths of 100 feet. Screened intervals for the cluster wells will be decided on the basis of the visual classification of the soils. In general, the most coarse-grained unit(s) will be screened. Soil samples taken during the drilling of these wells will be stored in air-tight containers for future chemical

analyses, if needed. In addition, representative samples will be geotechnically analyzed to provide grain-size and mineralogic information about the subsurface lithologic units.

In each borehole selected for a well, a two-inch monitoring well will be installed. The well will consist of two-inch stainless steel Johnson screen and riser pipe. A sand pack will be installed around the well screen to filter fines from the formation, and the well will be fully developed prior to sampling. A six to eight inch protective surface casing will be installed at the surface with a locking cap to secure the wells.

Following the installation of the regional wells, groundwater samples will be collected from each well for analyses. The well storage water will first be evacuated with a submersible pump or air lift system whereby the air is not permitted to come in direct contact with the aquifer. The groundwater samples will be collected using a positive displacement sampling device made entirely from stainless steel and teflon. This procedure will permit the collection of a sample that is more representative of the aquifer water and to limit the possibility of degassing and volatilization. The sampling equipment will be cleaned between wells by hexane, methanol, and distilled water rinses. A quantity of each of these will be pumped through the pump and teflon tubing.

As a part of the ongoing QA program, wash blanks, consisting of distilled deionized water from the discharge of the pump following cleaning will be taken between selected wells to monitor the effectiveness of the cleaning procedures. Two types of trip blanks will also be taken. The first type consists of a sample bottle filled with distilled, deionized water at the laboratory and will remain capped and accompany the samples at all times. The second type, an atmospheric trip blank, will consist of a sample bottle filled with distilled, deionized water, opened to the atmosphere and set aside during the sampling of the wells. The purpose of these trip blanks is to ensure that proper sample bottle preparation and handling techniques have been employed and to evaluate the potential for atmospheric contamination, respectively.

The groundwater samples and all blanks collected from this sampling effort will be analyzed for indicator parameters. For budgetary purposes, assume fifteen samples will be analyzed for pH, specific conductivity, fluoride, total organic carbon, the interim drinking water metals, and EPA Method 601-602 organic compounds including: TCE, benzene, toluene, chloroform, and other organic compounds.

Based on initial well sampling analytical results an additional set of groundwater samples will be collected at selected wells as necessary for complete priority pollutant (GC/MS organics and metals excluding asbestos) analyses. For budgetary purposes, assume three samples will be analyzed for a complete priority pollutant scan.

Permeability of the soil at each well will be assessed by means of in situ variable head permeability tests. These tests will provide an indication of the local permeability of the soils. General aquifer characteristics (Transmissivity and storativity) should be available in the literature of past studies. Well elevations will be determined by a survey, to enable groundwater elevation maps to be prepared.

Chemical and hydrogeological information from this task will be input into the TARGET computer model (Task I-B) from which an analysis of groundwater flow characteristics will be made.

Task I-A-4 Field Installations at Potential Source Sites

Based on the results of the geophysical surveys, the computer modelling, and the results of the samples collected from the regional wells, locations for additional borings and well installations will be chosen. Borings will be placed wherever specific hydrogeological or chemical information about a potential source site is required. In selected borings, single or cluster wells will be installed and groundwater samples will be taken in order to identify and quantify the release of contaminants from the site. The procedure for well installation and sampling will be the same as described in Task I-A-3.

The present understanding of the source sites would suggest the placement of seven wells north, northwest, and northeast and southeast of the Kentucky Avenue well field (see Figure 1-1). These wells may be single or cluster wells, depending on the sequence of geologic units encountered during drilling. It is anticipated that the maximum depths of the wells will be 70 feet. For budgetary purposes, assume that seven two-well clusters will be installed. During the placement of well screens, emphasis will be placed on investigating the contaminated aquifer(s). This task will also provide additional hydrogeological and chemical information to the computer model and will verify or exonerate potential source sites as contributors to the contamination of the well field. The data gathered will also aid in understanding the physical dimensions of the contaminant plume. Assume that 15 samples will be analyzed for the indicator parameters.

Task I-B Computer Simulation of Groundwater Flow Systems

To provide a better understanding of the hydrogeologic flow characteristics of the aquifer systems, we will use Dames & Moore's computer model TARGET to simulate the groundwater flow system. TARGET, an acronym for Transient Analyzer of Reactive Groundwater Effluent Transport, is a finite difference model capable of modelling transient groundwater flow and contaminant transport. Both 2-dimensional and 3-dimensional versions are available to model the movement of contaminants laterally and vertically through the subsurface.

Task I-B-1 Selection of Groundwater Model

The model will be accessible to the project staff through remote terminals and will be used for design of sampling programs, testing of hypotheses and evaluation of remedial alternatives. The model provides a variety of graphical and tabular displays which can be used as decision making tools. The model version and grid will be selected in this task to establish a base model ready to accept field data for calibration.

Task I-B-2 Calibration and Application of Groundwater Model

The model can be calibrated using the real data obtained from both the current and past field studies. This calibration process will be ongoing in that data will be incrementally expanded. The model will then be used by various members of the project team as a predictive tool to evaluate the extent of the contamination in the aquifer and the change in contaminant mass transport characteristics with time. More specific applications of the model include the following:

Hydrology

- o Parameter studies to fit aquifer properties and measured aquifer behavior
- o Selection of optimal sampling locations
- o Simulation of long-term aquifer behavior under different stress regimes
- o Analysis of aquifer/surface water interaction

Source/Pathway Identification

- o Testing of source hypotheses derived from imprecise historical data
- o Selection of target areas for intensive field examination

Conceptual Design

- o Optimal selection of equipment, dimensions, etc.
- o Predictions of positive impact and time frames for these
- o Testing of remedial designs against "worst case" probabalistic meteorologic/recharge data

The D&M TARGET model has been successfully used to evaluate the migration potential and remedial alternatives of a volatile, heavy hydrocarbon spill.

Task I-C Assessment of Contamination on the Environment

The objective of this task is to assess the impact on receptors resulting from contamination, both under present and future conditions. This evaluation will include impact on: 1) groundwater drinking water supplies, and 2) surface water quality. The performance of this assessment is highly dependent

on an accurate identification of contaminant sources, contaminant characteristics, migration pathways, all potential receptors and an understanding of feasible remedial alternatives as evaluated in Task II. Hence, successful completion of this task requires close interaction of the three task teams.

Task I-C-1 Impact Under Present Conditions

Following identification of the type and extent of contamination in the groundwater under Tasks I-A and I-B, a comparison of contaminant concentrations with drinking water requirements and surface water uses for Newton Creek will be prepared. An assessment of the impact of identified concentrations of contaminants (i.e., TCE) on human health will be conducted. The results of this analysis will be applicable to municipal drinking water supplies, private well drinking water supplies, general groundwater quality, surface water quality (general use) and surface water drinking supplies. If necessary, the impact on aquatic and terrestrial ecology will be assessed.

Task I-C-2 Impact Under Proposed Remedial Alternatives

Following identification of potential contaminant sources (Task I-D) and potential remedial alternatives (Task II-D), an assessment of the impact of various remediation alternatives will be made on contaminant concentrations in groundwater and surface water supplies. The groundwater model developed under Task I-B will be utilized to simulate future aquifer flow characteristics and the fate of specific contaminants in the groundwater and surface water. The fate of specific contaminants, such as TCE, will vary depending on the solubility, mobility and degradation potential for the contaminant in both groundwater and surface water. Once a prediction of future contaminant concentrations is made with and without various remedial alternatives, a comparison with drinking water requirements and surface water quality uses can be performed. This analysis will provide a basis for final evaluation of the remedial alternatives. This prediction will also be used to establish a long-range monitoring program to evaluate the effectiveness of the selected remedial plan.

Task I-D Identification of Contamination Sources and Migration Pathways

The objective of this task is to identify pollutant sources and pathways in order to develop remedial alternatives that will assure that contamination has been discontinued. Information collected during this task will be integrated with the geophysical, geologic and hydrogeologic investigations. The activities of each task will be closely coordinated to ensure proper definition of the contaminant sources, pathways of migration and the extent of contamination. The following subtasks describe our approach to accomplishing this objective.

Task I-D-1 Develop List of Potential Sources

The list of 20 sites identified as potential sources of aquifer contamination by information from USEPA and NYSDEC will be the initial starting point of this investigation. The existing information will be reviewed to determine if this list should be expanded. Other potential sources might include leaky sewer lines or previous spills that may have occurred in the area. Information concerning other potential sources will be obtained from interviews with local residents and contacts with the local newspaper, fire department, public utility, freight lines and the railroads. If other potential sites are found, they will be noted to NYSDEC and added to the list of sites for further evaluation, if requested.

Task I-D-2 Review Waste Management History of Potential Sites

A review of past waste management practices will be conducted for each potential source identified in Task I-D-1. This review will be performed by a team of environmental and chemical engineers familiar with industrial operations and waste management practices. There is a substantial amount of existing data on 20 sites that have been identified. This data will be reviewed and a detailed summary written for each site. The summary will include all known data concerning waste characteristics, period of operation, method of operation and size. Any missing data or suspected information will be identified. This activity will be closely coordinated with the field investigation tasks.

Task I-D-3 Select Sites for Field Investigations

The information from Task I-D-2 will be evaluated with that from Tasks I-A and I-B to determine what additional information is required to further assess the candidate sources. The highest priority sites will be selected based on this information and further testing will be performed at the high priority sites. The field investigations will be designed to confirm the existence of any contamination if it exists at the site. Either limited testing or no testing will be performed at the low priority sites. Task I-A-4 defines the additional borings and/or wells which may be installed. Assume that the D&M/ES teams will collect twenty soil/waste samples for indicator parameter analyses as defined in Task I-A-3.

Task I-D-4 Identify Potential Pathways of Migration

The information collected from this task and the geologic and hydrogeologic study will be used to examine potential contaminant pathways (i.e., groundwater, surface water, soil, air) for each candidate source. The hydrogeologic model will be used to simulate contaminant migration from suspected sources. These simulations will then be compared with actual measurements. This investigation will identify the most likely source(s) and pathways for present and future contaminant migration.

Task I-E Focused Feasibility Study

The purpose of the Focused Feasibility Study is to evaluate initial remedial measures, as defined in the National Oil and Hazardous Substances Contingency Plan (NCP), in order to address immediate public health or safety issues. The specific issues to be considered in this project by the Focused Feasibility Study are:

- o treatment of water at the Kentucky Avenue Well,
- o treatment of private homeowner well water, and
- o constructing a public water distribution system for supplying water to private homeowners with wells.

Task I-E-1 Review Issues and Objectives

The key health and safety issues identified at this time concern the use of contaminated water from the private homeowner wells and the possible need for putting the Kentucky Avenue Well back in service to supply water to the municipal system. These issues will be reviewed with NYSDEC and local personnel to determine the need and scope of the Focused Feasibility Study. Other issues may be identified that require immediate remedial action. The specific objectives of the Focused Feasibility Study will also be established at this time.

The first priority under the focused feasibility effort will be to determine the magnitude of the private homeowner well contamination. Both the number of and location of private wells in the area will be determined through discussions with the Elmira Water Board, the Town of Horseheads, and the Department of Health Services. A representative number of these wells will be sampled in accordance with NYSDEC and EPA approved sampling procedures. To assist in development of the focused feasibility objectives, assume that up to 25 private wells will be sampled and analyzed for the EPA Method 601-602 organics, TOC, fluoride and the EPA interim Drinking Water Standard Metals. Based on the results of these analyses both the extent and magnitude of contamination can be assessed along with the associated risks.

Task I-E-2 Identify Remedial Alternatives

Specific remedial alternatives will be identified for each study issue based on the existing data and the data developed during Task I-E-1. If volatile organic contamination (ie., TCE) is the primary concern at the Kentucky Avenue Well, the most likely alternatives will be air stripping, carbon adsorption, and no action. Depending on the results of the private homeowner well sampling, the three alternatives proposed for the private homeowner wells are individual carbon adsorption units, connecting the private homes to the public water supply, and no action. Based on the results of Task I-E-1, the most practical alternatives will be identified and reviewed with the NYSDEC, and

modified if necessary.

Task I-E-3 Evaluation of Alternatives

Each of the alternatives identified during Task I-E-2 will be evaluated and compared based on existing data with respect to environmental and health impacts, implementability, technical reliability, maintenance considerations, level of cleanup attainable, community relations, regulatory acceptability, capital costs, O&M costs, and legal considerations. The alternatives will be ranked with respect to the above listed criteria.

Conceptual design and cost estimates will be prepared for each practical alternative including, but not limited to:

- a) Individual carbon units for the private wells
- b) Air stripping treatment
- c) Hook up the private wells to the existing municipal system
- d) no action

Published treatability data will be used to develop the design and cost estimate for the air stripping and carbon adsorption processes. The capacity of the existing municipal water system will be evaluated by a field trip to inspect the facilities as well as a review of the system's design drawings and discussions with the Elmira Water Board (EWB). The discussions with EWB will also involve establishing a proposed routing for the trunk line to provide water to homeowners using the private wells. During the field trip any special problems that may affect the overall alternative evaluation will be identified (ie., routing considerations, age of water treatment facilities, etc.).

Task I-E-4 Prepare Focused Feasibility Study Report

A draft Focused Feasibility Study report will be prepared that summarizes the result of this study. The following information will be included in the report:

- o Introduction, purpose, scope
- o Description of existing water supply systems
- o Assessment of the public health risk
- o Identification description of alternative remedial measures
- o Evaluation of remedial measures
- o Recommended initial remedial measures

The draft report will be submitted to NYSDEC for review. After reviewing the report, D&M/ES will meet with NYSDEC representatives to discuss the comments. A final Focused Feasibility Study report will then be prepared and submitted to NYSDEC.

Task I-F Remediation Investigation Report

Upon completion of Tasks I-A through I-D, a report will be prepared describing the remedial investigation study results. The following information will be included in the report:

- o Introductory section describing the project background, summary of the work performed to date, and project objectives.
- o Description of the site environmental setting
- o Description of the groundwater and surface water resource utilization
- o Description of the groundwater model
- o Description of potential groundwater contamination sources
- o Assessment of the present and potential effects of contaminant migration
- o Identification of possible contaminant migration pathways

This report will initially be prepared in draft format to facilitate internal D&M/ES review and NYSDEC review. The report will be prepared using word processing techniques to minimize typing time and costs.

Task I-G Southern Perimeter Wells (Optional)

This task was designed to address concerns raised by NYSDEC regarding the detection of contaminants moving past the southern perimeter of the site. This task would entail the installation of a series of well clusters along the southern perimeter. Five locations were suggested by NYSDEC and adopted for the planning of this task. For budgetary estimates, three-well clusters were assumed, with wells typically at depths of 30, 75, and 150 feet, respectively. The wells will be installed according to the procedure outlined in Task I-A-3, using two-inch stainless steel wells. Following development, each well will be sampled according to the same procedure used for the Task I-A wells. The groundwater samples gathered during this initial sampling event will be analyzed for the indicator parameters. Fifteen samples were assumed for the cost estimates. Following examination of the analytical results from the analysis of the initial samples, several wells may be selected for priority pollutant analysis. Three priority pollutant groundwater samples were assumed for the preparation of cost estimates. Data gathered from this task would be utilized in the modelling effort for final calibration, and in the remedial assessments of later tasks.

This task was not included in the original version of our proposal, and will not be initiated without specific approval by the NYSDEC.

TASK II FEASIBILITY STUDY

The Kentucky Well Field site feasibility study is a remedial alternatives investigation which includes the types of corrective action necessary to mitigate the release of hazardous substances from contributing sources. Remedial investigation activities on the Kentucky Well Field site will involve the identification and evaluation of technically feasible remedial action alternatives, the end product being the selection of the most environmentally acceptable and cost-effective alternative for solving the drinking water supply problems facing the Elmira Water Board. A high degree of interaction will be established between this activity and the other major technical activities to assure that 1) all reasonable, technically feasible approaches are considered, 2) the results of Task I are properly considered in planning and conducting this task, and 3) the selected remedial action solves the problem for the long term, taking into account the hydrogeologic factors, local needs, expected future conditions and overall public health and safety considerations.

Task II-A Characterize Contaminated Groundwater, Surface Water and Soils

D&M/ES will collect and review the specific groundwater, surface water and soil characterization data that is necessary to identify technically feasible remedial alternatives. A summary of existing data from the RAMP, Elmira Water Board, and NYSDEC files will be collected along with the new data generated under Task I. The parameters of interest for groundwater and surface water include: specific organics (including TCE and other detectable organic materials), heavy metals, hardness, pH, alkalinity, acidity, and possibly TOC and COD, if substantial amounts of organics are found in the samples. Soils characterization will include specific organics and heavy metals. This characterization data will be used to develop an overall isoconcentration map which will be used to: 1) examine the remedial action alternatives and 2) identify the remedial action approaches which should be tested for various affected areas.

Task II-B Identify Potential Hazards Requiring Remedial Action

Based on results of the site characterization and source identification work, D&M/ES will identify any potential or existing hazards for which corrective action is required. The level of contaminants in groundwater, surface water, and soil will be compared to the New York State Drinking Water Standards, New York State Water Quality Standards and acceptable soil standards. Where standards do not exist for low level toxic pollutants a general risk assessment will be conducted to determine the potential hazards associated with the identified levels of site contaminants. Imminent or potential long-term threats to public health via surface water contamination, drinking water supplies, and human contact will be summarized.

This task will provide the baseline information necessary to define the cleanup objectives, define corrective action categories, and to identify practical remedial alternatives.

Task II-C Define Corrective Action Categories

Once the potential hazards have been ascertained upon completion of Task II-B, the discrete elements requiring corrective action will be identified and levels of cleanup or treatment determined. For example, decontamination of groundwater will most likely be a discrete element. The level of decontamination or treatment required will be evaluated to ensure long term public health and safety. Other potential elements include site source remediation, soil remediation, alternative drinking water supplies (private and public) and contaminated well remediation.

Task II-D Identify Remedial Action Alternatives

Based on results of the site characterization and source identification work, D&M/ES will identify technically feasible remedial action alternatives for consideration. These alternatives will fall into three general categories: 1) alternatives for rehabilitation of the groundwater, 2) alternatives to clean up any identified sources of contamination to prevent continued or future damage to the aquifer, and 3) no action.

