EM U.S. Department of Energy
Office Of Environmental Management

Brookhaven National Laboratory Federal Facility Agreement Under CERCLA Section 120, February 28, 1992

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

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   IN THE MATTER OF:                :
                                    :    FEDERAL  FACILITY
   The U.S. Department              :     AGREEMENT UNDER
   of Energy's                      :   CERCLA SECTION 120
                                    :
 Brookhaven National Laboratory     : Administrative Docket
Number:
                                    :    II-CERCLA-FFA-00201
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Based on the information available to the Parties on the effective date of this **Federal Facility Agreement** (Agreement), and without trial or adjudication of any issues of fact or law, the Parties agree as follows:

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I. Jurisdiction

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

(i) The U.S. Environmental Protection Agency (EPA), Region II, enters into those portions of this Agreement that relate to the Remedial Investigation/Feasibility Study(s) (RI/FS(s)) pursuant to Section 120 (e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §9620(e)(1), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499 (hereinafter jointly referred to as CERCLA) and Sections 6001, 3008(h), and 3004 (u) and (v) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6961, 6928(h), 6924(u) and (v), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) (hereinafter jointly referred to as RCRA), and Executive order 12580;

(ii) EPA, Region II, enters into those portions of this Agreement that relate to Operable Units and final Remedial Actions pursuant to Section 120(e)(2) of CERCLA, Sections 6001, 3008(h) and 3004 (u)and (v) of RCRA, and Executive Order 12580;

(iii) The U.S. Department of Energy (DOE) enters into those portions of this Agreement that relate to the RI/FS(s) pursuant to Section 120(e)(1) of CERCLA, Sections 6001, 3008(h) and 3004(u) and (v) of RCRA, Executive Order 12580, the National Environmental Policy Act (NEPA), 42 U.S.C. §4321, and the Atomic Energy Act of 1954 (AEA), as amended, 42 U.S.C. §§2011-2296;

(iv) DOE enters into those portions of this Agreement that relate to Operable Units, Removal Actions, and Remedial Actions pursuant to Section 120(e)(2) of CERCLA, Sections 6001, 3004(u) and 3008(h) of RCRA, Executive Order 12580 and the AEA.

(v) NYSDEC enters into this Agreement pursuant to Sections 120 and 121 of CERCLA/SARA; Sections 6001, 3006, and 3004(u) and (v) of RCRA, upon authorization by EPA; New York State Environmental Conservation Law (ECL) Article 27, Titles 9 and 13, and ECL 30301.

DOE will take all necessary actions in order to effectuate the terms of this Agreement fully, including undertaking response actions at the Brookhaven National Laboratory (BNL), Upton, New York, in accordance with federal and state applicable or relevant and appropriate laws, standards, limitations, criteria and requirements consistent with Section 121 of CERCLA.

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II. EPA and NYSDEC Determinations

For the purpose of this Agreement only, the following constitutes a summary of the determinations by EPA and NYSDEC upon which this Agreement is based. Nothing in this Agreement shall be considered admissions by any Party with respect to any unrelated claims by a Party or any claims by persons not a party to this Agreement.

On the basis of the results of the testing and analyses described in the Findings of Fact, below, and EPA and NYSDEC files and records, EPA and NYSDEC have determined that:

(1) The Brookhaven National Laboratory (BNL) located in Upton, New York, constitutes a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. §9601 (9), and an inactive hazardous waste disposal site within the meaning of ECL §27-1301(2);

(2) From 1947 to the present, DOE or one of its predecessor agencies has been an "owner or operator" of BNL within the definition of Section 101(20) of CERCLA, 42 U.S.C. §9601(20), and has been an owner or operator of BNL within the meaning of Section 107(a) of CERCLA, 42 U.S.C. §9607(a). DOE has also been an owner or operator for purposes of Section 3005 of RCRA;

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

necessary to protect human health or welfare or the environment unless the owner or operator is unable to obtain the necessary permission to take the corrective action despite the owner or operator's best efforts to do so. DOE is required to comply with these sections in order to receive a final RCRA permit;

(4) Hazardous substances, pollutants or contaminants within the meaning of Section 101(14) of CERCLA, 42 U.S.C. §9601 (14), and (33) and §§9604 (a)(12) and hazardous wastes within the meaning of ECL 27-1301(1) have been disposed of in certain areas at BNL;

(5) Radionuclides, including strontium-90 and tritium, and volatile organic compounds are hazardous substances as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14), and have been identified in groundwater and soils at the Site;

(6) The presence of hazardous substances, pollutants, and contaminants in various environmental media at the Site, including but not limited to those substances referred to in paragraph (5) above, constitutes a release and threatened release of hazardous substances, pollutants or contaminants into the environment as defined in Section 101(22) of CERCLA, 42 U.S.C. §9601 (22);

(7) With respect to those releases and threatened releases, DOE is a responsible person within the meaning of Section 107 of CERCLA, 42 U.S.C. §9607 and an owner pursuant to ECL Article 27, Title 13;

(8) The actions to be taken pursuant to this Agreement are intended to protect the public health or welfare or the environment and shall be conducted in a manner consistent with the National Contingency Plan (NCP), 40 CFR Part 300;

(9) A reasonable time for beginning or completing the actions required by this Agreement has been provided;

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

(11) EPA and NYSDEC have determined that the Submittals, actions, and other elements of work required by this Agreement are necessary to protect the public health or welfare or the environment.