Based on previous experience in this type of work, the candidate aquifer rehabilitation technologies (unit processes) that may require investigation include the following:

- Neutralization (pH and adjustment)
- Suspended solids settling and solvent phase separation
- Air stripping of organics (with or without vapor phase carbon adsorption)
- Liquid phase carbon adsorption
- Filtration
- Disinfection

Remedial alternatives for source control depend on the type, size, and nature of contaminants of the source. For example, potential sources of contamination at the Kentucky Well Field site include: 1) leaking tanks, abandoned landfills, waste oil lagoons, past hazardous substance storage areas and abandoned waste disposal pits. A variety of remedial alternatives exist, including but not limited to immobilization techniques (capping, liners, slurry walls, groundwater pumping, solidification/fixation, etc.), excavation and offsite secure disposal of contaminated soils and sediments, and in situ treatment by biological, chemical or physical means.

Once the site characterization and degree of cleanup are established, D&M/ES will conduct an initial screening of candidate alternatives for each corrective action category to determine the most practical alternatives for detailed analysis. The initial screening criteria will include comparative cost, engineering feasibility, and environmental acceptability. Once the most practical alternatives are identified, we will develop a specific experimental plan to investigate them.

Task II-E Conduct Bench-Scale Treatability Investigations

Using the experimental plan developed in the previous subtask, D&M/ES will conduct bench and/or pilot scale treatability investigations to evaluate and design the various treatment alternatives under consideration. ES owns essentially all the specialized equipment necessary to do this testing and would naturally make use of any suitable equipment that is available at the site from previous studies. The detailed testing program will be developed following the completion of some of the earlier technical tasks including the characterization work, required level of treatment, and modelling. The preliminary concept of the approach to these studies is a two-step approach. The first step would be conducted under this project. If needed, the second step would be conducted under the Detailed Design (Task III) phase of the NYSDEC/EPA Cooperative Agreement.

The first step will involve initial bench-scale screening tests to develop preliminary performance data and design criteria for each process under consideration. This will quickly reveal which processes are applicable to various contamination situations and eliminate those that are clearly not appropriate from a technology perspective. These tests may include a few carbon adsorption, isotherm, and precipitation/neutralization jar tests. Cost estimates for this testing were formulated assuming 20 samples would be analyzed for the indicator parameters.

During the second step, the viable unit process will be tested in pilot scale to predict performance and develop final design criteria. Pilot scale testing is particularly important if the treated water is to be considered for use as a drinking water source. Pilot studies may not be required for air stripping or for other unit processes which can be designed from bench scale experiments. This decision will be made based on additional information collected in the earlier phases of the project. Because of the importance of this issue, the air emission permitting requirements for process equipment (e.g., air stripping units) similar to candidate treatment units in this project were investigated. The NYSDEC Division of Air Resources requires at least the submittal of a letter prior to construction, with attachments describing the estimated air contaminants, emission rates and specific process unit locations. The preliminary indication is that no formal permit to construct or certificate to operate would need to be issued as long as the emission rate of the primary organic contaminant does not exceed 10 pounds per hour.

Task II-F Detailed Analysis of Remedial Action Alternatives

Upon completion of the previous tasks, a detailed analysis of remedial alternatives for each category of corrective action will be conducted. Each alternative will be evaluated with respect to the capital cost, operation and maintenance requirements and costs, level of cleanup attainable, engineering constructability, effective life, long term public health risk, environmental acceptability, regulatory acceptability (federal, state and local laws), health and safety requirements, and community relations. This overall evaluation technique will be used for each of the following areas:

a) Groundwater Treatment and Rehabilitation Alternatives

The results of the treatability studies will be evaluated in terms of the level of removal that can be achieved and a comparison of the various alternatives on the basis of costs (capital and O&M), ease of operation, constructability and long-term value to the community. The treatment alternatives will be ranked on a quantitative and qualitative basis in a format suitable for integration into the overall remedial action alternatives evaluation.

b) Alternatives to Supply Drinking Water to Households on Private Wells

As discussed in the RFP, there are several private wells which are located in or near the area contaminated with TCE and potentially other toxic organics. These households and perhaps others (depending on the results of the contaminant migration study in Task I) will require a stable source of potable water. The purpose of this task is to evaluate alternatives for providing this source of water for the long-term. The results of the Focused Feasibility Study will be used as the basis for this task. Unranked options may include, but are not limited to 1) long-term continuation of the use of home treatment systems, 2) connection of these households to the Elmira Water Board's water distribution system, or 3) another alternative which may become apparent during performance of the earlier tasks. These alternatives will be studied from technical and cost/benefit views and a concise recommendation will be made to the NYSDEC.

c) Municipal Drinking Water Supply Alternatives

D&M/ES will evaluate alternatives to municipal drinking water supplies for replacement of the Kentucky Well Field supplies if necessary.

d) Source Control Remediation

In addition to evaluating various alternatives for aquifer rehabilitation and restoration, it is necessary to also consider eliminating the sources of this contamination. D&M/ES will

evaluate these alternatives on a comparative basis, considering the costs and risks associated with various remedial action alternatives versus the risks of the "no action" alternative. For example, if it is determined that a broken sewer line is a major source of contamination, possible alternatives might include slip-lining, replacement of the line, or abandonment of that portion of the sewer system. All identified sources will need to be evaluated in this fashion to be certain that the overall most cost-effective approach is identified.

Task II-G Prepare Feasibility Report

Upon completion of Task II, a report will be prepared describing the study results and the recommended remedial action. The following information will be included in the report:

- o Introductory section describing the project background, summary of work performed to date and project objectives.
- o Rationale and methodology for the evaluation of remedial alternatives.
- o Identification of remedial alternatives.
- o Evaluation of remedial alternatives.
- o Recommended remedial plan.

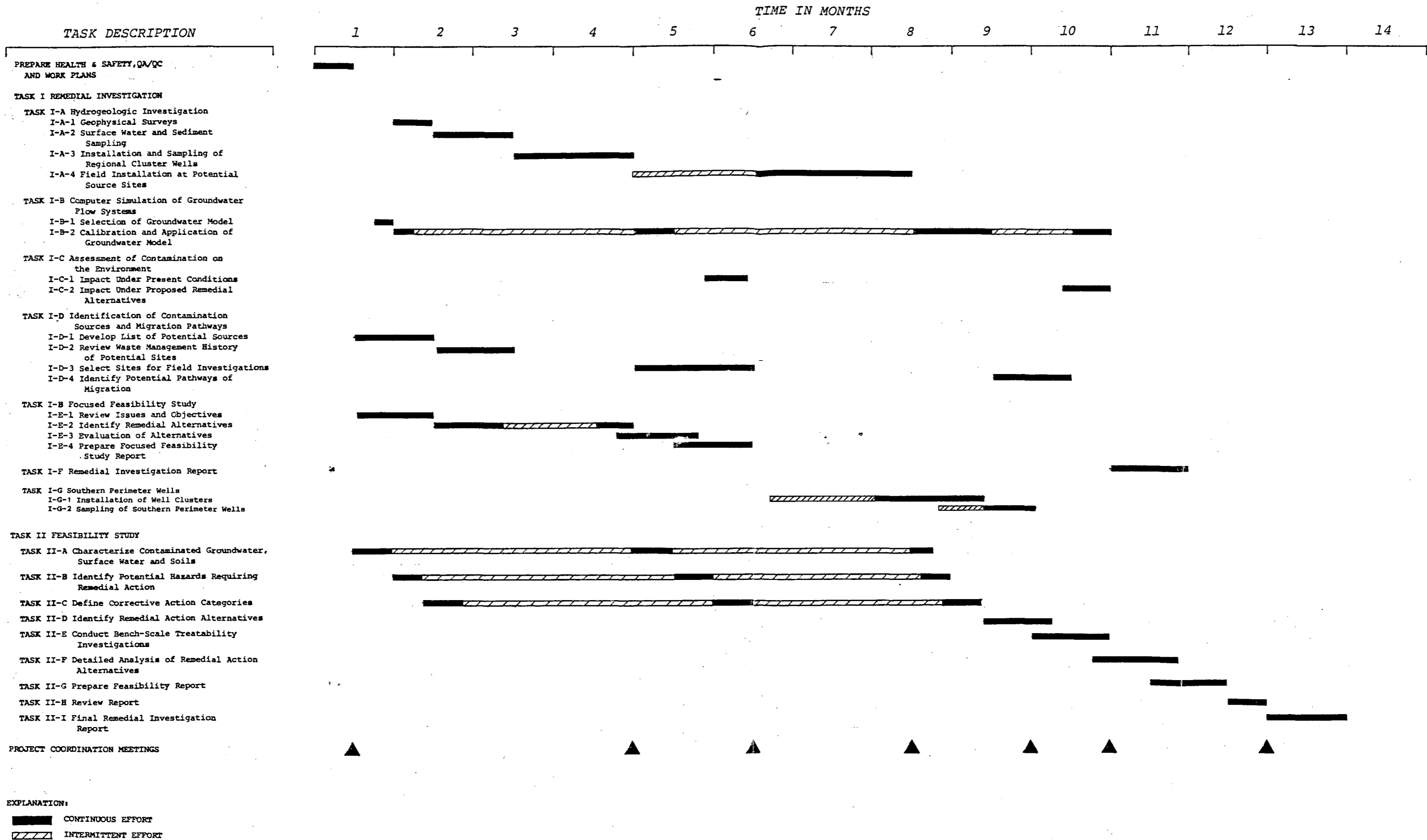
This report will initially be prepared in draft format to facilitate internal ES/D&M review and NYSDEC review. The report will be prepared using word processing techniques to minimize typing time and costs.

Task II-H Review Report with NYSDEC

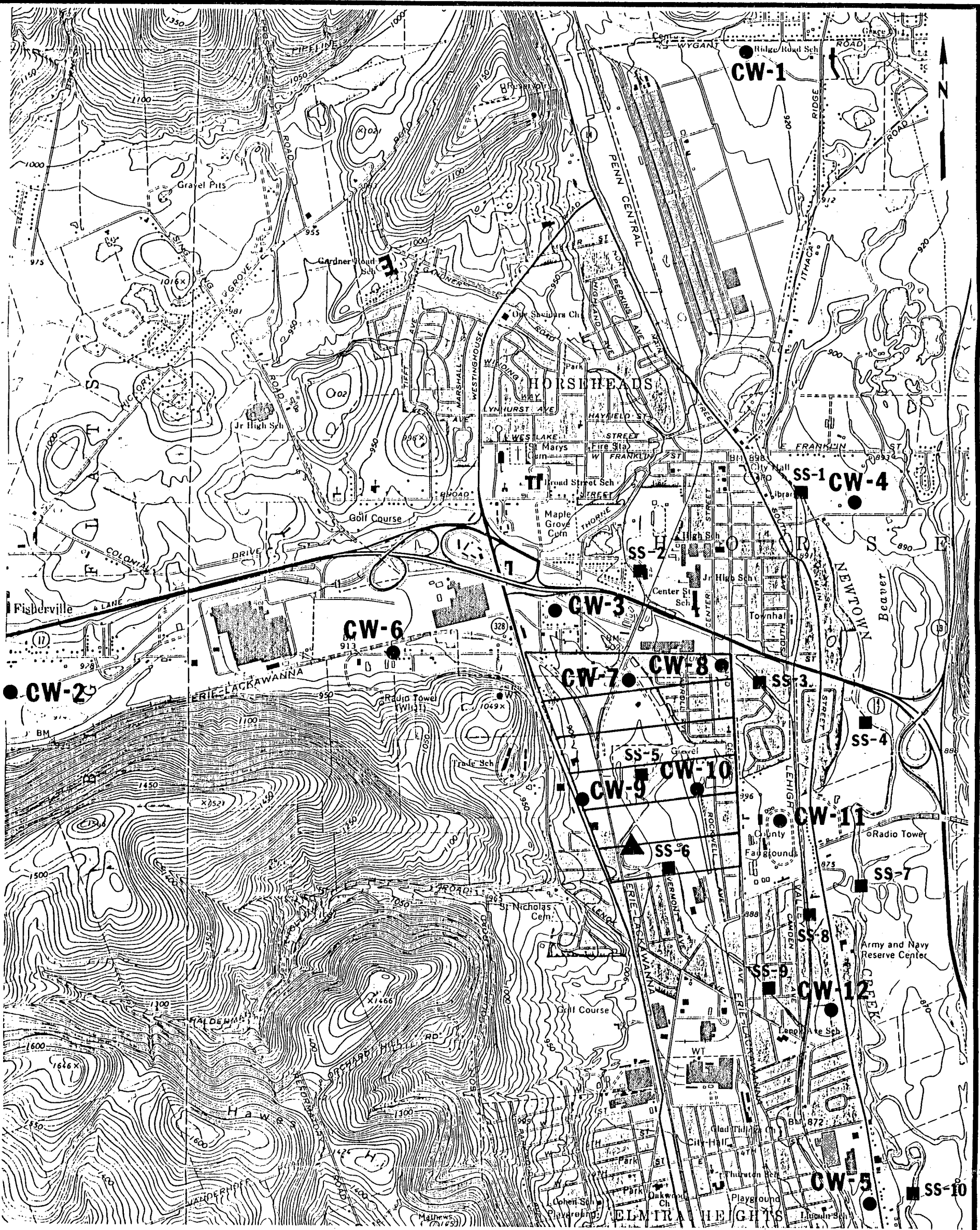
Upon completion of the draft report, ten copies will be submitted to the NYSDEC for review and comments. It is anticipated that a meeting will be held with NYSDEC to discuss the report findings.

Task II-I Final Remedial Investigation Report

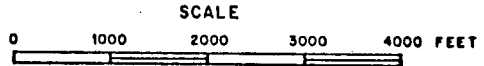
Upon completion of the NYSDEC review, D&M/ES will prepare the Final Remedial Investigation Study Report. Twenty copies of the final report will be submitted to NYSDEC.



PROPOSED PROJECT SCHEDULE



- EXPLANATION:**
- GEOPHYSICAL GRID
 - KENTUCKY AVENUE WELL
 - CLUSTER WELL
 - CW-1 - CW-5 PROPOSED REGIONAL WELLS
 - CW-6 - CW-12 POSSIBLE LOCATION FOR POTENTIAL SOURCE SITE WELLS
 - SURFACE WATER AND SEDIMENT SAMPLING LOCATIONS
 - SS



STUDY AREA
 SHOWING PROPOSED WELL AND SAMPLING LOCATIONS
 AND PROPOSED GEOPHYSICAL GRID LOCATION

Reference: Base map taken from U.S.G.S. 7.5' Topographic Map, Horseheads, N.Y. Quadrangle, 1969

FIGURE 1-1

EXHIBIT A
SUMMARY OF DIRECT SALARY RATES

EXHIBIT A

Summary of Direct Salary Rates*

| <u>Title</u> | <u>Actual Daily Salary Rate or Hourly Salary Rate</u> |
|---------------------------|---|
| PROJECT MANAGER | 23.40/HR |
| DEPUTY PROJECT MANAGER | 22.43/HR |
| TECHNICAL REVIEW BOARD | 26.53/HR |
| TASK LEADERS | 16.50/HR |
| QUALITY ASSURANCE MANAGER | 10.63/HR |
| HEALTH & SAFETY MANAGER | 10.63/HR |
| PROFESSIONAL STAFF | 14.50/HR |
| SUPPORT SERVICES | 10.50/HR |

*These rates shall be held firm until MARCH 29, 1985. Any changes in these rates require written approval of the DEPARTMENT.

EXHIBIT B

DIRECT NON-SALARY COST ITEMS

CONSTRUCTION SUPERVISION AND INSPECTION AGREEMENTS

EXHIBIT B

Summary of Estimated Direct Project Related
Non-Salary Costs

| | |
|--|---------|
| Transportation Estimated At | 12,901 |
| Subsistence Estimated At | 19,900 |
| Subconsultant Services Estimated At (drilling, surveying, laboratory) | 180,323 |
| Expendable Health and Safety Equipment Estimated At | 325 |
| Expendable Laboratory Equipment Estimated At | 700 |
| Other (Specify) | |
| Telephone | 2,175 |
| Printing | 2,915 |
| Copying | 2,500 |
| Word Processing | 4,400 |
| Delivery Charges, Mail, Express Services, etc. | 1,660 |
| Sampling Equipment | 3,000 |
| Health and Safety Monitoring Equipment | 1,800 |
| Geophysical Equipment | 1,500 |
| Laboratory Equipment | 600 |
| Computer Charges | 16,800 |
| | ----- |
| TOTAL | 251,499 |

GUIDELINES FOR ACCEPTABLE ITEMS CHARGEABLE AS DIRECT
NON-SALARY COSTS IN CONSTRUCTION INSPECTION

A. General

The following guidelines are applicable and consistent with the provisions of Federal Procurement Regulations for most Construction Inspection Engineering Agreements. The objective of these guidelines is to provide consistency and uniformity on the treatment of direct non-salary and overhead items for all projects being done by an ENGINEER. These guidelines are also flexible and, if the ENGINEER'S normal practice is to include an item as direct non-salary on all projects, it may be included as direct non-salary on this project even though the item may be listed as overhead in these guidelines. In this case, it should appear in Exhibit B. In some instances because of the structure of the ENGINEER'S accounting system, there may be conflicts with the requirements of Federal Procurement Regulations. When conflicts exist, the requirements of the Federal Procurement Regulations prevail; e.g., when items are charged as direct non-salary costs to this AGREEMENT, similar-type expenses must be identified and segregated in the firm's records for all projects, including fixed price-type agreements. If this is not done, these expenses may not be claimed as direct non-salary costs and may only be recovered in overhead as an indirect cost.

In case of any difference in the interpretation of these guidelines, the matter shall be submitted through the DEPARTMENT.

B. Department-Loaned Equipment

The DEPARTMENT has an inventory of radios, cameras, survey, and other equipment which remain from previous consultant inspection agreements. Prior to authorizing the purchase or lease of these types of equipment under this AGREEMENT, the DEPARTMENT will attempt to fill the ENGINEER'S needs from the inventory.

Any equipment assigned to the ENGINEER from the DEPARTMENT'S inventory will be in usable condition. Furthermore, in the event that the equipment needs normal maintenance during the life of the agreement, the ENGINEER will be reimbursed for these maintenance costs as direct non-salary costs. In the event that it is no longer economical to repair or maintain the equipment, another piece of equipment will be provided or the consultant will be permitted to provide new equipment at a rate approved by the DEPARTMENT.

C. Transportation and Subsistence

1. Reasonable on-the-job mileage in private vehicles for persons assigned to the job is reimbursed at the State Comptroller's current rates.

2. If it is determined that it would be more economical, or the conditions of the project, such as sites on back roads, require that vehicles be assigned to the project, vehicles may be procured and assigned on the job and all allowable costs of procuring, maintaining, and operating these vehicles would be considered as acceptable direct non-salary costs.
3. All estimated costs for transportation must be summarized in Exhibit B.

D. Communications

1. Radios - If the need for and the type of communications equipment has not been established at the scope meeting and specifically included in this AGREEMENT, the number and type of radios and the most cost-effective method of procurement (buy or rent) are to be determined by the ENGINEER, and a recommendation made to the DEPARTMENT. The ENGINEER's recommendations should be based on at least three (3) quotes and submitted to the DEPARTMENT for approval. ENGINEER-owned equipment may be used, but the ENGINEER cannot rent from himself.
2. Telephones - Generally, telephones are provided and paid for at the job site by the CONTRACTOR. The phone is provided to facilitate the technical and administrative communications necessary to supervise the contract in an adequate and timely manner. The phone is not there for the ENGINEER'S use to manage his business nor for the personal use of the ENGINEER's employees. The ENGINEER should strive for the reasonable use of the telephone within the intended purposes stated above.

In the event that the reasonable use of the telephone is abused, the DEPARTMENT shall investigate and may direct the ENGINEER to institute a telephone usage monitoring system. When the use of such a system is directed, the following reimbursement procedures shall apply:

a. Technical Telephone Communications -

- (1) From the ENGINEER's Main Office are acceptable as overhead cost.
- (2) From the Field Office are acceptable as direct non-salary cost.

b. Administrative Communications or Communications having to do with Personnel Matters -

- (1) From the ENGINEER's Main Office are acceptable as charges only in overhead.
- (2) From the job site to the ENGINEER's Main Office, are to be made collect and are chargeable to overhead only.

c. Personal Phone Calls -

- (1) From the ENGINEER'S main office are not acceptable for charges (anytime).
 - (2) From the Field Office are not acceptable against the CONTRACTOR'S telephone and should preferably be made collect, or be reimbursed to the CONTRACTOR either by the ENGINEER, without charge to the State as direct or overhead, or by the individual who made the phone call.
3. Mail, Parcel Post and Other Delivery Charges - All delivery charges for both technical and administrative materials are acceptable as overhead.

E. All Other Equipment

This would fall into three general categories unless other reimbursement conditions for unique and/or very costly equipment are agreed upon at the time of negotiations.

1. Tools of the Trade

These have a long life span. Depreciation on these tools of the trade would be acceptable in overhead.

2. Expendable Technical Equipment

That is equipment that would be expended during the life of the agreement. This equipment would be acceptable as a direct non-salary cost. Estimated costs for Expendable Technical Equipment are shown in Exhibit B.

3. Office Supplies

That is, all supplies that are normal to the operation of any office would be acceptable only as an overhead cost. Estimated costs for Office Supplies are shown in Exhibit B. As specific indications of the general comments above, the following equipment would be considered under each of these categories.

1. Tools of the Trade: (Depreciation Overhead)

- a. Cameras and camera equipment.
- b. Survey equipment such as levels, transits, rods, right-angle prisms, plumb bobs, steel tapes, machetes, sheaths, stake bags.

- c. Hammers and axes.
 - d. Testing equipment such as air meters, Swiss hammers, slump cones and rods, density meters, wet film gages, soil sieves, etc.
 - e. Drafting equipment such as scales, triangles, drafting sets, templates, protractors, etc.
 - f. Work clothing worn under protective covering and stored for reuse on the site.
2. Expendable Technical Equipment: (Direct non-salary)
- a. Film and its development.
 - b. Protective outerwear such as protective gloves, coveralls and shoe covers.
 - c. Cloth tapes, six-foot rulers, stakes and nails.
 - d. Safety goggles
 - e. Safety equipment such as hard hats and vests.
3. Office Supplies: (Overhead)
- a. Company letterhead
 - b. Scratch pads
 - c. Pens, pencils and erasers
 - d. Clip boards
 - e. Pencil sharpeners
 - f. Cellophane Tape
 - g. Staplers, hole punches, etc.
4. Personal Equipment
- Equipment such as rain gear, cold weather clothing, boots, gloves, safety shoes, if provided by the ENGINEER, will not be acceptable as a direct non-salary cost.

F. Other Specialized Technical Charges which will be acceptable as direct non-salary costs:

1. Computer time to perform technical functions. It should be demonstrated that the computer will perform these technical functions in a more economical fashion than other methods.
2. If the consultant has been given the task of approving shop drawings, such charges as prints, Xerox copies, etc., specifically for the approval of shop drawings are acceptable for direct non-salary cost.
3. Any special technical equipment specifically noted in the direct non-salary cost breakdown.

G. Miscellaneous

1. Insurance - The insurance premiums for coverage in Article 11 and Article 12 of this AGREEMENT are acceptable as a direct non-salary cost. All other insurance, unless otherwise noted, is reimbursable as overhead.
2. Sublet Services - For all subcontracts in excess of \$1,000, the ENGINEER shall solicit a number of bids from qualified contractors so that he will receive at least three (3) competitive bids. The ENGINEER will then enter into a subcontract with the lowest bidder who is fully responsive to the invitation to bid.

EXHIBIT C

ESTIMATED COST SUMMARY

EXHIBIT C

Estimated Cost Summary

| | |
|--|-------------------|
| Item IA, Direct Technical Salaries (estimated) subject to audit | \$ 97,376 |
| Item IB, Direct Technical Salaries (estimated) subject to audit (Premium Portion of Overtime) | \$ --- |
| Item II, Direct Non-Salary Costs (estimated) subject to audit | \$ 71,176 |
| Item III, Overhead (estimated) subject to audit | \$ 115,878 |
| Item IV, Fixed Fee (negotiated) | \$ 31,988 |
| Item II, Direct Non-Salary Costs (estimated) subject to audit (Sub-Consultant Costs) | \$ <u>180,323</u> |
| Total Estimated Cost | \$ <u>496,741</u> |
| MAXIMUM AMOUNT PAYABLE | \$ 496,741 |

EXHIBIT D

ESTIMATED COST SUMMARY BY TASK

TABLE 1-D-1
 COST ESTIMATE BREAKDOWN BY TASK
 KENTUCKY AVENUE WELLFIELD
 REMEDIAL INVESTIGATION AND FEASIBILITY STUDY

| Task Description | Direct Hours | Labor Costs | Lab Anal. | Other Direct Costs (ODC'S)\$ | | | | | Sub-Total ODC'S | Total |
|--|--------------|----------------|---------------|------------------------------|----------------|----------------|---------------|----------------|-----------------|-------|
| | | | | Travel & Subsistence | Equip. Charges | Subcon. Costs | Misc. | | | |
| Task I Remedial Investigation | | | | | | | | | | |
| Task I-A Hydrogeologic Investigation | 2,295 | 33,260 | 41,228 | 21,252 | 6,900 | 100,470 | 875 | 170,725 | 203,985 | |
| Task I-B Computer Simulation of Groundwater Flow Systems | 760 | 11,377 | | | 14,400 | | 575 | 14,975 | 26,352 | |
| Task I-C Assessment of Contamination on the Environment | 456 | 6,582 | | 4,872 | 200 | | 350 | 5,422 | 12,004 | |
| Task I-D Identification of Contamination Sources & Migration Pathway | 472 | 6,858 | 10,292 | 2,307 | 2,200 | | 300 | 15,099 | 21,957 | |
| Task I-E Focused Feasibility Study | 358 | 5,002 | 15,741 | 3,387 | 900 | | 1,225 | 21,253 | 26,255 | |
| Task I-F Prepare Remedial Investigation Report | 378 | 6,161 | | | 800 | | 1,175 | 1,975 | 8,136 | |
| *Task I-G Southern Perimeter Wells | 516 | 7,590 | 15,982 | 2,895 | 1,100 | 58,040 | 500 | 78,517 | 86,107 | |
| Task II Feasibility Study | | | | | | | | | | |
| Task II-A Characterize Contaminated Groundwater, Surface Water & Soils | 61 | 853 | | | 1,000 | | 325 | 1,325 | 2,178 | |
| Task II-B Identify Potential Hazards Requiring Remedial Action | 44 | 688 | | | | | 100 | 100 | 788 | |
| Task II-C Define Corrective Action Categories | 41 | 688 | | | | | 250 | 250 | 938 | |
| Task II-D Identify Remedial Action Alternatives | 178 | 2,836 | | | | | 375 | 375 | 3,211 | |
| Task II-E Conduct Bench-Scale Treatability Investigations | 147 | 2,210 | 12,592 | | 200 | | 1,225 | 14,017 | 16,227 | |
| Task II-F Detailed Analysis of Remedial Action Alternatives | 734 | 10,461 | | | | | 350 | 350 | 10,811 | |
| Task II-G Prepare Feasibility Report | 552 | 7,985 | | | 1,000 | | 1,475 | 2,475 | 10,460 | |
| Task II-H Review Report with NYSDEC | 48 | 916 | | 983 | 200 | | 350 | 1,533 | 2,449 | |
| Task II-I Final Remedial Investigation Report | 106 | 1,499 | | | 300 | | 1,325 | 1,625 | 3,124 | |
| TOTALS | 7,146 | 104,966 | 95,835 | 35,696 | 29,200 | 158,510 | 10,775 | 330,016 | 434,982 | |

| | | | |
|--|-----------------|-----------------|------------------|
| *Optional Task Contribution: Labor Costs (included overhead & fee) | \$19,115 | OVERHEAD @ 119% | 124,910 |
| Other Direct Costs | 78,517 | FEE @ 15% | 34,481 |
| | <u>\$97,632</u> | TOTAL | <u>\$594,373</u> |
| | | | - 97,632 |
| | | | <u>\$496,741</u> |

TABLE 1-D-2
SUBCONTRACTORS COST BREAKDOWN

| TASK | ITEM | COST |
|-------|----------------------------|-----------|
| I-A-2 | Surveying | 2,000 |
| | | ----- |
| | | 2,000 |
| I-A-3 | Drilling | 47,588 |
| | Surveying | 2,500 |
| | | ----- |
| | | 50,088 |
| I-A-4 | Drilling | 40,195 |
| | Surveying | 2,500 |
| | | ----- |
| | | 42,695 |
| | Total Task I-A | 94,783 |
| | Handling @ 6% | 5,687 |
| | | ----- |
| | TOTAL | 100,470 |
| I-G | Drilling | 52,255 |
| | Surveying | 2,500 |
| | | ----- |
| | | 54,755 |
| | Handling @ 6% | 3,285 |
| | | ----- |
| | | 58,040 |
| | TOTAL SUBCONTRACTORS COST: | \$158,510 |

TABLE 1-D-3

LABORATORY ANALYTICAL COST BREAKDOWN

| TASK | NO. OF SAMPLES | TYPE OF SAMPLE | ANALYSES | ANALYSES COST PER SAMPLE | TOTAL ANALYTICAL COSTS |
|-------|----------------|--------------------------------|---------------------------|--------------------------|------------------------|
| I-A-2 | 2 | Surface Water | Indicators(1) | 500 | \$ 1,000 |
| | 8 | Infiltration Water | Indicators(1) | 500 | \$ 4,000 |
| | 10 | Sediment | Indicators(2) | 400 | \$ 4,000 |
| | 2 | Infiltration/ Surface Water | Priority Pollutants(3) | 1800 | \$ 3,600 |
| I-A-3 | 15 | Groundwater | Indicators(1) | 500 | \$ 7,500 |
| | 3 | Groundwater | Priority Pollutants(3) | 1800 | \$ 5,400 |
| I-A-4 | 15 | Groundwater | Indicators(3) | 500 | \$ 7,500 |
| I-D-3 | 20 | Soil/Waste | Indicators(2) | 400 | \$ 8,000 |
| I-E-1 | 25 | Groundwater | Indicators(1) | 500 | \$12,500 |
| * I-G | 15 | Groundwater | Indicators(1) | 500 | \$ 7,500 |
| | 3 | Groundwater | Priority Pollutants(3) | 1800 | \$ 5,400 |
| II-E | 20 | Groundwater | Indicators(1) | 500 | \$10,000 |
| | | | | | ----- |
| | | | | | \$76,400 |
| | | Shipping Containers | 73 each @ \$35 each | | 2,555 |
| | | Shipping Costs | 73 each @ \$60 each | | 4,380 |
| | | QA/QC | 15% of subtotal | | 12,500 |
| | | | | | ----- |
| | | | TOTAL | | \$95,835 |

NOTES

- (1) Indicators- Total Organic Carbon(TOC), Fluoride, Chromium, Cadmium, Zinc, Copper, Silver, Arsenic, Mercury, Selenium, and the EPA method 601-602 organics (Which includes TCE, Benzene, Toluene, Chloroform, and other organics)
- (2) Indicators in Note (1) except TOC
- (3) Priority Pollutants (129 organics and metals)

* Optional Task

TABLE 1-D-4

TRAVEL & SUBSISTENCE BREAKDOWN

| TASK | DESCRIPTION | COST |
|-----------|---|----------|
| TASK I-A | 8 round trips by auto from office to site x 300 miles x 0.23 | 552 |
| | Subsistence 3 persons x 90 days @ \$50/day | 13,500 |
| | Vehicle rental 2 vehicles x 90 days @ \$40/day | 7,200 |
| | | ----- |
| | | \$21,252 |
| TASK I-C | 8 round trips to site x 300 miles x 0.23 | 552 |
| | Subsistence 2 persons x 24 days @ \$50/day | 2,400 |
| | Vehicle rental 2 vehicles x 24 days @ \$40/day | 1,920 |
| | | ----- |
| | | \$ 4,872 |
| TASK I-D | 3 round trips to site x 300 miles x 0.23 | 207 |
| | Subsistence 2 persons x 15 days @ \$50/day | 1,500 |
| | Vehicle rental 1 vehicle x 15 days @ \$40/day | 600 |
| | | ----- |
| | | \$2,307 |
| TASK I-E | 4 round trips to site x 300 miles x 0.23 | 276 |
| | Subsistence 2 persons x 20 days @ \$50/day | 2,000 |
| | Vehicle rental 1 vehicle x 20 days @ \$40/day | 800 |
| | 2 trips to Albany x 350 miles x 0.23 | 161 |
| | Subsistence 1 person x 3 days @ \$50/day | 150 |
| | | ----- |
| | | \$3,387 |
| TASK I-G | 5 round trips from office to site x 300 miles x \$.23 | 345 |
| | Subsistence: 1 person x 20 days @ \$50/day | 1,000 |
| | 2 persons x 5 days @ \$50/day | 500 |
| | Vehicle rental 1 vehicle x 20 days @ \$40/day | 800 |
| | 2 vehicles x 5 days @ \$50/day | 250 |
| | | ----- |
| | | \$2,895 |
| TASK II-H | 6 round trips to Albany x 360 x 0.23 | 483 |
| | Subsistence 1 person 10 days @\$50/day | 500 |
| | | ----- |
| | | \$ 983 |
| | Total Travel & Subsistence | \$35,696 |

TABLE 1-D-5

EQUIPMENT COST BREAKDOWN

| TASK ----- | ITEM ----- | COST ----- |
|---------------|--|---------------|
| I-A | Sampling equipment 40 days @ \$60 day | 2400 |
| | H&S monitoring equipment 3 months HNU @ \$600 | 1800 |
| | Geophysical equipment 15 days @ \$100 | 1500 |
| | Laboratory equipment 20 days @ \$20 | 400 |
| | Word processing 80 hrs. @ \$10 | 800 |
| | | ----- |
| | | 6900 |
| I-B | Word processing 40 hrs. @ \$10 | 400 |
| | Computer usage, VAX 40 hr (CPU) @ \$225 | 9000 |
| | Minicomputer 250 hrs @ \$20 | 5000 |
| | | ----- |
| | | 14400 |
| I-C | Word processing 20 hr @ \$10 | 200 |
| | | ----- |
| | | 200 |
| I-D | Word processing 20 hr @ \$10 | 200 |
| | Computer usage Minicomputer 100 hr @ \$20 | 2000 |
| | | ----- |
| | | 2200 |

TABLE 1-D-5 (Cont)

| TASK | ITEM | COST |
|------|---|------|
| I-E | Word processing 30 hr @ \$10 | 300 |
| | Sampling equipment 10 days @ \$60 | 600 |
| | | 900 |
| I-F | Word processing 80 hr @ \$10 | 800 |
| | | 800 |
| I-G | H&S monitoring equipment 1 month HNU @ \$600 | 600 |
| | Sampling equipment 5 days @ \$60/day | 300 |
| | Word processing 20 hours @ \$10/hr | 200 |
| | | 1100 |
| II-A | Computer usage 40 hr @ \$20 | 800 |
| | Word processing 20 hr @ \$10 | 200 |
| | | 1000 |
| II-E | Laboratory equipment 10 days @ \$20 | 200 |
| | | 200 |
| II-G | Word processing 100 hr @ \$10 | 1000 |
| | | 1000 |
| II-H | Word processing 20 hr @ \$10 | 200 |
| | | 200 |

TABLE 1-D-5 (Cont)

| TASK | ITEM | COST |
|-------|---------------------------------|-------------------|
| ----- | ----- | ----- |
| II-I | Word processing 30 hr @ \$10 | 300 |
| | | --- |
| | | 300 |
| | Total Equipment | ----- \$29,200 |

TABLE 1-D-6

MISCELLANEOUS COST BREAKDOWN

| <u>TASK</u> | <u>ITEM</u> | <u>COST</u> |
|-------------|-----------------------------|-------------|
| TASK IA | Telephone | 250 |
| | Health & Safety Consumables | 375 |
| | Postage | 250 |
| | | ----- |
| | | 875 |
| TASK IB | Telephone | 275 |
| | Postage | 300 |
| | | ----- |
| | | 575 |
| TASK IC | Telephone | 200 |
| | Postage | 150 |
| | | ----- |
| | | 350 |
| TASK ID | Telephone | 200 |
| | Postage | 100 |
| | | ----- |
| | | 300 |
| TASK IE | Telephone | 200 |
| | Postage | 275 |
| | Printing | 750 |
| | | ----- |
| | | 1225 |
| TASK IF | Telephone | 175 |
| | Postage | 250 |
| | Printing | 750 |
| | | ----- |
| | | 1175 |
| TASK IG | Telephone | 200 |
| | Postage | 200 |
| | Printing | 100 |
| | | ----- |
| | | 500 |
| TASK II-A | Telephone | 275 |
| | Postage | 50 |
| | | ----- |
| | | 325 |
| TASK II-B | Telephone | 100 |
| | | ----- |
| | | 100 |