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III. Definitions

Except as set forth below or otherwise explicitly stated in this Agreement, the terms used in this Agreement shall have the meaning as set forth in CERCLA, 42 U.S.C. §§9601-9675, and the NCP. In addition:

A. "Additional Work" shall mean any work requested by any of the Parties which has not previously been addressed by any Remedial Activity or response action to accomplish the objectives of this Agreement.

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

C. "AOC" or "Area of Concern" shall be defined as in Part X (Areas of Concern).

D. "ARAR" or "applicable or relevant and appropriate requirement" shall mean "legally applicable" or "relevant and appropriate" standards, requirements, criteria or limitations as those terms are used in Section 121 of CERCLA, 42 U.S.C. §9621, the NCP and EPA guidance.

E. "Authorized Representative" may include a Party's contractors acting in any capacity, including an advisory capacity, when so designated by that Party.

F. "BNL" shall mean the Brookhaven National Laboratory, a federally-owned, contractor-operated facility located in Upton Suffolk County, New York, (see Part V, Site Description).

G. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601-9675, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499, and any subsequent amendments thereof.

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

I. "DOE" shall mean the United States Department of Energy, its employees, contractors, agents, successors, assigns and Authorized Representatives.

J. "EPA" shall mean the United States Environmental Protection Agency, its employees and Authorized Representatives.

K. "Hazardous Substances" shall mean any hazardous substance, pollutant or contaminant, as defined by Section 101(14) of CERCLA, 42 U.S.C. §9601(14), as well as hazardous waste constituents as set forth at 40 CFR 260.10.

L. "Mixed Waste" shall mean any waste that contains both hazardous waste (listed or characteristic) regulated under RCRA and radionuclides regulated under the Atomic Energy Act.

M. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300, and any amendments or revision thereof.

N. "NYSDEC" shall mean the New York State Department of Environmental Conservation, its employees and Authorized Representatives.

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

P. "Quality Assured Data" means the data which have undergone quality assurance as set forth in the approved Quality Assurance Project Plan.

Q. "RCRA" shall mean the Resource Conservation and Recovery Act, 42 U.S.C. §§6901-6991, as amended by the Hazardous and Solid Waste Amendments of 1984, Pub. L. 98-616, and any subsequent amendments thereof.

R. "Removal Actions" or "Removals" shall mean those actions taken pursuant to Section XI (Removals) to prevent, minimize, or mitigate damage to the public health or environment which may otherwise result from a release or threatened release of hazardous substances, pollutants or contaminants pursuant to CERCLA, and which are not inconsistent with the final Remedial Action.

S. "Respond" or "Response" shall mean remove, Removal, remedy, and Remedial Action, and all such terms (including the terms "Removal" and "Remedial Action") shall include enforcement activities related thereto.

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

U. "Site" shall constitute areas as defined in Part V (Site Description). "Submittal" shall mean every document, report, schedule, deliverable, work plan, comments, or other item to be submitted to any or all of the Parties pursuant to this Agreement.

W. "Timetables and Deadlines" shall mean schedules as well as that work and those actions which are to be completed and performed in conjunction with such schedules, including performance of actions established pursuant to the dispute resolution procedures set forth in Part XVI (Resolution of Disputes) of this Agreement.

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IV. Parties

The Parties to this Agreement are EPA, NYSDEC and DOE. The terms of this Agreement shall apply to and be binding upon EPA, NYSDEC, and DOE, and all subsequent owners, operators and lessees of BNL. DOE will notify EPA and NYSDEC of the identity and assigned tasks of each of its contractors performing work under this Agreement upon contract award. Nothing herein shall be construed as an agreement to indemnify any person. DOE shall notify its agents, employees, response action contractors for the Site, and all subsequent owners, operators and lessees of BNL of the existence of this Agreement until its termination.

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V. Site Description

For the purposes of this Agreement, the approximately 5265 acre parcel in Upton, Suffolk County, New York, which is currently owned by the U.S. Department of Energy and operated by Associated Universities, Inc., shall be known as the "Brookhaven National Laboratory" ("BNL") (Attachment 1). The term "Site" shall include BNL and any area of contamination, whether or not within BNL, which is related in whole or in part to releases or threatened releases of hazardous substances, pollutants or contaminants at BNL. The identified Site boundaries may change on the basis of additional investigations so as to reflect more accurately the areas contaminated by hazardous substances, pollutants, or contaminants related in whole or in any part to BNL.