TABLE 1-D-6 (Cont)

| <u>TASK</u> | <u>ITEM</u> | <u>COST</u> |
|-------------|-----------------|-------------|
| TASK II-C | Telephone | 250 |
| | | ----- |
| | | 250 |
| TASK II-D | Telephone | 200 |
| | Postage | 175 |
| | | ----- |
| | | 375 |
| TASK II-E | Telephone | 275 |
| | Postage | 150 |
| | Lab Consumables | 800 |
| | | ----- |
| | | 1225 |
| TASK II-F | Telephone | 200 |
| | Postage | 150 |
| | | ----- |
| | | 350 |
| TASK II-G | Telephone | 275 |
| | Postage | 350 |
| | Printing | 850 |
| | | ----- |
| | | 1475 |
| TASK II-H | Telephone | 250 |
| | Postage | 100 |
| | | ----- |
| | | 350 |
| TASK II-I | Telephone | 200 |
| | Postage | 175 |
| | Printing | 950 |
| | | ----- |
| | | 1325 |
| | TOTAL | \$10,775 |

TABLE 1-D-7
PERSONNEL RESOURCES BREAKDOWN BY TASK

| Task Description | PM | DPM | Tech. Review Board | QAM | HSM | Task Ldr. Hydrogeol. | Task Ldr. Feasibil. | Prof. Staff | Support Staff | Total |
|---|-----|-----|--------------------------|-----|-----|-------------------------|------------------------|----------------|------------------|-------|
| Task I Remedial Investigation | | | | | | | | | | |
| Task I-A Hydrogeologic Investigation | 108 | 21 | 24 | 48 | 28 | 196 | 82 | 1,364 | 424 | 2,295 |
| Task I-B Computer Simulation of Groundwater Flow System | 40 | | 20 | | | 100 | 60 | 400 | 140 | 760 |
| Task I-C Assessment of Contamination on the Environment | 20 | | | | | 40 | 16 | 300 | 80 | 456 |
| Task I-D Identification of Contamination Sources & Migration Pathway | 16 | 24 | 4 | 8 | | 24 | | 300 | 96 | 472 |
| Task I-E Focused Feasibility Study | 16 | 24 | 8 | 2 | 16 | 4 | 42 | 86 | 160 | 358 |
| Task I-F Prepare Remedial Investigation Report | 60 | 40 | 20 | 8 | | 35 | 15 | 80 | 120 | 378 |
| *Task I-G Southern Perimeter Wells | 36 | 12 | 8 | 12 | 12 | 40 | 4 | 292 | 100 | 516 |
| Task II Feasibility Study | | | | | | | | | | |
| Task II-A Characterize Contaminated Groundwater, Surface Water & Soils | 2 | 4 | 1 | | | 2 | 4 | 32 | 16 | 61 |
| Task II-B Identify Potential Hazards Requiring Remedial Action | 4 | 4 | 1 | | | | 4 | 22 | 9 | 44 |
| Task II-C Define Corrective Action Categories | 4 | 8 | 1 | | | | 4 | 24 | | 41 |
| Task II-D Identify Remedial Action Alternatives | 8 | 20 | 4 | | 2 | | 24 | 112 | 8 | 178 |
| Task II-E Conduct Bench-Scale Treatability Investigations | 4 | 12 | 6 | 2 | 1 | | 24 | 58 | 40 | 147 |
| Task II-F Detailed Analysis of Remedial Action Alternatives | 16 | 40 | 18 | 2 | 2 | 2 | 125 | 255 | 274 | 734 |
| Task II-G Prepare Feasibility Report | 16 | 80 | 24 | 4 | 14 | 4 | 4 | 148 | 258 | 552 |
| Task II-H Review Report with NYSDEC | 16 | 16 | | | | | | 8 | 8 | 48 |
| Task II-I Final Remedial Investigation Report | 4 | 16 | | | | | | 48 | 38 | 106 |
| TOTALS | 370 | 321 | 139 | 86 | 75 | 447 | 408 | 3,529 | 1,771 | 7,146 |

EXHIBIT E

COST CONTROL REPORT INSTRUCTIONS

EXHIBIT E

Cost Control Report Instructions

The Cost Control Report is to be completed each month. Copies are to be sent to the OWNER's AUTHORIZED REPRESENTATIVE within fifteen days after the end of each monthly period.

The purpose of the Cost Control Report is to provide cost data for the continuing evaluation of the PROJECT. The cost figures in the report should be based on accounted expenses, which will give a true picture of expenditures at the end of the reporting period.

The ENGINEER will maintain and provide the following information on the Cost Control Report:

This Period - All costs other than out-of-pocket expenses will be allocated by project task for the reporting period. **To Date** - Cumulative costs to date of report will be reported for each task.

Estimated to Completion - The ENGINEER will make a judgment of the cost needed to complete each particular task of the PROJECT. This estimate need not be the difference between cumulative costs and budget. It should represent the cost needed to complete a particular task of the PROJECT regardless of the budgeted amount. **Estimated Total** - This column is obtained by adding the costs in the "To Date" column and the "Estimated to Completion" column. **Under (Over)** - This column is the difference between the "Estimated Total" column and the "Budget" column.

% Phase Completed - This column will be a percentage estimate of work completed to date for each task. This figure in this column will be a judgmental factor which the ENGINEER determines to indicate the work effort completed during the reporting period.

% Estimated Total/Budget - This column will be expressed as a percent which will represent the estimated total cost divided by the budgeted cost.

Out-of-Pocket Expenses - All out-of-pocket expenses for the PROJECT will be accumulated for the reporting period. Out-of-pocket expenses will not be charged against specific project tasks. **Total (B)** - This row will be computed by adding data from the "Total (A)" columns and "Out-of-Pocket Expenses" columns. Total (B) under line (5) Budget should show the total Estimated Cost, not the Maximum Amount Payable. The Maximum Amount Payable is shown separately. The ENGINEER Project Manager will review and sign the Cost Control Report.

EXHIBIT F

REQUIRED DOCUMENTATION FOR PAYMENT APPLICATIONS

DOCUMENTATION REQUIREMENTS

PERSONAL SERVICES:

Claims for personal services shall be documented by the following:

- name of each individual
- salary of each individual
- title of each individual
- dates worked for each individual
- hours worked each day by task (if appropriate)

The above information may be most clearly presented in tabular form.

NON-PERSONAL SERVICES:

Supplies and Equipment

Claims for expenses incurred to purchase supplies and equipment must be accompanied by invoices or receipts.

Meals and Lodging

Claims for meal and lodging expenses must be accompanied by the following documentation:

- name of individual
- date of travel
- meals claimed
- purpose of travel
- receipts for lodging expenses

Travel

Claims for travel expenses must be accompanied by the following documentation:

- name of individual
- date(s) of travel
- origin and destination of travel
- method of travel
- purpose of travel
- receipts for tolls, parking and public transportation costs

SUBCONTRACTORS:

Claims for the cost of subcontracted work must be accompanied by invoices. Where the subcontractor provides professional services, the Division's engineer in responsible charge shall require that the same level of documentation as that described above accompany the subcontractor's invoice.

OTHER EXPENSES:

Internal costs for postage, reproduction, printing, use of company vehicles and phone--for which invoices may not normally be available--are reimbursable if the Contractor has an acceptable method for providing an auditable record of those costs directly attributable to the Division's contract.

EXHIBIT G

STATE COMPTROLLER'S GUIDELINES
FOR EMPLOYEES EXPENSES

Travel Allowances & Guidelines

I. Schedule of Travel Allowances for Meals & Lodging

| <u>Location</u> | <u>Maximum 1/ Lodging</u> | <u>Daily Meal Allowance</u> |
|---|-------------------------------|---------------------------------|
| New York City and counties of Nassau, Suffolk, Rockland, and Westchester | \$55 | \$20 |
| Cities of Albany, Binghamton, Buffalo, Rochester and Syracuse or any city, town, village, etc. within 15 miles of these cities. | \$40 | \$15 |
| All other locations in New York State | \$35 | \$15 |
| Out of State | \$55 | \$20 |

1/ Lodging charges must be supported by a receipt.

II. Meal Allowance For Non-Overnight Travel

| <u>Location</u> | <u>Maximum Allowance (Receipts Required)</u> | | <u>Standard Allowance (No Receipts Required)</u> | |
|--|--|---------------|--|---------------|
| | <u>Breakfast</u> | <u>Dinner</u> | <u>Breakfast</u> | <u>Dinner</u> |
| New York City and counties of Nassau, Suffolk, Rockland and Westchester | \$4.00 | \$16.00 | \$3.50 | \$10.50 |
| All other locations in New York State | \$4.00 | \$11.00 | \$3.50 | \$ 9.50 |
| Out-of-State | \$4.00 | \$16.00 | \$3.50 | \$10.50 |

III. Mileage Rate - The reimbursement for use of personally or company owned cars or aircraft will be in accordance with the following:

1. Mileage rate 23 cents per mile for automobiles.
2. Travel by aircraft will be reimbursed at the lower of:
 - a. 23 cents per mile regardless of the number of passengers.
 - b. Reimbursement at published coach rates for air travel if commercial air transportation is available between points of travel and no official passengers are carried.
3. In cases where an automobile is used between New York City and Albany, the maximum mileage reimbursement will be 15 cents per mile. Tolls and parking are included in this rate.

IV. Transportation Allowance

- A. No Receipts Required - When the destination of travel is 35 miles or more from the traveler's official work station, the traveler's transportation expenses without receipts will be reimbursed in accordance with the following:
 1. Up to \$7.00 each way without receipts between residence/official station and transportation terminal, bus stations, train stations, etc.
 2. Reimbursement for personally or company owned car will be at the rate of 23 cents per mile for travel between residence official station and transportation terminal. The total maximum allowed for each round trip will be \$20.00. This maximum includes mileage, tolls and parking.
 3. Reimbursement up to \$7.00 without a receipt for travel by taxi, common carrier, or personal/company car between transportation terminals, bus stations, train stations etc.
- B. Receipts Required - When the destination of travel is 35 miles or more from the traveler's official work station, the traveler's transportation expenses with receipts will be reimbursed in accordance with the following:
 1. Reimbursement up to \$25.00 each way in New York City area for receipted expenses for taxi fares and common carrier between residence/official station and transportation terminal, airports, train stations etc.
 2. Reimbursement up to \$15.00 elsewhere for receipted expenses for taxi fares and common carrier between residence/official station and transportation terminal, airports, train stations, etc.
- C. Air Train and Bus Fares - Travel by air, train or bus will be reimbursed at coach rates. Air travel must be supported by an air passenger coupon.

IV. Transportation Allowance (con't)

- D. Rental Cars - Travel by rental car will only be reimbursed in instances where no other more economical means of travel is available. Car rentals must be supported by a copy of the rental agreement along with a justification for use of the rental car.

V. Extraordinary Situations

1. Under extraordinary circumstances, requests for reimbursement of higher lodging or meal allowances other than these shown above will be considered. Prior approval of the Department must be obtained before any such expenses would be allowed. Any approved expenses must be supported by documentation and written justification.
2. Travelers will be allowed expenses for meals and lodging on Saturdays, Sundays and holidays while engaged in authorized work. The traveler will be reimbursed for expenses incurred while returning home on a weekend or holiday, limited to the amount the traveler would have received had he/she remained at post of duty.

SCHEDULE 2

STATE AND FEDERAL POLICIES

Schedule 2

Actual allowable overhead and direct reimbursable costs under this agreement shall be determined in accordance with the following Federal Procurement Regulations and New York State Policies.

FEDERAL REGULATIONS

Reimbursement will be limited to the costs which are or would be allowable under federal costs principles, contained in the Federal Procurement Regulations.

NEW YORK STATE POLICIES

1. The maximum annual individual compensation (salary plus incentive compensation) which will be allowable as either a direct cost or a part of overhead shall be the daily rate for the federal salary grade GS 18, which at the time of execution of this contract is \$245.36. Should the total compensation limit be raised during the term of this AGREEMENT, the new maximum will be allowed as stated in the Department's formal notification to the ENGINEER.
2. Participation by New York State in contractual or discretionary incentive compensation or bonuses which are paid/or accrued during the ENGINEER's fiscal year, shall not exceed 15 percent of the employee's annual base compensation.
3. Per diem and travel allowances authorized for New York State employees shall apply to this project. The rate authorized will be that rate which applies to the geographical area in which the charge occurs. All charges for transportation and subsistence must be consistent with the New York State Comptroller's guidelines. These guidelines are presented in Exhibit G and are a part of this AGREEMENT by reference.

APPENDIX A

The parties to the attached contract further agree to be bound by the following, which are hereby made a part of said contract:

I. This contract may not be assigned by the contractor or its right, title, or interest therein assigned, transferred, conveyed, sublet or disposed of without the previous consent, in writing, of the State.

II. This contract shall be deemed executory only to the extent of money available to the State for the performance of the terms hereof and no liability on account thereof shall be incurred by the State of New York beyond moneys available for the purpose thereof.

III. The contractor specifically agrees, as required by Labor Law, Sections 220 and 220-d, as amended, that:

(a) no laborer, workman or mechanic, in the employ of the contractor, subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week, except in the emergencies set forth in the Labor Law.

(b) the wages paid for a legal day's work shall be not less than the prevailing rate of wages as defined by law.

(c) the minimum hourly rate of wage to be paid shall not be less than that stated in the specifications, and any redetermination of the prevailing rate of wages after the contract is approved shall be deemed to be incorporated herein by reference as of the effective date of redetermination and shall form a part of these contract documents.

1) The Labor Law provides that the contract may be forfeited and no sum paid for any work done thereunder on a second conviction for willfully paying less than -

(a) the stipulated wage scale as provided in Labor Law, Section 220, subdivision 3, as amended, or

(b) less than the stipulated minimum hourly wage scale as provided in Labor Law, Section 220-d, as amended.

IV. The contractor specifically agrees, as required by the provisions of the Labor Law, Section 220-e as amended, that -

(a) In hiring of employees for the performance of work under this contract or any subcontract hereunder, or for the manufacture, sale or distribution of materials, equipment or supplies hereunder, no contractor, subcontractor nor any person acting on behalf of such contractor or subcontractor, shall by reason of race, creed, color, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates.

(b) no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, color, sex or national origin.

(c) there may be deducted from the amount payable to the contractor by the State under this contract a penalty of five dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract, and

(d) this contract may be canceled or terminated by the State or municipality and all moneys due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of the contract, and

(e) the aforesaid provisions of this section covering every contract for or on behalf of the state or a municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.

V. During the performance of this contract, the contractor agrees as follows:

(a) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status.

(b) If directed to do so by the Commissioner of Human Rights, the contractor will send to each labor union or representative of workers with which the contractor has or is bound by a collective bargaining or other agreement or understanding, a notice, to be provided by the State Commissioner of Human Rights, advising such labor union or representative of the contractor's agreement under clauses (a) through (g) (hereinafter called "non-discrimination clauses") If the contractor was directed to do so by the contracting agency as part of the bid or negotiation of this contract, the contractor shall request such labor union or representative to furnish a written statement that such labor union or representative will not discriminate because of race, creed, color, sex, national origin, age, disability or marital status, and that such labor union or representative will cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses and that it consents and agrees that recruitment, employment and the terms and conditions of employment under this contract shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, the contractor shall promptly notify the State Commissioner of Human Rights of such failure or refusal.

(c) If directed to do so by the Commissioner of Human Rights, the contractor will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Commissioner of Human Rights setting forth the substance of the provisions of the State's laws against discrimination as the State Commissioner of Human Rights shall determine.

(d) The contractor will state, in all solicitations or advertisement for employees placed by or on behalf of the contractor, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, sex, national origin, age, disability or marital status.

(e) The contractor will comply with the provisions of Sections 290-299 of the Executive Law and with the Civil Rights Law, will furnish all information and reports deemed necessary by the State Commissioner of Human Rights under these non-discriminatory clauses and such sections of the Executive Law, and will permit access to the contractor's books, records and accounts by the State Commissioner for the purposes of investigation to ascertain compliance with these non-discrimination clauses and such sections of the Executive Law and Civil Rights Law.

(f) This contract may be forthwith canceled, terminated or suspended, in whole or in part, by the contracting agency upon the basis of a finding made by the State Commissioner of Human Rights that the contractor has not complied with these non-discrimination clauses, and the contractor may be declared ineligible for future contracts made by or on behalf of the State or a public authority or agency of the State, until the contractor satisfies the State Commissioner of Human Rights that the contractor has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Commissioner of Human Rights after conciliation efforts by the Commissioner have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the Commissioner, notice thereof has been given to the contractor to be heard publicly in accordance with the Executive Law. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by law.

(g) The contractor will include the provisions of clauses (a) through (f) in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to operations to be performed within the State of New York. The contractor will take such action in enforcing such provisions of such subcontract or purchase order as the State Commissioner of Human Rights or the contracting agency may direct, including sanctions or remedies for non-compliance. If the contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the State Commissioner of Human Rights or the contracting agency, the contractor shall promptly so notify the Attorney General, requesting the Attorney General to intervene and protect the interests of the State of New York.

VI. (a) By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

1) The prices in this bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to openingce with Section 220-f of the Labor Law and Section 139-h of the State Finance Law and the regulations of the Comptroller of the State of New York promulgated thereunder, the contractor agrees, as a material condition of the contract.

to submit a bid for the purpose of restricting competition.

(b) A bid shall not be considered for award nor shall any award be made where (a)(1)(2) and (3) above have not been complied with provided, however, that if in any case the bidder can not make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefore. Where (a)(1)(2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the State, public department or agency to which the bid is made, or his designee, determined that such disclosure was not made for the purpose of restricting competition.

The fact that a bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of paragraph VI (a).

VII. The agreement shall be void and of no force and effect unless the contractor shall provide coverage for the benefit of, and keep covered during the life of this agreement, such employees as are required to be covered by the provisions of the Worker's Compensation Law.

VIII. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law and the regulations of the Comptroller of the State of New York promulgated thereunder, the contractor agrees, as a material condition of the contract.

A. That neither the contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the provisions of the United States Export Administration Act of 1969, as amended, or the Export Administration Act of 1979, as amended, or the regulations of the United States Department of Commerce promulgated thereunder;

B. That if the contractor or any substantially owned or affiliated person, firm, partnership or corporation has been convicted or subjected to a final determination by the United States Department of Commerce or any other appropriate agency of the United States of a violation of the United States Export Administration Act of 1969, as amended, or the Export Administration Act of 1979, as amended, or the regulations of the United States Department of Commerce promulgated thereunder, the contractor shall notify the Comptroller of such conviction or determination in the manner prescribed by the Comptroller's regulations.

The following definitions apply hereinafter:

Minority business enterprise (MBE): A business at least 51 percent of which is owned and controlled by minority male/female members or in the case of a publicly-owned business, at least 51 percent of the stock of which is owned and controlled by minority male/female members. The minority ownership must exercise actual day-to-day management.

Minority group members: Black Americans, Hispanic Americans, Asian Americans, American Indians, American Eskimos, and American Aleuts.

Black (not of hispanic origin) - A person having origins in any of the black racial groups.

Hispanic - A person of Mexican, Puerto Rican, Cuban Central or South American, or other Spanish culture or origin, regardless of race.

Asian or Pacific Islander - A person having origins in any of the original peoples of the Far East, Southeast Asia, Indian subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Phillipine Islands, and Samoa.

American Indian or Alaskan native - A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

Women's Business Enterprise (WBE): A business at least 51 percent of which is owned and controlled by female partner(s), or in the case of a publicly-owned business, at least 51 percent of the stock of which is owned and controlled by female group members. The female ownership must exercise actual day-to-day management.

White: A person with origins in any of the original peoples of Europe, North Africa, or the Middle East who is not a hispanic origin.

NYSDEC/OAA - New York State Department of Environmental Conservation/Office of Affirmative Action.

The Contractor agrees that it will make good faith efforts to subcontract at least (12%) MBE and at least (2%) WBE of the total value of this contract. Failure to obtain these percentages or demonstrate positive efforts to do so may lead to withholding of payments. Within 15 days of authorization to begin work or signing of the contract, whichever occurs first, the Contractor must submit an MBE/WBE utilization plan with a detailed description of the services to be provided as well as an estimated dollar amount of each subcontract. This MBE/WBE utilization plan shall identify how the contractor proposes to achieve the MBE/WBE goals stated in the proposed utilization plan shall be submitted to the Department's MBE/WBE officer.

The NYSDEC/OAA will review and approve the utilization plan if it clearly delineates methods to achieve the required MBE/WBE goals. Failure to submit and receive NYSDEC/OAA approval of the MBE/WBE utilization plan prior to the first withholding of this payment by the Department. Such withholding of payments shall not relieve the Contractor of any requirements of the contract including the completion of the project. Submission of an approvable plan shall be determined a prerequisite to invocation of the provisions of the "prompt payment" bill (L. 1984 c, 153).

Within 30 days of approval of the utilization plan by NYSDEC/OAA, the Contractor shall submit copies of signed MBE/WBE subcontracts to the Department's MBE/WBE officer. These subcontracts must include the following: actual dollar amount, job description, signature of both parties - prime and MBE/WBE, dates of execution.

Note - If the work to be done by the MBE/WBE subcontractors is not expected to commence within the first year of the project, the prime contractor may submit signed MBE/WBE subcontracts 60 days prior to the work's being done. This will be allowed only if the contractor has clearly identified in the utilization plan a time schedule for work to be performed by MBE/WBE subcontractors and has secured a letter of intent signed by the respective parties.

MBE/WBE must be registered with the New York State Department of Commerce and listed with NYSDEC/OAA before they can be approved for project participation provided that out-of-state MBE/WBE's who register and meet the requirements of NYSDEC/OAA are eligible for participation in projects.

The New York State Department of Environmental Conservation's Office of Affirmative Action requires that two (2) weeks' notice be given prior to pre-construction meetings to allow for the New York State Department of Environmental Conservation's Office of Affirmative Action officials' attendance and review of MBE/WBE compliance requirements.

Failure to meet the provisions for this notice shall be grounds for rescheduling these pre-construction meetings.

SCHEDULE 3

FEDERAL RULES AND REGULATIONS

Dated: March 11, 1983.

John W. Hernandez, Jr.,
Acting Administrator.

Accordingly, Title 40 Chapter I is amended by revising Part 33 to read as follows:

PART 33—PROCUREMENT UNDER ASSISTANCE AGREEMENTS

- 33.001 Applicability and scope of this part.
33.005 Definitions.

Subpart A—Procurement System Evaluation

- 33.105 Applicability and scope of this subpart.
33.110 Applicant and recipient certification.
33.115 Procurement system review.

Subpart B—Procurement Requirements

- 33.205 Applicability and scope of this subpart.
33.210 Recipient responsibility.
33.211 Recipient reporting requirements.
33.220 Limitation on subagreement award.
33.225 Violations.
33.230 Competition.
33.235 Profit.
33.240 Small, minority, women's, and labor surplus area businesses.
33.245 Privity of subagreement.
33.250 Documentation.
33.255 Specifications.
33.260 Intergovernmental agreements.
33.265 Bonding and insurance.
33.270 Code of conduct.
33.275 Federal cost principles.
33.280 Payment to consultants.
33.285 Prohibited types of subagreements.
33.290 Cost and price considerations.
33.295 Subagreements awarded by a contractor.

Small Purchases

- 33.305 Small purchase procurement.
33.310 Small purchase procedures.
33.315 Requirements for competition.

Formal Advertising

- 33.405 Formal advertising procurement method.
33.410 Public notice and solicitation of bids.
33.415 Time for preparing bids.
33.420 Adequate bidding documents.
33.425 Public opening of bids.
33.430 Award to lowest, responsive, responsible bidder.

Competitive Negotiation

- 33.505 Competitive negotiation procurement method.
33.510 Public notice.
33.515 Evaluation of proposals.
33.520 Negotiation and award of subagreement.
33.525 Optional selection procedure for negotiation and award of subagreements for architectural and engineering services.

Noncompetitive Negotiation

- 33.605 Noncompetitive negotiation procurement method.

Subpart C—Requirements for Recipients of Assistance Agreements for Construction of Treatment Works

- Sec.
33.705 Applicability and scope of this subpart.
33.710 Buy American.
33.715 Use of the same architect or engineer during construction.

Subpart D—Requirements for Institutions of Higher Education and Other Nonprofit Organizations

- 33.805 Applicability and scope of this subpart.
33.810 Nonapplicable subagreement clauses.
33.815 Nonapplicable procurement provisions.
33.820 Additional procurement requirements.

Subpart E—Requirements for Recipients of Remedial Action Cooperative Agreements Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

- 33.905 Applicability and scope of this subpart.
33.910 Preference for formal advertising.
33.915 Award official approval.

Subpart F—Subagreement Provisions

- 33.1005 Applicability and scope of this subpart.
33.1010 Requirements for subagreement clauses.
33.1015 Subagreement provisions clause.
33.1018 Labor standards provisions.
33.1019 Patents, data and copyrights clause.
33.1020 Violating facilities clause.
33.1021 Energy efficiency clause.
33.1030 Model subagreement clauses.

Subpart G—Protests

- 33.1105 Applicability and scope of this subpart.
33.1110 Recipient protest procedures.
33.1115 Protest appeal.
33.1120 Limitations on protest appeals.
33.1125 Filing requirements.
33.1130 Review of protest appeals.
33.1140 Deferral of procurement action.
33.1145 Award official's review.

Appendix A—Procedural Requirements for Recipients Who Do Not Certify Their Procurement Systems, or for Recipients Who Have Their Procurement Certifications Revoked by EPA.

Authority: 7 U.S.C. 135 et seq.; 15 U.S.C. 2501 et seq.; 33 U.S.C. 1251 et seq.; 42 U.S.C. 241, 242b, 243, 246, 300j-1, 300j-2, 300j-3, 1357 et seq., 6901 et seq.; and 42 U.S.C. 9601 et seq.

§ 33.001 Applicability and scope of this Part.

(a) This part applies to all assistance agreements awarded on or after the effective date of this part. For assistance agreements awarded before the effective date, this part will apply only to those procurement actions initiated by the recipient on or after the date the recipient complies with the self-certification requirements in § 33.110 of this part.

(b) This part:

(1) Describes EPA's procurement system evaluation process.

(2) Identifies the minimum requirements for the procurement of supplies, services, and construction under EPA assistance agreements.

(3) Identifies an additional specification requirement for procurement under assistance agreements for the construction of treatment works awarded under 40 CFR Part 35, Subparts E and I.

(4) Identifies the procurements standards that institutions of higher education and other nonprofit organizations must follow.

(5) Identifies the provisions that recipients of EPA assistance agreements must include in their subagreements.

(6) Describes the procedures that EPA will use to handle protest appeals concerning the award of a subagreement by the recipient of an EPA assistance agreement.

(c) This Part does not apply to work beyond the scope of the project for which an assistance agreement is awarded (i.e., ineligible work).

(d) This part does not apply to expenses for services for which the recipient will receive an allowance or a potential recipient will receive an advance of an allowance under 40 CFR Part 35, Subpart I.

(e) This part supplements the requirements in:

(1) 40 CFR Part 30 "General Regulation for Assistance Programs," and

(2) 40 CFR Part 32, "Debarments and Suspensions under EPA Assistance Programs."

(f) The following types of recipients must comply with the specified subparts in this part:

(1) Recipients of assistance agreements for the construction of treatment works awarded under 40 CFR Part 35, Subparts E and I, must follow the requirements in Subparts A, B, C, F and G.

(2) Recipients of remedial action cooperative agreements under the Comprehensive Environmental Response, Compensation, Liability Act of 1980 (Superfund 42 U.S.C. 6901 et seq.) must follow the requirements in Subparts A, B, E, F and G.

(3) State and local government recipients for other than construction grants and CERCLA remedial action cooperative agreements must follow the requirements in Subparts A, B, F and G.

(4) Institutions of higher education, hospitals, and other nonprofit organizations must follow the requirements in Subparts A, B, D and G.

(g) In the construction of treatment works program under the Clean Water Act (33 U.S.C. 1251 et. seq.), it is EPA's policy to delegate determinations on individual projects to State agencies to the maximum extent possible (see 40 CFR Part 35, Subpart F). This Part uses the term "award official." To the extent that the award official for a treatment works assistance agreement delegates responsibility for determining compliance with the requirements of this Part (except for § 33.115 "Procurement system review," § 33.211 "Recipient reporting requirements" and Subpart G "Protests") to a State agency under a delegation agreement (40 CFR 35.1130), the term "award official" may be read "State agency."

(h) This Part applies to a grant awarded under 40 CFR Part 35 Subpart E only if the recipient elects to follow the requirements in this Part. If the recipient of a Subpart E grant does not elect to follow the requirements in this Part, it is subject to the procurement requirements in 40 CFR Subpart E.

§ 33.605 Definitions.

(a) Words and terms not defined below shall have the meaning given to them in 40 CFR Part 30 and 40 CFR Part 35.

(b) As used in this part, the following words and terms mean:

Architectural or engineering (A/E) services. Consultation, investigations, reports, or services for design-type projects within the scope of the practice of architecture or professional engineering as defined by the laws of the State or territory in which the recipient is located.

Construction. Erection, building, alteration, remodeling, improvement, or extension of buildings, structures or other property. Construction also includes remedial actions in response to a release, or a threat of a release, of a hazardous substance into the environment as determined by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

Contractor. Any party to whom a recipient awards a subagreement.

Cost analysis. The review and evaluation of each element of subagreement cost to determine reasonableness, allocability and allowability.

Intergovernmental Agreement. Any written agreement between units of government under which one public agency performs duties for or in concert with another public agency using EPA assistance. This includes substate and interagency agreements.

Minority Business Enterprise. A minority business enterprise is a business which is: (1) Certified as socially and economically disadvantaged by the Small Business Administration, (2) certified as a minority business enterprise by a State or Federal agency, or (3) an independent business concern which is at least 51 percent owned and controlled by minority group member(s). A minority group member is an individual who is a citizen of the United States and one of the following:

- (i) Black American;
- (ii) Hispanic American (with origins from Puerto Rico, Mexico, Cuba, South or Central America);
- (iii) Native American (American Indian, Eskimo, Aleut, native Hawaiian), or
- (iv) Asian-Pacific American (with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan or the Indian subcontinent).

Price analysis. The process of evaluating a prospective price without regard to the contractor's separate cost elements and proposed profit. Price analysis determines the reasonableness of the proposed subagreement price based on adequate price competition, previous experience with similar work, established catalog or market price, law, or regulation.

Profit. The net proceeds obtained by deducting all allowable costs (direct and indirect) from the price. (Because this definition of profit is based on applicable Federal cost principles, it may vary from many firms' definition of profit, and may correspond to those firms' definition of "fee.")

Services. A contractor's labor, time, or efforts which do not involve the delivery of a specific end item, other than documents, (e.g., reports, design drawing, specifications). This term does not include employment agreements or collective bargaining agreements.

Small business. A business as defined in Section 3 of the Small Business Act, as amended (15 U.S.C. 632).

Subagreement. A written agreement between an EPA recipient and another party (other than another public agency) and any lower tier agreement for services, supplies, or construction necessary to complete the project. Subagreements include contracts and subcontracts for personal and professional services, agreements with consultants, and purchase orders.

Supplies. All property, including equipment, materials, printing, insurances and leases of real property,

but excluding land or a permanent interest in land.

Women's Business Enterprise. A women's business enterprise is a business which is certified as such by a State or Federal agency, or which meets the following definition: A women's business enterprise is an independent business concern which is at least 51 percent owned by a woman or women who also control and operate it. Determination of whether a business is at least 51 percent owned by a woman or women shall be made without regard to community property laws. For example, an otherwise qualified WBE which is 51 percent owned by a married woman in a community property state will not be disqualified because her husband has a 50 percent interest in her share. Similarly, a business which is 51 percent owned by a married man and 49 percent owned by an unmarried woman will not become a qualified WBE by virtue of his wife's 50 percent interest in his share of the business.

Subpart A—Procurement System Evaluation

§ 33.105 Applicability and scope of this subpart.

(a) This subpart applies to all recipients of EPA assistance agreements.

(b) For procurements involving EPA funds, recipients shall use their own procurement policies and procedures if those policies and procedures reflect applicable Federal, State, and local laws and regulations, and at least meet the requirements set forth in this part.

(c) This subpart describes when EPA will review the recipient's procurement practices.

§ 33.110 Applicant and recipient certification.

(a) It is the applicant's and recipient's responsibility to evaluate its own procurement system and to determine whether its system meets the applicable requirements in this part (see § 33.001).

(b) After evaluating its procurement system, the applicant or recipient will complete the "Procurement System Certification" (EPA Form 5700-46). The applicant or recipient will either certify that:

(1) Its system will meet the intent of all the requirements in this part before any procurement action with EPA assistance is undertaken, or

(2) Its current system does not meet the intent of the requirements of this part and, therefore, the applicant will follow the requirements of 40 CFR Part 33 and allow EPA preaward review of proposed procurement actions that will

use EPA funds. The additional requirements for EPA review and approval are contained in Appendix A to this part.

(c) The applicant must submit the signed certification form with the assistance application to the award official.

(d) The certification will be valid for two years or for the length of the project period specified in the assistance agreement, whichever is greater, unless the recipient substantially revises its procurement system or the award official determines that the recipient is not following the intent of the requirements in this part (see § 33.115(b)). If the recipient substantially revises its procurement system, the recipient must re-evaluate its system and submit a revised EPA Form 5700-48.

(e) Even when a recipient certifies its procurement system, the EPA award official retains the authority stated in:

(1) Section 33.210(h) "Recipient's procurement responsibilities," which requires the recipient to receive the award official's prior written approval if the recipient wants to use an innovative procurement method.

(2) Section 33.211 "Recipient reporting requirements," which requires the award official to notify the Department of Labor of certain construction subagreement awards, and obtain all bid or offer tabulations.

(3) Section 33.605(d) "Noncompetitive negotiation," to authorize a noncompetitive award.

(4) Section 33.820(b) "Additional procurement requirements," which requires the award official's prior approval for a sole source award over \$10,000 by an institute of higher education or other nonprofit organization.

(5) Section 33.915 "Award official approval," which requires the award official to approve the recipient's use of a procurement method other than formal advertising for a Superfund remedial action award, and

(6) Subpart G "Protests."

§ 33.115 Procurement system review.

(a) EPA will not substitute its judgment for that of the recipient unless the matter is primarily a Federal concern.

(b) Even if a recipient has a certified procurement system, EPA reserves the right to review a recipient's procurement system or procurement action under an assistance agreement:

(1) To determine if the recipient is following the procurement requirements in this part; or

(2) When there is sufficient reason to believe that the recipient's system may be unacceptable based on:

(i) Information concerning the review or certification of the recipient's procurement system or actions by other Federal agencies or Congress;

(ii) Information from the recipient's cognizant audit agency;

(iii) Information from State agencies and organizations independent of the recipient's procurement activity;

(iv) Recipient responses to the procurement system certification form;

(v) Previous EPA experience with the recipient; or

(vi) Information from contractors or prospective contractors.

(c) If the award official determines that the recipient is not following the procurement requirements it certified it would follow, the award official shall revoke the recipient's certification and:

(1) Require that the recipient follow the procurement requirements in this part, including Appendix A, for future procurement actions and, if appropriate,

(2) Apply the sanctions in 40 CFR Part 30.

(d) The recipient may recertify its procurement system if it shows the award official that it has corrected the procurement deficiencies noted by the award official, and the award official accepts the recertification.

Subpart B—Procurement Requirements

§ 33.205 Applicability and scope of this subpart.

This subpart contains:

(a) The recipient's and EPA's responsibilities, and

(b) The minimum procurement standards for each recipient's procurement system.

§ 33.210 Recipient responsibility.

(a) The recipient is responsible for the settlement and satisfactory completion in accordance with sound business judgment and good administrative practice of all contractual and administrative issues arising out of subagreements entered into under the assistance agreement. This includes issuance of invitations for bids or requests for proposals, selection of contractors, award of subagreements, settlement of protests, claims, disputes and other related procurement matters.

(b) The recipient shall maintain a subagreement administration system to assure that contractors perform in accordance with the terms, conditions and specifications of their subagreements.

(c) The recipient shall review its proposed procurement actions to avoid purchasing unnecessary or duplicative items.

(d) The recipient shall consider consolidating its procurement or dividing it into parts to obtain a more economical purchase.

(e) Where appropriate, the recipient shall make an analysis of lease versus purchase alternatives in its procurement actions.

(f) A recipient of a remedial action cooperative agreement awarded under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 must obtain the EPA award official's approval to use a procurement method other than the formal advertising method (see Subpart E).

(g) A recipient may request technical and legal assistance from the award official for the administration and enforcement of any subagreement awarded under this Part. However, such assistance does not relieve the recipient of its responsibilities under this Part.

(h) A recipient may use innovative procurement methods or procedures only if it receives the award officials' prior written approval.

§ 33.211 Recipient reporting requirements.

Recipients shall notify the award official in writing, of each construction subagreement which has or is expected to have an aggregate value over \$10,000 within a 12-month period. The recipient shall notify the award official within ten (10) calendar days after the award of each construction subagreement. The notice shall include:

(a) Name, address, telephone number and employee identification number of the construction contractor,

(b) Amount of the award,

(c) Estimated starting and completion dates.

(d) Project number, name and site location of the project, and

(e) Copy of the tabulations of bids or offerors and the name of each bidder or offeror.

§ 33.220 Limitation of subagreement award.