The Parties will determine which additional areas will be investigated and remediated under this Agreement and shall notify DOE of this determination.

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VI. Purpose

A. The general purposes of this Agreement are to:

1. Ensure that the impacts to the public health, welfare or the environment associated with past and present activities at the Site are thoroughly investigated and appropriate Remedial Action (s) are taken as necessary to protect the public health or welfare or the environment;

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

3. Facilitate cooperation, exchange of information and participation of the Parties in such actions; and

4. Ensure that Removal and Remedial Actions at the Site will be in compliance with federal and state applicable or relevant and appropriate requirements (ARARs).

B. Specifically, the purposes of this Agreement are to:

1. Identify Removal Actions (Removals) which are appropriate at the Site pursuant to Section XI (Removals).

2. Identify Operable Unit alternatives which are appropriate at the Site prior to the implementation of final Remedial Action(s) for the Site. This process is designed to promote cooperation among the Parties in identifying operable Unit alternatives prior to final Remedial Action at the Site.

3. Establish requirements for the performance of RI(s) to determine the nature and extent of the threat to the public health or welfare or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at the Site and to establish requirements for the performance of FS(s) for the Site to identify, evaluate, and select

alternatives for the appropriate Remedial Action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants or contaminants at the Site and protect public health or welfare or the environment in accordance with CERCLA.

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

5. Implement the selected Removal Actions, Operable Units, and Remedial Action(s).

6. Provide for continued operation and maintenance of the selected Remedial Action(s).

7. Assure compliance with applicable federal and state hazardous waste laws and regulations for matters covered by this Agreement.

8. Provide NYSDEC involvement in the initiation, development, selection and enforcement of Remedial Actions to be undertaken at BNL, including the review of all applicable data as they become available and the development of studies, reports, and action plans; and to identify and integrate state ARARs into the Remedial Action process.

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VII. Statutory Compliance/RCRA-CERCLA Integration

A. The Parties intend to integrate DOE's response obligations under CERCLA and RCRA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes, pollutants or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will achieve compliance with CERCLA, 42 U.S.C. §§9601-9675; satisfy the corrective action requirements of Sections 3004(u) and (v) of RCRA, 42 U.S.C. §6924(u) and (v), for a RCRA permit, and Section 3008(h), 42 U.S.C. §6928(h), for interim status facilities; and meet or exceed all applicable or relevant and appropriate federal and state laws and regulations, to the extent required by Section 121 of CERCLA, 42 U.S.C. §9621.

B. Based upon the foregoing, the Parties intend that any Remedial Action selected, implemented and completed under this Agreement shall be protective of human health and the environment such that the remediation of releases covered by this Agreement shall obviate the need for further corrective action under RCRA. The Parties agree that with respect to releases of hazardous waste covered by this Agreement, RCRA shall be considered an applicable or relevant and appropriate requirement pursuant to Section 121 of CERCLA.

C. The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties further recognize that ongoing hazardous waste management activities at BNL may require the issuance of permits under federal and state laws. This Agreement does not affect the requirements, if any, to obtain such permits. However, any permit issued to DOE for ongoing hazardous waste management activities at the Site shall reference and incorporate any appropriate provisions, including appropriate schedules (and the provision for extension of such schedules), of this Agreement into the corrective action module of the permit. Only the corrective action module of such permit will be affected by this Agreement; no other obligations or conditions under the permit will be affected in any manner. The

Parties intend that the judicial review of any permit conditions which reference this Agreement shall, to the extent authorized by law, only be reviewed under the provisions of CERCLA.

D. Nothing in this Agreement shall alter DOE's authority with respect to Removal Actions conducted pursuant to Section 104 of CERCLA, 42 U.S.C. §9604. Nothing in this Agreement shall alter any authority NYSDEC and EPA may have with respect to Removal Actions.

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VIII. Findings of Fact

For the purposes of this Agreement, the following represents a summary of the facts upon which EPA and the State are relying to enter into this Agreement. None of the facts related herein shall be deemed admissions by any Party to this Agreement.

(1) Brookhaven National Laboratory (BNL) is a federally-owned research facility located in Suffolk County, Long Island, at Upton, New York, comprising approximately 5265 acres of land on which there have been constructed over 300 buildings and other structures.

(2) Lying near the geographic center of Suffolk County, in the Town of Brookhaven (Town), BNL is approximately 50 miles from New York City. Suffolk County has in excess of 1.3 million residents, 410,000 of whom reside in the Town. Residents of Suffolk County and adjacent Nassau County have as a primary source of drinking water an aquifer lying in part beneath the BNL property designated by EPA in 1978 as "sole source." The permeability of the formations underlying BNL and the discontinuities in the clay formations underlying the Site may allow contaminants access to the sole source aquifer.