(a) The recipient shall award subagreements only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. A responsible contractor is one that has:

(1) Financial resources, technical qualifications, experience, organization and facilities adequate to carry out the project, or a demonstrated ability to obtain these;

(2) Resources to meet the completion schedule contained in the subagreement;

(3) A satisfactory performance record for completion of subagreements;

(4) Accounting and auditing procedures adequate to control property, funds and assets, as required in this Part and 40 CFR Part 30; and

(5) Demonstrated compliance or willingness to comply with the civil rights, equal employment opportunity, labor law and other statutory requirements under 40 CFR Part 30.

(b) The recipient shall not make awards to contractors who have been suspended, debarred, or voluntarily excluded under 40 CFR Part 32 nor shall it permit any portion of the work required by the subagreement to be performed at any facility listed on the EPA List of Violating Facilities (see 40 CFR Part 15).

§ 33.225 Violations.

The recipient shall refer violations of law to the local, State or Federal authority with jurisdiction over the matter (see § 30.610).

§ 33.230 Competition.

(a) The recipient shall conduct all procurement transactions in a manner that provides maximum open and free competition.

(b) Procurement practices shall not unduly restrict or eliminate competition. Examples of practices considered to be unduly restrictive include:

(1) Noncompetitive practices between firms;

(2) Organizational conflicts of interest;

(3) Unnecessary experience and bonding requirements;

(4) State or local laws, ordinances, regulations or procedures which give local or in-State bidders or proposers preference over other bidders or proposers in evaluating bids or proposals; or

(5) Placing unreasonable requirements on firms in order for them to qualify to do business.

(c) The recipient may use a prequalification list(s) of persons, firms or products if it:

(1) Updates its prequalified list(s) at least every six months;

(2) Reviews and acts on each request for prequalification made more than 30 days before the closing date for receipt of proposals or bid opening; and

(3) Gives adequate public notice of its prequalification procedure in accordance with the public notice procedures in § 33.410 or § 33.510.

(d) A recipient may not use a prequalified list(s) of persons or firms if the procedure unnecessarily restricts competition. However, this restriction

does not apply to § 33.525 "Optional selection procedure for negotiation and award of subagreements for architectural and engineering services."

§ 33.235 Profit.

(a) Recipients must assure that only fair and reasonable profits are paid to contractors awarded subagreements under EPA assistance agreements.

(b) The recipient shall negotiate profit as a separate element of price for each subagreement in which there is no price competition, or where price is based on cost analysis.

(c) Where the recipient receives two or more bids, profit included in a formally advertised, competitively bid, fixed price subagreement shall be considered reasonable.

(d) Off-the-shelf or catalog supplies are exempt from this section.

§ 33.240 Small, minority, women's, and labor surplus area businesses.

(a) It is EPA policy to award a fair share of subagreements to small, minority, and women's businesses. The recipient must take affirmative steps to assure that small, minority, and women's businesses are used when possible as sources of supplies, construction and services. Affirmative steps shall include the following:

(1) Including qualified small, minority, and women's businesses on solicitation lists;

(2) Assuring that small, minority, and women's businesses are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of small, minority, and women's businesses;

(4) Establishing delivery schedules, where the requirements of the work permit, which will encourage participation by small, minority, and women's businesses;

(5) Using the services and assistance of the Small Business Administration and the Office of Minority Business Enterprise of the U.S. Department of Commerce, as appropriate; and

(6) If the contractor awards subagreements, requiring the contractor to take the affirmative steps in paragraphs (a)(1) through (a)(5) of this section.

(b) [Reserved].

(c) EPA encourages recipients to procure supplies and services from labor surplus area firms.

§ 33.245 Privy of subagreement.

Neither EPA nor the United States shall be a party to any subagreement nor to any solicitation or request for proposals.

§ 33.250 Documentation.

(a) Procurement records and files for procurements in excess of \$10,000 shall include the following:

(1) Basis for contractor selection;

(2) Written justification for selection of the procurement method;

(3) Written justification for use of any specification which does not provide for maximum free and open competition;

(4) Written justification for the type of subagreement;

(5) Basis for award cost or price, including a copy of the cost or price analysis made in accordance with § 33.290 and documentation of negotiations; and

(6) Written justification for rejecting bids.

(b) Recipients must state the reasons for rejecting any or all bids and the justification for procurements on a noncompetitively negotiated basis and make them available for public inspection.

§ 33.255 Specifications.

(a) Recipients must incorporate in their specifications a clear and accurate description of the technical requirements for the material, product or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition, unless the features are necessary to test or demonstrate a specific thing or to provide for necessary interchangeability of parts and equipment or to promote innovative technologies. The description shall include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.

(b) The recipient shall avoid the use of detailed product specifications if at all possible.

(c) When in the judgment of the recipient it is impractical or uneconomical to make a clear and accurate description of the technical requirements, recipients may use a "brand name or equal" description as a means to define the performance or other salient requirements of a procurement. The recipient need not establish the existence of any source other than the named brand. Recipients must clearly state in the specification the salient requirements of the named brand which must be met by offerors. (An additional specification requirement for recipients of assistance for the construction of treatment works under

40 CFR Part 35, Subparts E and I is contained in § 33.710.)

§ 33.260 Intergovernmental agreements.

(a) To foster greater economy and efficiency, EPA encourages recipients to enter into State and local intergovernmental agreements for common procurement or use of goods and services.

(b) Although intergovernmental agreements are not subject to the requirements in this part, all procurements under intergovernmental agreements are subject to the requirements in this part except for procurements that are:

(1) Incidental to the purpose of the assistance agreement, and

(2) Made through a central public procurement unit.

§ 33.265 Bonding and insurance.

(a) These requirements apply only to recipients and contractors with subagreements for construction.

(1) For construction subagreements of \$100,000 or less, the recipient shall follow its own requirements relating to bid guarantees, performance bonds and payment bonds.

(2) For those subagreements more than \$100,000, the award official may accept the recipient's bonding policy and requirements provided the award official makes a determination that the Federal Government's interest is adequately protected. If the award official does not make that determination, the minimum bonding requirements for subagreements more than \$100,000 are:

(i) A "bid guarantee" from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as the EPA recipient may require within the time specified.

(ii) A "performance bond" for 100 percent of the subagreement price. A "performance bond" is one that the contractor executes in connection with a subagreement to secure fulfillment of all its obligations under such subagreement.

(iii) A "payment bond" for 100 percent of the subagreement price. A "payment bond" is one that the contractor executes in connection with a subagreement to assure payment as required by law, to all persons supplying labor and material in the execution of the work provided for in the subagreement.

(3) Where bonds are required in the situations described above, bidders and contractors shall obtain them from companies holding certificates of authority as acceptable sureties (31 CFR Part 223).

(b) Recipients and contractors must follow the flood hazard area requirements of the Flood Disaster Protection Act of 1973 contained in 40 CFR Part 30.

§ 33.270 Code of conduct.

(a) Recipients shall maintain a written code or standards of conduct which shall govern the performance of its officers, employees, or agents engaged in the award and administration of subagreements supported by EPA funds. No employee, officer or agent of the recipient shall participate in the selection, award or administration of a subagreement supported by EPA funds if a conflict of interest, real or apparent, would be involved.

(b) Such a conflict would arise when:

(1) Any employee, officer or agent of the recipient, any member of their immediate families, or their partners have a financial or other interest in the firm selected for award, or

(2) An organization which may receive or has been awarded a subagreement employs, or is about to employ, any person under paragraph (b)(1) of this section.

(c) The recipient's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors or other parties to subagreements.

(d) Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

(e) To the extent permitted by State or local law or regulations, the recipient's code of conduct shall provide for penalties, sanctions or other disciplinary actions for violations of the code by the recipient's officers, employees or agents or by contractors or their agents.

§ 33.275 Federal cost principles.

The following cost principles apply to assistance agreements and subagreements:

(a) State and local governments must comply with OMB Circular A-87 to determine allowable costs.

(b) Educational institutions must comply with OMB Circular A-21 to determine allowable costs and with OMB Circular A-88 for indirect cost rates.

(c) Nonprofit institutions must comply with OMB Circular A-122 to determine allowable costs.

(d) All other recipients, contractors and subcontractors must comply with the cost principles contained in the Federal Procurement Regulations (41 CFR 1-15.2 and, if appropriate, 1-15.4) to determine allowable costs.

§ 33.280 Payment to consultants.

(a) For all EPA assistance agreements, EPA will limit its participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors to the maximum daily rate for a GS-18. (Recipients may, however, pay contractors and subcontractors more than this amount.) This limitation applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed; recipients will pay these in accordance with their normal travel reimbursement practices.

(b) Subagreements with firms for services which are awarded using the procurement requirements in this part are not affected by this limitation.

§ 33.285 Prohibited types of subagreements.

The cost-plus-percentage-of-cost (e.g., a multiplier which includes profit) and the percentage-of-construction-cost types of subagreements shall not be used.

§ 33.290 Cost and price considerations.

(a) The recipient shall conduct a cost analysis of all negotiated change orders and all negotiated subagreements estimated to exceed \$10,000.

(b) The recipient shall conduct a price analysis of all formally advertised procurements estimated to exceed \$10,000 if there are fewer than three bidders.

(c) For negotiated procurement, contractors and subcontractors shall submit cost or pricing data in support of their proposals to the recipient.

§ 33.295 Subagreements awarded by a contractor.

A contractor must comply with the following provisions in its award of subagreements. (This section does not apply to a supplier's procurement of materials to produce equipment, materials and catalog, off-the-shelf, or manufactured items.)

(a) 40 CFR Part 32 (Debarment and Suspension Under EPA Assistance Programs);

(b) The limitations on subagreement award in § 33.220 (a)(1) through (a)(5);

(c) The profit requirements in § 33.235;

(d) The requirements for small, minority, women's and labor surplus area businesses in § 33.240;

(e) The specification requirements of § 33.255;

(f) The requirements of Subpart C of this Part, if appropriate;

(g) The Federal cost principles in § 33.275;

(h) The prohibited types of subagreements in § 33.285;

(i) The cost and price considerations in § 33.290, and

(j) The applicable subagreement provisions in Subpart F of this part.

Small Purchases

§ 33.305 Small purchase procurement.

If the aggregate amount involved in any one procurement transaction does not exceed \$10,000, including estimated handling and freight charges, overhead and profit, the recipient may use small purchase procedures.

§ 33.310 Small purchase procedures.

Small purchase procedures are relatively simple procurement methods that are sound and appropriate for a procurement of services, supplies or other property costing in the aggregate not more than \$10,000.

§ 33.315 Requirements for competition.

(a) Recipients shall not divide a procurement into smaller parts to avoid the dollar limitation for competitive procurement.

(b) Recipients shall obtain price or rate quotations from an adequate number of qualified sources.

Formal Advertising

§ 33.405 Formal advertising procurement method.

(a) The requirements in §§ 33.405 through 33.430 apply to all formally advertised subagreements in excess of \$10,000. Formal advertising means the public solicitation of sealed bids and the award of a subagreement based on a fixed price (lump sum, unit price, or a combination of the two) to the lowest, responsive, responsible bidder.

(b) Formal advertising requires at a minimum:

(1) A complete, adequate and realistic specification or purchase description of what is required;

(2) Two or more responsible bidders which are willing and able to compete effectively for the recipient's business;

(3) A procurement that lends itself to the award of a fixed-price subagreement; and

(4) That the selection of the successful bidder be made principally on the basis of price.

§ 33.410 Public notice and solicitation of bids.

The recipient shall give adequate public notice of the solicitation, inviting bids and stating when and how the bidding documents may be obtained or examined.

§ 33.415 Time for preparing bids.

The recipient must allow adequate time between the date the public notice is first published and the date by which bids must be submitted.

§ 33.420 Adequate bidding documents.

Recipient's bidding documents shall include:

(a) A complete statement of work to be performed including, where appropriate, design drawings and specifications and the required performance schedule;

(b) The terms and conditions of the subagreement to be awarded, including payment, delivery schedules, point of delivery and acceptance criteria;

(c) A clear explanation of the recipient's method of bidding and the method of evaluating bid prices, and its basis and method for awarding the subagreement;

(d) Any other responsibility requirements or evaluation criteria which the recipient will use in evaluating bidders;

(e) The prevailing wage determination, made under the Davis-Bacon Act, if applicable; and

(f) The deadline and place to submit bids and a copy of § 33.295, Subparts F and G and, if appropriate, EPA Form 5720-4 "Labor Standard Provisions for Federally Assisted Contracts."

§ 33.425 Public opening of bids.

The recipient shall publicly open bids at the place, date and time announced in the bidding documents.

§ 33.430 Award to the lowest, responsive, responsible bidder.

(a) The recipient shall evaluate all bids in accordance with the methods and criteria in the bidding documents.

(b) The recipient shall award a fixed-price subagreement to the lowest, responsive, responsible bidder. Where specified in the bidding documents, recipients shall consider factors such as discounts, transportation costs and life cycle costs to determine the low bid. Payments discounts may be used to determine the low bid only when prior experience of the recipient indicates that it generally accepts such discounts.

(c) The recipient may reject all bids only when it has sound, documented business reasons which are in the best interest of the program for which EPA

assistance is awarded (see § 33.250 "Documentation").

Competitive Negotiation

§ 33.505 Competitive negotiation procurement method.

(a) The requirements in §§ 33.505 through 33.525 apply to all competitively negotiated subagreements in excess of \$10,000.

(b) Recipients may use competitive negotiation only if conditions are not appropriate for the use of the formal advertising method of procurement (see § 33.405).

§ 33.510 Public notice.

(a) The recipient must give adequate public notice for competitively negotiated procurements.

(b) The notice of a request for proposals must state how to obtain associated documents, including a copy of § 33.295, Subparts F and G, the basis for subagreement award, and, if appropriate, EPA Form 5720-4 "Labor Standard Provisions for Federally Assisted Contracts."

(c) Requests for proposals must be written, contain enough information to enable a prospective offeror to prepare a proposal, contain all evaluation criteria and the relative importance attached to each, and clearly state the deadline and place to submit proposals.

§ 33.515 Evaluation of proposals.

(a) Recipients must uniformly and objectively evaluate all proposals submitted in response to the request for proposals.

(b) Recipients must base their determinations of qualified offerors and acceptable proposals solely on the evaluation criteria stated in the request for proposals.

§ 33.520 Negotiation and award of subagreement.

(a) Unless the request for proposals states that award may be based on initial offers alone, the recipient must conduct meaningful negotiations with the best qualified offerors with acceptable proposals within the competitive range, and permit revisions to obtain best and final offers. The best qualified offerors must have equal opportunities to negotiate or revise their proposals. During negotiations, the recipient must not disclose the identity of competing offerors or any information from competing proposals.

(b) The recipient must award the subagreement to the responsible offeror whose proposal is determined in writing to be the most advantageous to the recipient, taking into consideration price

and other evaluation criteria set forth in the request for proposal.

(c) The recipient must promptly notify unsuccessful offerors that their proposals were rejected.

(d) The recipient must document its procurement file to indicate how proposals were evaluated, what factors were used to determine the best qualified offerors within the competitive range, and what factors were used to determine the subagreement award.

§ 33.525 Optional selection procedure for negotiation and award of subagreements for architectural and engineering services.

(a) The recipient may evaluate and select an architect or engineer using the procedures in this section in place of the procedures in § 33.520, "Negotiation and award of subagreements."

(b) The recipient may use either a prequalified list developed in accordance with § 33.230(c) or responses to requests for statement of qualifications to determine the most technically qualified architects or engineers.

(c) After selecting and ranking the most qualified architects or engineers, the recipient will request technical proposals from those architects or engineers and inform them of the evaluation criteria the recipient will use to rank the proposals.

(d) The recipient shall then select and determine, in writing, the best technical proposal.

(e) After selecting the best proposal, the recipient shall attempt to negotiate fair and reasonable compensation with that offeror.

(f) If the recipient and the offeror of the best proposal cannot agree on the amount of compensation, the recipient shall formally terminate negotiations with that offeror. The recipient shall then negotiate with the offeror with the next best proposal. This process will continue until the recipient reaches agreement on compensation with an offeror with an acceptable proposal. Once the recipient terminates negotiations with an offeror, the recipient cannot go back and renegotiate with that offeror.

Noncompetitive Negotiation

§ 33.605 Noncompetitive negotiation procurement method.

Recipients may use noncompetitive negotiation to award a subagreement if the other three procurement methods are inappropriate because:

(a) The item is available only from a single source;

(b) A public exigency or emergency exists and the urgency for the

requirement will not permit a delay incident to competitive procurement;

(c) After solicitation from a number of sources, competition is inadequate; or

(d) The EPA award official authorizes noncompetitive negotiation, subject to the limitation in § 33.715(a)(2).

Subpart C—Requirements for Recipients of Assistance Agreements for the Construction of Treatment Works

§ 33.705 Applicability and scope of this subpart.

Recipients of assistance agreements awarded under 40 CFR Part 35, Subparts E and I must comply with the following requirements.

§ 33.710 Buy American.

Section 215 of the Clean Water Act requires that contractors give preference for the use of domestic material in the construction of EPA funded treatment works.

(a) Contractors must use domestic construction material in preference to nondomestic material if it is priced no more than 6 percent higher than the bid or offered price of the nondomestic material, including all costs of delivery to the construction site and any applicable duty, whether or not assessed. The recipient will normally base the computations on prices and costs in effect on the date of opening of bids or proposals.

(b) The award official may waive the Buy American provision based upon factors he considers relevant, including:

(1) Such use is not in the public interest;

(2) The cost is unreasonable;

(3) The Agency's available resources are not sufficient to implement the provision, subject to the Deputy Administrator's concurrence;

(4) The articles, materials or supplies of the class or kind to be used or the articles, materials or supplies from which they are manufactured are not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities or satisfactory quality for the particular project; or

(5) Application of this provision is contrary to multilateral government procurement agreements, subject to the Deputy Administrator's concurrence.

(c) All bidding documents, subagreements, and, if appropriate, requests for proposals must contain the "Buy American" provision in § 33.1030.

§ 33.715 Use of the same architect or engineer during construction.

(a) If the recipient is satisfied with the qualifications and performance of

the architect or engineer who provided any or all of the facilities planning or design services for the project and wishes to retain that firm or individual during construction of the project, it may do so without further public notice and evaluation of qualifications, provided:

(1) The recipient received a facilities planning (Step 1) or design grant (Step 2), and selected the architect or engineer in accordance with EPA's procurement regulations in effect when EPA awarded the grant; or

(2) The award official approves noncompetitive procurement under § 33.605(d) for reasons other than simply using the same individual or firm that provided facilities planning or design services for the project; or

(3) The recipient attests that:

(i) The initial request for proposals clearly stated the possibility that the firm or individual selected could be awarded a subagreement for services during construction; and

(ii) The firm or individual was selected for facilities planning or design services in accordance with procedures in:

(A) Section 33.230 "Competition," and (B) Section 33.250(a)(1), (a)(2) & (a)(3), and (b) "Documentation," and one of the following:

(C) Section 33.305 through 33.315 "Small Purchases," or

(D) Section 33.405 through 33.430 "Formal Advertising," or

(E) Section 33.505 through 33.525 "Competitive Negotiation."