(3) BNL was established in 1947, after World War II, on the property formerly known as Camp Upton, an Army training base from 1917 to 1920, during the First World War, and an induction center from 1940 to 1946, during World War II. Between the World Wars, the property was designated as Upton National Forest and was reforested by the Civilian Conservation Corp; after World War II, the property was used as a convalescent and rehabilitation facility for returning veterans.

(4) Associated Universities, Inc. (AUI), a not-for-profit corporation chartered under the Education Law of the State of New York, has operated BNL since 1947 under a prime cost-type management and operating contract with DOE and its predecessor agencies, the Energy Research and Development Administration and the Atomic Energy Commission.

(5) The prime contract, currently designated as Contract No. DEAC02-76CH00016, provides that AUI will conduct basic and applied research in the physical, biomedical and environmental sciences and in selected energy technologies and will exercise managerial control over programmatic and operational activities at BNL, subject to DOE's oversight responsibilities.

(6) Among the scientific and research programs are high energy physics, nuclear and solid-state physics, fundamental nuclear structure properties and interaction of matter, nuclear medicine, and the biological and chemical effects of radiation and chemical substances used in the production of energy. To perform the research, a number of large-scale research facilities unavailable to most educational institutions have been constructed at BNL, including two research reactors, an

accelerator, and a synchrotron light source.

(7) A number of substances defined as hazardous under regulations of EPA and the State, including radioactive substances, have been and are acquired, used, stored, and disposed of in the course of research activities at BNL or may have been disposed of by the United States Army prior to the transfer of the BNL property to DOE. Certain of these hazardous substances, pollutants, and constituents that have been used, stored or disposed of have been released into soil and underlying groundwater at BNL. Several such releases have been documented in BNL and DOE reports.

(8) Radionuclides have been detected in both soil and groundwater within BNL boundaries and in two wells outside of BNL property lines.

(9) BNL's environmental monitoring program has detected contamination by hazardous substances of various media resulting from releases at BNL, including but not limited to elevated aromatic hydrocarbons and organics resulting from a spill of fuel oil and solvents, near the Central Steam Facility, in both soil and groundwater; contamination of soil by radionuclides from underground piping serving a radioactive waste storage facility at Building 830; iron and manganese, among other metals, at levels above State drinking water standards at a former landfill and the currently used landfill; and the presence of volatile organic compounds (VOCS) and tritium in groundwater near the HWMF resulting from releases.

(10) DOE's June 1988 Environmental Survey Preliminary Report contained the following major preliminary findings:

- Contamination of groundwater within BNL with tritium, strontium, and volatile organic compounds in excess of drinking water standards;
- Contamination of groundwater in two wells beyond the BNL boundary with tritium, resulting from BNL operations;
- Deficiencies in BNL's groundwater monitoring program;
- Numerous areas that are actual and/or potential sources of soil, surface water, and groundwater contamination, such areas including active and inactive disposal areas, cesspools, abandoned drums and stained soils,

(11) The June 1988 Environmental Survey Preliminary Report identified instances of failure to obtain required permits for various air sources. In 1985, BNL began an aquifer pumping program to remediate VOC- contaminated groundwater, which is also contaminated with tritium. The program involves pumping groundwater from the aquifer, spraying the water into the air, thus aerating it and vaporizing volatile compounds. The water is then recharged to the aquifer some distance away from the wells. The system is non-permitted.

(12) BNL conducts an on-going environmental monitoring program to determine whether operation of its facilities is in compliance with applicable environmental standards and effluent control requirements. The program monitors the following:

(a) external radiation levels;

(b) radioactivity in air, rain, potable water, surface water, groundwater, soil, vegetation, aquatic biota and small game;

(c) water quality; and

(d) metals, organics and petroleum products in groundwater, surface water, and potable water.

The Environmental Survey Preliminary Report found that the more than 130 monitoring wells placed throughout BNL fail to adequately characterize known VOC plumes and areas of potential groundwater contamination. The Report also found deficiencies in the scope of BNL's soil monitoring program.

(13) BNL has interim status under RCRA, having submitted a Part A application on November 19, 1980, and a Part B application as a storage facility on January 4, 1985. In March, 1986, BNL was required to submit a 6 NYCRR Part 373 application to the State of New York. NYSDEC has received final authorization for the base RCRA program (i.e., permitting activities), and BNL has submitted the application to NYSDEC.

(14) EPA currently retains authority in New York for issuance of the HSWA permit, which requires facilities to undertake corrective action to address all releases of hazardous waste or constituents from Solid Waste Management Units (SWMUs). These units include both regulated units that require a permit as well as units used in the past, regardless of when waste was placed in these units. Initial assessment of BNL is currently in progress (RCRA Facility Assessment).

(15) In 1987, 66 SWMUs were identified at BNL by NYSDEC.