(iii) No employee, officer or agent of the recipient, any member of their immediate families, or their partners have financial or other interest in the firm selected for award; and

(iv) None of the recipient's officers, employees or agents solicited or accepted gratuities, favors or anything of monetary value from contractors or other parties to subagreements.

(b) However, if the recipient uses the procedures in paragraph (a) to retain an architect or engineer, any Step 3 subagreements between the architect or engineer and the recipient must meet all of the other procurement provisions in this part.

Subpart D—Requirements for Institutions of Higher Education and Other Nonprofit Organizations

§ 33.805 Applicability and scope of this subpart.

Recipients who are subject to the provisions of OMB Circular A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit

Organizations" are not subject to all of the requirements in this part.

§ 33.810 Nonapplicable subagreement clauses.

The following clauses in Subpart F of this part do not apply to institutions of higher education and other nonprofit organizations:

- (a) Energy efficiency (§ 33.1024);
- (b) Changes (§ 33.1030.3);
- (c) Differing site conditions (§ 33.1030.4); and
- (d) Price reduction for defective cost or pricing data (§ 33.1030.8).

§ 33.815 Nonapplicable procurement provisions.

The following procurement provisions do not apply to institutions of higher education and other nonprofit organizations:

- (a) Subparts C and E;
- (b) Sections 33.405 through 33.430 "Formal advertising;"
- (c) Sections 33.505 through 33.525 "Competitive negotiation;"
- (d) Section 33.605 "Noncompetitive negotiation" (see § 33.820(b));
- (e) The requirement in § 33.270(a) "Code of conduct" to have a written code of conduct;
- (f) The provisions of § 33.240 "Small, minority, women's, and labor surplus area businesses" which:
 - (1) Encourage the award of a fair share of contracts to women's and labor surplus area businesses;
 - (2) Require the specific affirmative action steps in § 33.240(a)(1) through (a)(6); however, nonprofit organizations are required to make positive efforts to use small businesses and minority owned businesses as sources of supplies and services;
- (g) Subpart G "Protests."

§ 33.820 Additional procurement requirements.

(a) Recipients must exclude contractors that develop or draft specifications, requirements, statements of work, invitation for bids, or requests for proposals from competing for awards resulting from the prior effort.

(b) For all proposed sole source subagreements and where only one bid or proposal is received, the recipient must request the award official's prior approval to award the subagreement if the aggregate expenditure is expected to exceed \$10,000.

Subpart E—Requirements for Recipients of Remedial Action Cooperative Agreements Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

§ 33.905 Applicability and scope of this subpart.

(a) The requirements in §§ 33.910 through 33.915 apply only to remedial actions which EPA funds as part of a cooperative agreement under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund).

(b) Studies, investigations, or engineering activities which precede a remedial action activity are not subject to the requirements in §§ 33.910 through 33.915, but are subject to the requirements in Subparts A, B, F and G of this part.

§ 33.910 Preference for formal advertising.

If a recipient wants to use a procurement method other than formal advertising, it must receive the EPA award official's concurrence with the determination.

§ 33.915 Award official approval.

The award official shall approve the recipient's use of a procurement method other than formal advertising only after the recipient has completed planning remedial activities and selected a cost-effective alternative.

Subpart F—Subagreement Provisions

§ 33.1005 Applicability and scope of this subpart.

(a) This subpart applies to all EPA recipients and describes the minimum content of each subagreement (contract and subcontract).

(b) Nothing in this subpart prohibits a recipient from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party to a subagreement.

§ 33.1010 Requirements for subagreement clauses.

Recipients shall include clauses that meet the requirements of §§ 33.1015 through 33.1021, and the appropriate clauses in § 33.1030, in each procurement subagreement.

§ 33.1015 Subagreement provisions clause.

Each subagreement must include provisions defining a sound and complete agreement, including the:

- (a) Nature, scope, and extent of work to be performed;
- (b) Timeframe for performance;

(c) Total cost of the subagreement; and

(d) Payment provisions.

§ 33.1016 Labor standards provisions.

Recipients shall include a copy of EPA Form 5720-4 "Labor Standards Provisions for Federally Assisted Construction Contracts" in each subagreement for construction (as defined by the Secretary of Labor). The form contains the Davis-Bacon Act requirements (40 U.S.C. 276a-276a-7); the Copeland Regulations (29 CFR Part 3); the Contract Work Hours and Safety Standards Act—Overtime Compensation (940 U.S.C. 327-333) and the nondiscrimination provisions in Executive Order 11246, as amended.

§ 33.1019 Patents data and copyrights clause.

Except for construction grant subagreements, all subagreements shall include notice of EPA requirements and regulations pertaining to reporting and patent rights under any subagreement involving research, developmental, experimental or demonstration work with respect to any discovery or invention which arises or is developed in the conduct of work under a subagreement. This notice shall also include EPA requirements and regulations pertaining to copyrights and rights in data contained in 40 CFR Part 30.

§ 33.1020 Violating facilities clause.

Subagreements in excess of \$100,000 shall contain a provision which requires contractor compliance with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and EPA regulations (40 CFR Part 15) which prohibit the use under nonexempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities.

§ 33.1021 Energy efficiency clause.

Subagreements shall comply with mandatory standards and policies on energy efficiency contained in the State's energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

§ 33.1030 Model subagreement clauses.

Recipients must include, when appropriate, the following clauses or their equivalent in each subagreement. Recipients may substitute other terms for "recipient and" "contractor" in their subagreements.

1. Supersession

The recipient and the contractor agree that this and other appropriate clauses in 40 CFR 33.1030 apply to that work eligible for EPA assistance to be performed under this subagreement and that these clause supersede any conflicting provisions of this subagreement.

2. Privity of Subagreement

This subagreement is expected to be funded in part with funds from the U.S. Environmental Protection Agency. Neither the United States nor any of its departments, agencies or employees is, or will be, a party to this subagreement or any lower tier subagreement. This subagreement is subject to regulations contained in 40 CFR Part 33 in effect on the date of the assistance award for this project.

3. Changes

(a) *The following clause applies only to subagreements for construction.* (1) The recipient may at any time, without notice to any surety, by written order designated or indicated to be a change order, make any change in the work within the general scope of the subagreement, including but not limited to changes:

- (i) in the specifications (including drawings and designs);
- (ii) In the time, method or manner of performance of the work;
- (iii) In the recipient-furnished facilities, equipment, materials, services or site, or
- (iv) Directing acceleration in the performance of the work.

(2) A change order shall also be any other written order (including direction, instruction, interpretation or determination) from the recipient which causes any change, provided the contractor gives the recipient written notice stating the date, circumstances and source of the order and that the contractor regards the order as a change order.

(3) Except as provided in this clause, no order, statement or conduct of the recipient shall be treated as a change under this clause or entitle the contractor to an equitable adjustment.

(4) If any change under this clause causes an increase or decrease in the contractor's cost or the time required to perform any part of the work under this contract, whether or not changed by any order, the recipient shall make an equitable adjustment and modify the subagreement in writing. Except for claims based on defective specifications, no claim for any change under paragraph (a)(2) above shall be allowed for any costs incurred more than 20 days before the contractor gives written notice as required in paragraph (a)(2). In the case of defective specifications for which the recipient is responsible, the equitable adjustment shall include any increased cost the contractor reasonably incurred in attempting to comply with those defective specifications.

(5) If the contractor intends to assert a claim for an equitable adjustment under this clause, he must, within 30 days after receipt of a written change order under paragraph (a)

(1) or the furnishing of a written notice under paragraph (a) (2), submit a written statement to the recipient setting forth the general nature and monetary extent of such claim. The recipient may extend the 30-day period. The contractor may include the statement of claim in the notice under paragraph (2) of this change clause.

(6) No claim by the contractor for an equitable adjustment shall be allowed if made after final payment under this subagreement.

(b) *The following clause applies only to subagreements for services.* (1) The recipient may at any time, by written order make changes within the general scope of this subagreement in the services or work to be performed. If such changes cause an increase or decrease in the contractor's cost or time required to perform any services under this subagreement, whether or not changed by any order, the recipient shall make an equitable adjustment and modify this subagreement in writing. The contractor must assert any claim for adjustment under this clause in writing within 30 days from the date it receives the recipient's notification of change, unless the recipient grants additional time before the date of final payment.

(2) No services for which the contractor will charge an additional compensation shall be furnished without the written authorization of the recipient.

(c) *The following clause applies only to subagreements for supplies.* (1) The recipient may at any time, by written order and without notice to the sureties, change the general scope of this subagreement in any one or more of the following:

- (i) Drawings, designs or specifications where the supplies to be furnished are specifically manufactured for the recipient;
- (ii) Method of shipment or packing; and
- (iii) Place of delivery.

(2) If any change causes an increase or decrease in the cost or the time required to perform any part of the work under this subagreement, whether or not changed by any such order, the recipient shall make an equitable adjustment in the subagreement agreement price or delivery schedule, or both, and modify the subagreement in writing. The contractor must assert any claim for adjustment under this clause within 30 days from the date the contractor receives the recipient's notification of change. If the recipient decides that the facts justify such action, the recipient may receive and act upon any such claim asserted at any time before final payment under this subagreement. Where the cost of property made obsolete or excess as a result of a change is included in the contractor's claim for adjustment, the recipient has the right to prescribe the manner of disposition of such property. Nothing in this clause shall excuse the contractor from proceeding with the subagreement as changed.

4. Differing Site Conditions

The following clause applies only to construction subagreements. (a) The

contractor shall promptly, and before such conditions are disturbed, notify the recipient in writing of:

(1) Subsurface or latent physical conditions at the site differing materially from those indicated in this subagreement, or

(2) Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this subagreement.

(b) The recipient shall promptly investigate the conditions. If it finds that conditions materially differ and will cause an increase or decrease in the contractor's cost or the time required to perform any part of the work under this subagreement, whether or not changed as a result of such conditions, the recipient shall make an equitable adjustment and modify the subagreement in writing.

(c) No claim of the contractor under this clause shall be allowed unless the contractor has given the notice required in paragraph (a) of this clause. However, the recipient may extend the time prescribed in paragraph (a).

(d) No claim by the contractor for an equitable adjustment shall be allowed if asserted after final payment under this subagreement.

5. Suspension of Work

The following clause applies only to construction subagreements. (a) The recipient may order the contractor in writing to suspend, delay or interrupt all or any part of the work for such period of time as the recipient may determine to be appropriate for the convenience of the recipient.

(b) If the performance of all or any part of the work is suspended, delayed or interrupted for an unreasonable period of time by an act of the recipient in administration of this subagreement, or by the recipient's failure to act within the time specified in this subagreement (or if no time is specified, within a reasonable time), the recipient shall make an adjustment for any increase in the cost of performance of this subagreement (excluding profit) necessarily caused by such unreasonable suspension, delay or interruption and modify the contract writing. However, no adjustment shall be made under this clause for any suspension, delay or interruption to the extent (1) that performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of the contractor, or (2) for which an equitable adjustment is provided for or excluded under any other provision of this subagreement.

(c) No claim under this clause shall be allowed (1) for any costs incurred more than 20 days before the contractor notified the recipient in writing of the act, or failure to act, involved (this requirement does not apply to a claim resulting from a suspension order), and (2) unless the amount claimed is asserted in writing as soon as practicable after the termination of such suspension, delay or interruption, but not later than the date of final payment under the subagreement.

6. Termination

(a) This subagreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this subagreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

(b) This subagreement may be terminated in whole or in part in writing by the recipient for its convenience, provided that the contractor is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

(c) If termination for default is effected by the recipient, an equitable adjustment in the price provided for in this subagreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the contractor at the time of termination may be adjusted to cover any additional costs to the recipient because of the contractor's default. If termination for default is effected by the contractor, or if termination for convenience is effected by the recipient, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the contractor for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the contractor relating to commitments which had become firm prior to the termination.

(d) Upon receipt of a termination action under paragraphs (a) or (b) above, the contractor shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the recipient all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the contractor in performing this subagreement, whether completed or in process.

(e) Upon termination under paragraphs (a) or (b) above, the recipient may take over the work and may award another party a subagreement to complete the work under this subagreement.

(f) If, after termination for failure of the contractor to fulfill contractual obligations, it is determined that the contractor had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the recipient. In such event, adjustment of the subagreement price shall be made as provided in paragraph (c) of this clause.

7. Remedies

Unless otherwise provided in this subagreement, all claims, counter-claims, disputes and other matters in question between the recipient and the contractor

arising out of, or relating to, this subagreement or the breach of it will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the recipient is located.

8. Price Reduction for Defective Cost or Pricing Data

[Note.—The following clause applies to (1) any subagreement negotiated between the recipient and its contractor in excess of \$100,000; (2) negotiated subagreement amendments or change orders in excess of \$100,000 affecting the price of formally advertised, competitively awarded, fixed price subagreement, or (3) any lower tier subagreement or purchase order in excess of \$100,000 under a subagreement other than a formally advertised, competitively awarded, fixed price subagreement. This clause does not apply to subagreements awarded on the basis of effective price competition.]

(a) The contractor and subcontractor, where appropriate, assure that the cost and pricing data submitted for evaluation with respect to negotiation of prices for negotiated subagreements, lower tier subagreements and change orders is based on current, accurate and complete data supported by their books and records. If the recipient or EPA determines that any price (including profit) negotiated in connection with this subagreement, lower tier subagreement or amendment thereunder was increased by any significant sums because the data provided was incomplete, inaccurate or not current at the time of submission, then such price or cost or profit shall be reduced accordingly and the recipient shall modify the subagreement in writing to reflect such action.

(b) Failure to agree on a reduction shall be subject to the remedies clause of this subagreement.

[Note.—Since the subagreement is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with lower tier subagreements, the contractor may wish to include a clause in each lower tier subagreement requiring the lower tier subcontractor to appropriately indemnify the contractor. It is also expected that any lower tier subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data submitted by lower tier contractors.]

9. Audit; Access to Records

(a) The contractor shall maintain books, records, documents and other evidence directly pertinent to performance on EPA funded work under this subagreement in accordance with generally accepted accounting principles and practices consistently applied, and 40 CFR Part 30 in effect on the date of execution of this subagreement. The contractor shall also maintain the financial information and data used in the preparation or support of the cost submission required under 40 CFR 33.290 for any negotiated subagreement or change order and a copy of the cost summary submitted to the recipient. The United States Environmental Protection Agency, the

Comptroller General of the United States, the United States Department of Labor, the recipient, and (the State) or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying during normal business hours. The contractor will provide proper facilities for such access and inspection.

(b) If this is a formally advertised, competitively awarded, fixed price subagreement, the contractor agrees to make paragraphs (a) through (g) of this clause applicable to all negotiated change orders and subagreement amendments affecting the subagreement price. In the case of all other types of prime subagreements, the contractor agrees to make paragraphs (a) through (g) applicable to all subagreements he awards in excess of \$10,000, at any tier, and to make paragraphs (a) through (g) of this clause applicable to all change orders directly related to project performance.

(c) Audits conducted under this provision shall be in accordance with generally accepted auditing standards and with established procedures and guidelines of the reviewing or audit agency(ies).

(d) The contractor agrees to disclose all information and reports resulting from access to records under paragraphs (a) and (b) of this clause to any of the agencies referred to in paragraph (a).

(e) Records under paragraphs (a) and (b) above shall be maintained by the contractor during performance on EPA assisted work under this subagreement and for the time periods specified in 40 CFR Part 30. In addition, those records which relate to any controversy arising under an EPA assistance agreement, litigation, the settlement of claims arising out of such performance or to costs or items to which an audit exception has been taken shall be maintained by the contractor for the time periods specified in 40 CFR Part 30.

(f) Access to records is not limited to the required retention periods. The authorized representatives designated in paragraph (a) of this clause shall have access to records at any reasonable time for as long as the records are maintained.

(g) This right of access clause applies to financial records pertaining to all subagreements (except formally advertised, competitively awarded, fixed price subagreements) and all subagreement change orders regardless of the type of subagreement, and all subagreement amendments regardless of the type of subagreement. In addition this right of access applies to all records pertaining to all subagreements, subagreement change orders and subagreement amendments;

(1) To the extent the records pertain directly to subagreement performance;

(2) If there is any indication that fraud, gross abuse or corrupt practices may be involved; or

(3) If the subagreement is terminated for default or for convenience.

10. Covenant Against Contingent Fees

The contractor assures that no person or selling agency has been employed or retained

to solicit or secure this subagreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For breach or violation of this assurance, the recipient shall have the right to annul this agreement without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

11. Gratuities

(a) If the recipient finds after a notice and hearing that the contractor or any of the contractor's agents or representatives offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of the recipient, the State or EPA in an attempt to secure a subagreement or favorable treatment in awarding, amending or making any determinations related to the performance of this subagreement, the recipient may, by written notice to the contractor, terminate this subagreement. The recipient may also pursue other rights and remedies that the law or this subagreement provides. However, the existence of the facts on which the recipient bases such findings shall be in issue and may be reviewed in proceedings under the Remedies clause of this subagreement.

(b) In the event this subagreement is terminated as provided in paragraph (a), the recipient may pursue the same remedies against the contractor as it could pursue in the event of a breach of the subagreement by the contractor, and as a penalty, in addition to any other damages to which it may be entitled by law, be entitled to exemplary damages in an amount (as determined by the recipient) which shall be not less than three nor more than ten times the costs the contractor incurs in providing any such gratuities to any such officer or employee.

12. Buy American

This clause applies only to construction subagreements award under 40 CFR Part 35 Subparts E and I. In accordance with section 215 of the Clean Water Act (33 U.S.C. 1251 et seq.) and implementing EPA regulations, the contractor agrees that preference will be given to domestic construction material by the contractor, subcontractors, materialmen and suppliers in the performance of this subagreement.

13. Responsibility of the Contractor

(a) *The following clause applies only to subagreements for services.* (1) The contractor is responsible for the professional quality, technical accuracy, timely completion and coordination of all designs, drawings, specifications, reports and other services furnished by the contractor under this subagreement. If the subagreement involves environmental measurements or data generation, the contractor shall comply with EPA quality assurance requirements in 40 CFR 30.503. The contractor shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in

his designs, drawings, specifications, reports and other services.

(2) The contractor shall perform the professional services necessary to accomplish the work specified in this subagreement in accordance with this subagreement and applicable EPA requirements in effect on the date of execution of the assistance agreement for this project.