(16) BNL was proposed for inclusion on the National Priorities List (NPL) on July 14, 1989, and was included on the NPL on November 21, 1989.

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IX. Scope of Agreement

A. Under this Agreement, DOE agrees it shall:

1. Identify AOCs in accordance with Part X (Areas of Concern);

2. Prepare and submit to EPA and NYSDEC a completion Report pursuant to Part X (Areas of Concern) for any AOCs which DOE identifies as having been addressed by any activity described as completed prior to the effective date of this Agreement. The Completion Report shall describe all previously completed work performed by DOE at that AOC and how that work satisfies the requirements of this Agreement;

3. In conducting Removals, comply with the provisions of Part XI (Removal Actions);

4. Address Operable Units as identified in the Response Strategy;

5. Conduct RI(s) on the Site as described in Part XII (Remedial Investigation) and

Attachment 2 to this Agreement;

6. Conduct FS(s) for the Site as described in Part XIII (Feasibility Study) and Attachment 2 to this Agreement, incorporating the results of the RI(s);

7. Implement those Remedial Actions selected for the Site as described in Part XIV (Remedial Action) and Attachment 2 to this Agreement;

8. Address any release or threat of release identified at the Site and conduct removal activities as set forth in Part XI (Removal Actions) or remediation as set forth in Part XIV (Remedial Action);

9. Submit to EPA and NYSDEC certain deliverables within the time periods specified in Part XVII (Project Schedules and Deadlines) to fulfill the obligations and meet the purposes of this Agreement. The deliverables are listed in Part XV (Consultation) and are described in detail in Attachment 2 to this Agreement. The schedule for the submittal of the deliverables will be established as described in Part XVII (Project Schedules).

B. These matters are set forth in more detail in Parts X-XIV (Areas of Concern, Removal Actions, Remedial Investigation, Feasibility Study, Remedial Action) and in Attachment 2 to this Agreement. In the event of any inconsistency between Parts I-XLV of this Agreement and the Attachments to this Agreement, Parts I-XLV shall govern unless and until duly modified pursuant to this Agreement.

C. DOE or its contractors may request guidance with respect to any issue related to DOE's obligations under this Agreement. EPA shall determine within thirty (30) days of such request whether there exists a published guidance document applicable to the subject of DOE inquiry and provide DOE with the same, or advise DOE of the source of such document. If no published guidance document is available, EPA will determine whether any pre-publication draft of such document can be made available to DOE and the conditions, if any, upon which such a pre-publication draft may be provided to DOE or its contractor. If EPA determines that no prepublication draft is available, or can be provided to DOE, EPA shall use its best efforts to make DOE aware of the Agency's position with respect to any issue raised by DOE.

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X. Areas of Concern

A. **Areas of Concern.** Areas of Concern (AOCS) shall include both (1) Solid Waste Management Units (SWMUs) where releases of hazardous substances may have occurred and (2) locations where there has been a release or threat of a release into the environment of a hazardous substance, pollutant or contaminant (including radionuclides) under CERCLA. AOCs may include, but need not be limited to, former spill areas, landfills, surface impoundments, waste piles, land treatment units, transfer stations, wastewater treatment units, incinerators, container storage areas, scrapyards ("boneyards"), cesspools, and tanks and associated piping which are known to have caused a release into the environment or whose integrity has not been verified. Attachment 3 is a list of AOCs identified at the time this Agreement is executed. This list shall be updated on an ongoing basis.

B. **Identification and Classification of SWMUs.** DOE agrees to identify all SWMUs at the Site. Such identification will comply with the requirements of the RCRA Facility Assessment (RFA)

guidance. The identification will include a list of said identified SWMUs and a facility map, which will indicate any discernible waste management units from which hazardous waste or hazardous constituents may have migrated or may migrate, irrespective of whether the unit was intended for the management of hazardous or solid wastes.

Following the identification of SWMUs, DOE shall propose for each SWMU a classification of either "No Action" or AOC.

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

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

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

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

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

   b. **EPA or NYSDEC does not Agree with DOE's Proposed Classification.** If EPA or NYSDEC determines that the list of SWMUs is incomplete and/or the classifications are not appropriate, EPA or NYSDEC shall so notify DOE in writing. DOE shall take all necessary actions to revise and resubmit the SWMU list and classifications. The dispute resolution procedure of Section XVI may be invoked if any Party disagrees with the determinations above.

C. **Other AOCS.** AOCs also include locations where there has been a release or threat of release into the environment of a hazardous substance, pollutant or contaminant (including radionuclides) under CERCLA.

D. **Ongoing Identification and Addition of SWMUs and AOCS.** DOE is under a continuing

obligation to notify EPA and NYSDEC of any additional SWMUs or other potential AOCs of which DOE becomes aware. SWMUs identified after issuance of the 6 NYCRR Part 373/HSWA Permit shall be classified as AOCS. Any Party may submit a written proposal to all Parties to add AOCs on the basis of additional information which more accurately reflects contamination related in whole or in part to the Site. Unless one of the Parties invokes Dispute Resolution within fifteen (15) days after the receipt of the proposal, the proposed new AOC shall be added to Attachment 3 (AOCs).

E. **Completion Reports for AOCs.**

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

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

   a. **EPA and NYSDEC Determination that No Further Response Action is Recruited.** Based on information and conditions known by EPA and NYSDEC at that time, if EPA and NYSDEC determine that no further response action is necessary or that no response action will be necessary, EPA shall inform DOE in writing that no further response action is required for that particular AOC. The Completion Report on which the determination has been made shall be documented in a ROD.

   b. **EPA or NYSDEC Determination that Additional Response Actions are Required.** If EPA or NYSDEC determines that conditions at an AOC as described in a Completion Report are not protective of public health, welfare or the environment, or that the documentation is inadequate to make a protectiveness determination, EPA or NYSDEC shall so notify DOE may submit additional documentation to EPA and NYSDEC for review, or with the concurrence of EPA and NYSDEC, perform additional investigative activities. EPA and NYSDEC shall review and respond to such additional documentation in accordance with Subpart E above. If EPA or NYSDEC determines that further response action is warranted, the AOC will be addressed through a Removal as set forth in Part XI (Removal Actions) or the RI/FS process as set forth in Parts XII-XIV. AOCs may be addressed individually or collectively as Operable Units for purposes of investigation and remediation.

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

G. **Records of Decision for AOCS.** All AOCs will be documented in a ROD.

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

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XI. Removal Actions

A.

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

2. Any Removal Actions conducted at the Site shall be conducted in a manner consistent with this Agreement, CERCLA, the NCP and Executive Order 12580.
3. All reviews conducted by EPA and the State will be expedited to the extent practicable so as not to unduly jeopardize fiscal resources of DOE for funding the Removal Actions.
4. If a Party determines that there may be an endangerment to the public health, welfare or the environment because of an actual or threatened release of a hazardous substance, pollutant or contaminant at or from the Site, the Party may request that DOE take such response actions as may be necessary to abate such danger or threat and to protect the public health or welfare or the environment.

B. **Notice and opportunity to comment.**

1. DOE shall provide the other Parties with timely notice and opportunity to review and comment upon any proposed Removal Action for the Site.

2. For emergency response actions, DOE shall immediately notify all other Parties. Such notification shall include, to the extent practicable, adequate information concerning the Site background, threat to the public health, welfare or the environment (including the need for response), proposed actions and costs (including a comparison of possible alternatives, means of transportation of hazardous substance offsite, and proposed manner of disposal), expected change in the situation should no action be taken or should action be delayed (including associated environmental impacts), any important policy issues, and the DOE Project Manager's recommendations. To the extent that the above information is not known at the time of the notification, such information shall be provided as soon as it becomes known. Within forty-five (45) days of completion of the emergency action, DOE will furnish EPA and NYSDEC with an Action Memorandum addressing the information provided in the oral

notification, and any other information required pursuant to CERCLA and the NCP, and in accordance with pertinent EPA guidance, for such actions.

3. For any other Removal Actions, DOE will provide EPA and NYSDEC with any information required by CERCLA, the NCP, and in accordance with pertinent EPA guidance, such as the Action Memorandum, the Engineering Evaluation/Cost Analysis (EE/CA) (in the case of non-time- critical Removals) and, to the extent it is not otherwise included, all information required to be provided in accordance with Paragraph 2 of this Subpart. Such information shall be furnished as early as practicable, but not less than forty-five (45) days before the response action is to begin.

4. All activities related to ongoing Removal Actions shall be reported by DOE in the progress reports as described in Part XXI (Reporting).

C. **Dispute.** Any dispute among the Parties as to whether a proposed non-emergency Removal Action is a proper Removal Action under CERCLA, or as to the consistency of such a Removal Action with the final Remedial Action, shall be resolved pursuant to Part XVI (Resolution of Disputes). Such dispute may be brought directly to the DRC or the SEC at any Party's request.

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XII. Remedial Investigation

DOE agrees it shall develop, implement and report upon RI(s) covering each Operable Unit designated under Attachment 2. RI documents shall be subject to the review and comment procedures described in Part XV (Consultation). RI(s) shall be conducted in accordance with the requirements and time schedules set forth in the Attachments to this Agreement and Part XVII (Project Schedules and Deadlines) of this Agreement. RI(s) shall meet the purposes set forth in Part VI (Purpose) of this Agreement. Any RI(s) shall include, where appropriate, a survey for additional areas containing hazardous substances that were contaminated as a consequence of activities at the Site. These areas shall be addressed under this Agreement in the same manner as those identified areas which have been found to be contaminated prior to the execution of this Agreement. The Parties specifically agree that all criteria contained in Attachment 2 to this Agreement relate solely to the scope of the RI (s) and do not reflect a predetermination as to any cleanup level criteria. The Parties further agree that final clean-up level criteria will only be determined following completion of the Risk Assessment. The RI(s) will address all AOCS.