(3) The owner's or EPA's approval of drawings, designs, specifications, reports and incidental work or materials furnished hereunder shall not in any way relieve the contractor of responsibility for the technical adequacy of his work. Neither the owner's nor EPA's review, approval, acceptance or payment for any of the services shall be construed as a waiver of any rights under this agreement or of any cause for action arising out of the performance of this subagreement.

(4) The contractor shall be, and shall remain, liable in accordance with applicable law for all damages to the owner or EPA caused by the contractor's negligent performance of any of the services furnished under this subagreement, except for errors, omissions or other deficiencies to the extent attributable to the owner, owner-furnished data or any third party. The contractor shall not be responsible for any time delays in the project caused by circumstances beyond the contractor's control.

(5) The contractor's obligations under this clause are in addition to the contractor's other express or implied assurances under this subagreement or State law and in no way diminish any other rights that the owner may have against the contractor for faulty materials, equipment or work.

(b) *The following clause applies only to subagreements for construction.* (1) The contractor agrees to perform all work under this subagreement in accordance with this agreement's designs, drawings and specifications.

(2) The contractor guarantees for a period of at least one (1) year from the date of substantial completion of the work that the completed work is free from all defects due to faulty materials, equipment or workmanship and that he shall promptly make whatever adjustments or corrections which may be necessary to cure any defects, including repairs of any damage to other parts of the system resulting from such defects. The owner shall promptly give notice to the contractor of observed defects. In the event that the contractor fails to make adjustments, repairs, corrections or other work made necessary by such defects, the owner may do so and charge the contractor the cost incurred. The performance bond shall remain in full force and effect through the guarantee period.

(3) The contractor's obligations under this clause are in addition to the contractor's other express or implied assurances under this subagreement or State law and in no way diminish any other rights that the owner may have against the contractor for faulty materials, equipment or work.

14. Final Payment

Upon satisfactory completion of the work performed under this subagreement, as a

condition before final payment under this subagreement or as a termination settlement under this subagreement the contractor shall execute and deliver to the owner a release of all claims against the owner arising under, or by virtue of, this subagreement, except claims which are specifically exempted by the contractor to be set forth therein. Unless otherwise provided in this subagreement, by State law or otherwise expressly agreed to by the parties to this subagreement, final payment under this subagreement or settlement upon termination of this subagreement shall not constitute a waiver of the owner's claims against the contractor or his sureties under this subagreement or applicable performance and payment bonds.

Subpart G—Protests

§ 33.1105 Applicability and scope of this subpart.

This subpart sets forth EPA's administrative process for the rapid resolution of protest appeals filed with the award official.

§ 33.1110 Recipient protest procedures.

(a) Recipients must establish their own procedures for prompt consideration of initial protests concerning their solicitations or contract awards. A "protest" is a written complaint concerning the recipient's solicitation or award of a subagreement. It must be filed with the recipient by a party with a direct financial interest adversely affected by a recipient's procurement action (see § 33.1130 "Review of protest appeal").

(b) The recipient should review each protest received to determine whether it is appropriate to defer the protested procurement action.

(c) If the recipient does not defer the procurement action, it assumes the risk that the award official may disallow the cost of the protested procurement action if the protest appeal is upheld.

§ 33.1115 Protest appeal.

(a) A party with a financial interest which is adversely affected by the recipient's decision on the initial protest may file a "protest appeal" with the award official.

(b) A "protest appeal" is a written complaint filed with the award official regarding the recipient's determination of a protest.

§ 33.1120 Limitations on protest appeals.

(a) The award official shall not accept a protest appeal until the protester has exhausted all administrative remedies at the recipient level.

(b) A protest appeal is limited to the following:

(1) Issues arising under the procurement provisions of this Part, or

(2) Alleged violations of State or local law or ordinances where the award official determines that there is an overriding Federal requirement.

(c) A recipient of a lower tier subagreement (subcontract) may only file a protest appeal for issues which relate to the award of a subagreement by a contractor (see § 33.295 "Subagreements awarded by a contractor").

§ 33.1125 Filing requirements.

(a) Protest appeals must be filed with the Assistant General Counsel for Grants for Headquarters-awarded assistance agreements and with the Office of Regional Counsel for regionally awarded assistance agreements.

(b) A protest appeal must:
 (1) Be written;
 (2) Include a copy of the recipient's determination of the protest;
 (3) State the basis for the appeal; and
 (4) Request a determination under this subpart.

(c) Upon filing a protest appeal with the Regional Counsel or Assistant General Counsel for Grants, as appropriate, the party filing the protest appeal must concurrently transmit a copy of all protest documents and any attachments to all other parties with a direct financial interest which may be adversely affected by the determination of the protest appeal.

(d) The award official will only consider written protest appeals received by the appropriate Counsel's office within seven calendar days after the adversely affected party receives the recipient's determination of protest. However, the adversely affected party can meet the seven-day notice requirement by telegraphing the Counsel within the seven-calendar-day period of its intent to file a protest appeal, provided the adversely affected party submits a complete protest appeal within seven calendar days of the date it sends the telegram. If the seventh day falls on a Saturday, Sunday or holiday, the next working day shall be the last day to submit a protest appeal.

(e) Any party which submits a document to the award official during the course of a protest appeal must simultaneously furnish all other affected parties with a copy of the document.

§ 33.1130 Review of protest appeal.

(a) If the recipient does not receive the initial protest before bid opening or the closing date for receipt of proposals, the award official may dismiss as untimely any protest appeal based upon alleged improprieties in the solicitation which were clearly apparent before bid opening or before the deadline for

receipt of initial proposals. In negotiated procurements, protests of alleged improprieties which were incorporated in a new solicitation must have been received by the recipient by the closing date for receipt of proposals for the new solicitation.

(b) In cases not involving improprieties in the solicitation, the award official may dismiss as untimely a protest appeal if the adversely affected party did not file the initial protest with the recipient within seven calendar days of the date the basis for the protest was known or should have been known, whichever is earlier.

§ 33.1140 Deferral of procurement action.

When the award official receives a protest appeal and the recipient has not deferred the procurement action under § 33.1110(b), the award official must promptly request that the recipient defer the protested procurement action until the award official notifies the recipient of the formal or informal resolution of the appeal. The request shall be limited to the award of the subagreement or subitem which is the basis of the protest appeal.

§ 33.1145 Award official's review.

(a) The award official may establish rules of procedures or deadlines for the submission of materials or the arrangement of protest appeal conferences.

(b) The award official may summarily dismiss an appeal without proceedings under this subpart if:

(1) The protest appeal is not reviewable, see § 33.1130, or addresses issues other than those allowed under § 33.1120(b);

(2) The protester substantially fails to comply with the procedural requirements of this subpart; or

(3) The protester does not agree to the recipient's request for a reasonable extension of the bid and bond period.

(c) The award official may summarily deny a protest appeal without proceedings under this subpart if, after considering the facts in a light most favorable to the protester, the award official believes that the protest lacks merit.

(d) The award official will give both the recipient and the protester, as well as any other party with a financial interest which may be adversely affected by the determination of protest, an opportunity to present arguments in support of their views in writing or at a conference.

(e) After the announced date for receipt of written arguments, the record shall be closed.

(f) The award official shall review the record considered by the recipient and any other documents or arguments presented by the parties to determine whether the recipient has complied with the procurement requirements of this part and has a rational basis for its determination of protest.

(g) The award official's determination shall constitute final EPA action from which there shall be no further administrative appeal. No party may appeal an award official's determination of appeal to the EPA Board of Assistance Appeals.

(h) Nothing in this subpart precludes the award official from reviewing the recipient's procurement action. (See § 33.115.)

(i) Noncompliance with the award official's determination of protest shall be cause for an action against the recipient under 40 CFR Part 30 or 32.

(j) If an appeal involves legal issues not explicitly addressed by this part, the award official shall resolve the issue by referring to other protest determinations under this section and decisions of the Comptroller General of the United States or of the Federal courts addressing Federal requirements comparable to procurement requirements of this part.

Appendix A.—Procedural Requirements for Recipients Who Do Not Certify Their Procurement Systems, or for Recipients Who Have Their Procurement Certifications Revoked By EPA

(a) The following procedural requirements apply to recipients who:

(1) Do not certify to EPA that their procurement system meets the minimum procurement requirements in this part; or

(2) Have their procurement certification revoked by the award official, as stated in § 33.115(b).

(b) Those recipients must comply with the requirements in this part plus the following procedural requirements. These procedural requirements supplement the requirements in the sections cited.

(1) To comply with § 33.250, "Documentation," the recipient must submit to the award official the records required by this section.

(2) To comply with § 33.290, "Cost and price considerations," the recipient's contractors and subcontractors must submit their cost or price data on EPA Form 5700-41, "Cost or Price Summary Format for Subagreements Under U.S. EPA Grants," or in another format which provides information similar to that required by EPA Form 5700-41.

(3) To comply with § 33.415, "Time for preparing bids," the recipient must allow at least 30 days between the date when it first publishes the public notice and the date by which bids must be submitted.

(4) To comply with § 33.415, "Public notice and solicitation of bids," the recipient must publish the notice in professional journals,

newspapers, or publications of general circulation over a reasonable area for at least 30 days before bid opening.

(5) To comply with § 33.510, "Adequate public notice," the recipient must publish the notice in professional journals, newspapers, or publications of general circulation over a reasonable area for at least 30 days before the deadline for receipt of proposals. The recipient may use posted public notices or written notification directed to interested persons, firms or professional organizations.

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the authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund). This class deviation permits recipients to use the same architectural or engineering (A/E) firm that conducted any or all of the remedial investigation, feasibility study, or design to perform follow-on remedial investigation, feasibility study, design or engineering activities without going through the public notice (§ 33.510) and evaluation procedures (§ 33.515) in 40 CFR Part 33. However, the recipient must comply with all other requirements in Part 33 when awarding the follow-on subagreement and must have followed all of the Part 33 requirements when they conducted the initial procurement of the A/E.

We are publishing the class deviation with the publication of this notice.

EFFECTIVE DATE: The class deviation was effective on the date signed.

FOR FURTHER INFORMATION CONTACT: Richard A. Johnson, Grants Administration Division (PM-216), Environmental Protection Agency, 401 M St. SW, Washington D.C. 20460, (202) 382-5295.

SUPPLEMENTARY INFORMATION: 40 CFR 33.510 requires recipients to give adequate public notice for competitively awarded procurements and 40 CFR 33.515 requires recipients to evaluate all proposals submitted in response to the request for proposals.

Many recipients of Superfund cooperative agreements want to retain the architectural and engineering (A/E) firm that provided remedial investigation, feasibility study, or design services for follow-on remedial investigation, feasibility study, design, or engineering services during the construction phase of remedial actions. In cases where the initial subagreement did not include the subsequent A/E services, or where State policies do not permit procurement for activities where funding is not guaranteed, EPA's procurement regulations (40 CFR Part 33) require that the recipient readvertise and reevaluate subagreement awards. These recipients could only use the same A/E by following the public notice and evaluation requirements in 40 CFR 33.510 and 33.515, or by obtaining an individual deviation from the Director, Grants Administration Division.

This class deviation permits recipients of Superfund remedial cooperative agreements to use the A/E procured to conduct any or all of the remedial investigation (RI), the feasibility study (FS), or design to perform follow-on RI, FS, design, or engineering activities without going through the public notice

(§ 33.510) and evaluation procedures (§ 33.515) in 40 CFR Part 33. However, the recipient must comply with all other requirements in Part 33 when awarding the follow-on subagreements and must have followed all of the requirements in Part 33 (including the public notice and evaluation required in 40 CFR § 33.510 and § 33.515) for the initial procurement of the A/E, or EPA must have conducted the initial procurement.

This class deviation does not unduly restrict open and free competition. States will be required to ensure adequate competition for the initial procurement of A/E firms. EPA has previously approved this approach in the wastewater treatment construction grants program under Title II of the Clean Water Act, where its use has not adversely affected competition.

(41 U.S.C. 501; 33 U.S.C. 1251; 42 U.S.C. 7401, 6901, 300f, 9601; 7 U.S.C. 136, 15 U.S.C. 2601)

Dated November 17, 1983.

Concur:

Seymour D. Greenstone,

Acting Assistant Administrator for Administration and Management Resources (PM-208).

Dated: November 8, 1983.

Concur:

Jack W. McGraw,

Acting Assistant Administrator for Solid Waste and Emergency Response (WH-562A16)

Office of Administration

November 18, 1983.

Memorandum

To: Regional Administrators, Regions I-X; Chief, Grants Operations Branch (PM-216).

From: Harvey G. Pippen, Jr., Director, Grants Administration Division (PM-216).

Subject: Class Deviation From 40 CFR 33.510 and 33.515 for Certain Activities Conducted Under the Authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) provides financial assistance for planning and implementation of remedial actions to clean up uncontrolled hazardous waste sites posing significant threats to public health and the environment.

Many recipients of Superfund cooperative agreements want to retain the architectural and engineering (A/E) firm that provided remedial investigation or feasibility study services for engineering planning and

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 33

[OA-FRL 2490-2]

Procurement Under Assistance Agreements

AGENCY: Environmental Protection Agency.

ACTION: Deviation from rule.

SUMMARY: Under the authority of 40 CFR 30.1004, the Environmental Protection Agency (EPA) has issued a class deviation from 40 CFR 33.510 and 33.515 for certain activities conducted under

design activities or engineering services during the construction phase of remedial actions. In cases where the initial subagreement did not include the subsequent A/E services for the construction phase, or where State policies do not permit procurement for activities where funding is not guaranteed, EPA's procurement regulations (40 CFR Part 33) require that the recipient readvertise and reevaluate subagreement awards. These recipients could only use the same A/E by following the public notice and evaluation requirements in 40 CFR 33.510 and 33.515, or by obtaining an individual deviation from the Director, Grants Administration Division.

Background

The Superfund remedial action process is made up of four separate but related activities. These activities are part of a comprehensive approach required by CERCLA and the National Oil and Hazardous Substance Contingency Plan (NCP, 40 CFR Part 300) to mitigate actual or potential threats to public health and the environment. These activities are: (1) Remedial investigations (RI) to determine the type and extent of contamination, (2) feasibility studies (FS) to evaluate alternative actions and recommend a cost-effective remedy, (3) design of the remedy; and (4) construction of the remedy. Each of these activities requires the services of A/E firms qualified in hazardous waste management.

Continuity from one activity to another is needed to allow a timely and cost-effective response at Superfund sites. This class deviation saves time by eliminating the requirement for separate procurement actions between the various activities and provides continuity in A/E services. In addition, the time required to conduct subsequent activities would be reduced since the A/E firm would be familiar with the site conditions and will have had the opportunity to develop any specific expertise required to deal with the problems.

The Office of Emergency and Remedial Response issued guidance on February 22, 1983, discussing the need for continuity in providing A/E services in a particular project. That guidance recommends that States prepare site specific subagreements with firms to provide A/E services for all four of the activities listed above. EPA encourages this practice at new Superfund sites and expects this procedure to minimize future problems. This practice, however, is allowed by Part 33 only when the subagreement includes all four

activities. Therefore, this class deviation is necessary to allow Superfund recipients to use the same A/E firm in all four of the Superfund activities when the original subagreement does not include all four activities. This class deviation applies in the following cases:

1. Where States conducted RI and/or FS activities without EPA assistance and are now requesting funding for the follow-on activities;

2. Where States conduct RI and/or FS activities with EPA assistance under a cooperative agreement, but did not include follow-on activities in the original RI and/or FS subagreement; and

3. Where EPA conducted RI, FS or design activities and the State, under a cooperative agreement, assumes responsibility for the subsequent phases of remedial responses using EPA's A/E contractors.

We estimate that 100 to 200 procurement actions over the next three years may fall into the above categories. The exact number will depend on whether recipients follow the guidance referenced above and the number of sites where the recipient rather than EPA conducts the remedial activities. We anticipate that this class deviation will save three to six months on the remedial response at many sites.

This class deviation does not unduly restrict open and free competition. States will be required to ensure adequate competition for the initial procurement of A/E firms. EPA has previously approved this approach in the wastewater treatment construction grants program under Title II of the Clean Water Act, where its use has not adversely affected competition.

Action

I am approving a deviation to permit recipients of Superfund remedial action cooperative agreements to use the A/E procured to conduct any or all of the remedial investigation (RI), the feasibility study (FS), or design or engineering activities without going through the public notice (§ 33.510) and evaluation procedures (§ 33.515) in 40 CFR Part 33. However, the recipient must comply with all other requirements in Part 33 when awarding the follow-on subagreements and must have followed all of the requirements in Part 33 (including the public notice and evaluation required in 40 CFR § 33.510 and § 33.515) for the initial procurement of the A/E, or EPA must have conducted the initial procurement.

The class deviation applies in the following cases:

1. Where the recipient conducted the RI and/or FS activities without EPA

assistance but is using EPA funds for follow-on activities, the recipient may use the A/E for subsequent work provided the recipient attests that it:

(a) Complied with the following requirements when it selected the A/E:

(i) Section 33.230 "Competition," and (ii) Section 33.250 (a)(1) and (a)(2) and (a)(3), and (b) "Documentation," and (iii) Sections 33.505 through 33.525 "Competitive negotiation," and

(b) Complied with the following:

(i) No employee, officer, or agent of the recipient, any member of their immediate families, or their partners have financial or other interest in the firm selected for award; and

(ii) None of the recipient's officers, employees, or agents solicited or accepted gratuities, favors, or anything of monetary value from contractors or other parties to subagreements.

(c) If the recipient uses the procedures in this paragraph to retain an architect or engineer, any EPA funded subagreement between the A/E and the recipient must meet all of the other provisions in Part 33.

2. Where the recipient conducted the RI, FS, or design activities with EPA assistance but the original subagreement did not include the follow-on activities and the recipient wishes to use the same A/E for follow-on Superfund remedial activities, the recipient does not have to follow the public notice and evaluation requirements in 33.510 and 33.515, for subsequent activities provided the recipient follows the rest of the procedures in 40 CFR Part 33.

3. Where EPA conducted the RI, FS, or design activities under a direct procurement contract but the recipient will assume the responsibility for subsequent phases of remedial response under a cooperative agreement, the recipient may use, with EPA's approval, EPA's A/E contractor without further public notice or evaluation provided the recipient follows the rest of the Part 33 requirements to award the subagreement.

4. Where the recipient awards a subagreement after the effective date of this class deviation, the initial request for proposals or bid solicitations must clearly state the possibility that the firm or individual selected could be awarded a subagreement for follow-on services.

Dated: November 17, 1983.

Concur:

Seymour D. Greenstone,
Acting Assistant Administrator for
Administration and Resources Management
(PM-208).