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XIII. Feasibility Study

DOE agrees it shall design, propose, undertake and submit FS(s) for the Site. FS documents shall be subject to the review and comment procedures described in Part XV (Consultation). FS(s) shall be conducted in accordance with the requirements and time schedules set forth in the Attachments to this Agreement and Part XVII (Project Schedules and Deadlines) of this Agreement. FS(s) shall meet the purposes set forth in Part VI (Purpose) of this Agreement.

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XIV. Remedial Action Selection and Implementation

Following completion of any RI(s) and any FS(s) and after consultation with EPA and NYSDEC as described in Part XV (Consultation), DOE shall publish its Proposed Remedial Action Plan(s) for public review and comment in accordance with CERCLA §117(a), and comply with all other applicable sections of CERCLA §117. At the conclusion of the public comment period, all Parties will confer as to the need for modification of the Proposed Remedial Action Plan(s) and on the response to public comment. DOE shall prepare the Responsiveness Summary. The Responsiveness Summary shall follow EPA guidance and shall be based on public concerns regarding the Proposed Remedial Action Plan(s) and shall incorporate responses from EPA and NYSDEC. When public comment has been properly considered, DOE shall submit a draft Record of Decision in accordance with applicable guidance. Review and consultation with EPA and NYSDEC shall be conducted on any draft Record of Decision in accordance with Part XV (Consultation). If the Parties agree on a draft Record of Decision, DOE shall prepare it as a final Record of Decision. If the Parties are unable to reach agreement on a draft Record of Decision, the draft ROD will be subject to Dispute Resolution, with the EPA Administrator having the ultimate authority to select the Remedial Action (s). In the event that the EPA Administrator selects the final RA(s), EPA shall prepare the final ROD. If the dispute is resolved prior to reaching the EPA Administrator, DOE shall prepare the final ROD. The final selection of the RA(s) by the EPA Administrator shall be final and not subject to dispute resolution; however, this does not preclude any rights of the Parties pursuant to Part XXXIV (Covenant Not to Sue and Reservation of Rights). Notice of a final Record of Decision shall be published by the Party preparing it and shall be made available to the public in accordance with CERCLA §117(d) prior to commencement of any Remedial Action.

Following final selection of any Remedial Action(s), DOE shall propose and submit to EPA and NYSDEC for review and comment as described in Part XV (Consultation), a Remedial Design Work Plan and a Remedial Action Work Plan, which shall include appropriate project Timetables and Deadlines for the execution of the Remedial Design and Remedial Action. The Remedial Design Work Plan and a Remedial Action Work Plan will comply with the requirements of the NCP, CERCLA, and CERCLA guidance and policy. Following consultation with EPA and NYSDEC as described in Part XV (Consultation), DOE shall implement the Remedial Action(s) pursuant to the Remedial Action Work Plan in accordance with the requirements and time schedules set forth in the Attachments to this Agreement and Part XVII (Project Schedules and Deadlines) of this Agreement.

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XV. Consultation With EPA And NYSDEC: Review and Comment Process For Draft and Final Document

A. **Applicability:** The provisions of this Part establish the procedures that shall be used by DOE, EPA, and NYSDEC to provide the Parties with appropriate notice, review, comment, and response to comments regarding RI/FS and Remedial Design/Remedial Action (RD/RA) documents, specified herein as either primary or secondary documents. In accordance with Section 120 of CERCLA, DOE normally will be responsible for issuing primary and secondary documents to EPA and NYSDEC. As of the effective date of this Agreement, all draft and final documents for any deliverable identified herein shall be prepared, distributed, and subject to dispute in accordance with Paragraphs B through J below.

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

B. **General Process for RI/FS and RD/RA Documents:**

1. Primary documents include those documents that are major, discrete portions of RI/FS or RD/RA activities. Primary documents are initially issued by DOE in draft, subject to review and comment by EPA and NYSDEC. Following receipt of comments on a particular draft primary document, DOE will respond to the comments received and issue a draft final primary document subject to dispute resolution. The draft final primary document will become the final primary document thirty (30) days after the receipt by EPA and NYSDEC of DOE's response to comments, if dispute resolution is not invoked. If dispute resolution is invoked, the draft final primary document will become the final primary document in accordance with the dispute resolution process described in Part XVI (Resolution of Disputes).

2. Secondary documents include those documents that are discrete portions of the primary documents and are typically input or feeder documents. Secondary documents are issued by DOE in draft subject to review and comment by EPA and NYSDEC. Although DOE will respond to comments received, the draft secondary documents may be finalized in the context of the corresponding primary documents. A secondary document may be disputed at the time the corresponding draft final primary document is issued.

C. **Primary Documents:**

1. DOE shall complete and transmit drafts of the following primary documents to EPA and NYSDEC for review and comment in accordance with the provisions of this Part.

    1. SWMU Classification Report (SCR)

    2. Historical Site Review Report

    3. Site Community Relations Plan

    4. Response Strategy

    5. Schedule

    6. Completion Reports

2. For each Operable Unit, DOE shall complete and transmit drafts of the following primary documents to EPA and NYSDEC for review and comment in accordance with the provisions of this Part.

    1. RI/FS Work Plan (including the Sampling and Analysis Plan)

    2. RI Report (including Risk Assessment)

3. FS Report

4. Proposed Remedial Action Plan

5. Record of Decision

6. Remedial Design Work Plan

7. Remedial Action Work Plan (including the final Remedial Design, the Construction QA/QC plan, and the Contingency Plan)

3. Only the final drafts of the primary documents identified above shall be subject to dispute resolution. DOE shall complete and transmit draft primary documents in accordance with the Timetable and Deadlines established in Part XVII (Project Schedules and Deadlines) of this Agreement.

D. **Secondary Documents:**

1. DOE shall complete and transmit drafts of the Site Baseline Report (SBR) and the Work Plan for Historical Site Review, both of which are secondary documents, to EPA and NYSDEC for review and comment in accordance with the provisions of this part.

2. For each Operable Unit, DOE shall complete and transmit drafts of the following secondary documents to EPA and NYSDEC for review and comment in accordance with the provisions of this Part:

    1. RI Scope of Work

    2. Post-screening Investigation Work Plan(s) (if appropriate)

    3. Treatability Studies (if appropriate)

    4. Preliminary Remedial Design (if appropriate)

    5. Closeout Report (if appropriate)

3. Although EPA and NYSDEC may comment on the drafts of the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by Paragraph B hereof. Target dates shall be established for the completion and transmission of draft secondary documents pursuant to Part XVII (Project Schedules and Deadlines) of this Agreement. The Project Managers also may agree in writing upon additional secondary documents that are within the scope of the listed primary documents.

E. **Meetings of the Project Managers on Development of Documents:**

The Project Managers shall meet approximately every sixty (60) days, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the Site on the primary and secondary documents. Prior to preparing any draft document specified in Paragraphs C and D above,

the Project Managers shall meet to discuss the document contents in an effort to reach a common understanding, to the maximum extent practicable, with respect to the contents to be presented in the draft document.

F. **Identification and Determination of ARARS:**

1. For those primary documents or secondary documents that consist of or include ARAR determinations, prior to the issuance of a draft document, the Project Managers shall meet to identify and propose, to the best of their ability, all potential ARARs pertinent to the document being addressed. Draft ARAR determinations shall be prepared by DOE in accordance with Section 121(d)(2) of CERCLA, the NCP, and pertinent guidance issued by EPA, which is not inconsistent with CERCLA and the NCP.

2. In identifying potential ARARS, the Parties recognize that actual ARARs can be identified only on a site specific basis and that ARARs depend on the specific hazardous substances, pollutants and contaminants at a site, the particular actions proposed as a remedy and the characteristics of a site. The Parties recognize that ARAR identification is necessarily an iterative process and that potential ARARs must be reexamined throughout the RI/FS process until a ROD is issued.

G. **Review and Comment on Draft Documents:**

1. DOE shall complete and transmit each draft primary document to EPA and NYSDEC on or before the corresponding deadline established for the issuance of the document. DOE shall complete and transmit the draft secondary document in accordance with the target dates established for the issuance of such document established pursuant to Part XVII (Project Schedules and Deadlines) of this Agreement.

2. Unless the Parties mutually agree to another time period, all draft documents shall be subject to a thirty (30) day period for review and comment. Review of any document by EPA and NYSDEC may concern all aspects of the document (including completeness) and should include, but not be limited to, technical evaluation of any aspect of the document, and consistency with CERCLA and the NCP and any pertinent guidance or policy issued by EPA or the State. Comments by EPA and NYSDEC shall be provided with adequate specificity so that DOE may respond to the comments and, if appropriate, make changes to the draft document. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of DOE, EPA and NYSDEC shall provide a copy of the cited authority or reference. EPA or NYSDEC may extend the thirty (30) day comment period for an additional thirty (30) days by written notice to DOE prior to the end of the initial thirty (30) day period. This time period may be further extended by mutual agreement or pursuant to Part XVI (Resolution of Disputes) if necessary to adequately comment on the draft document. On or before the close of the comment period, EPA and NYSDEC shall transmit by next day mail their written comments to the other Parties.

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

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

5. Following the close of the comment period for a draft document, DOE shall give full consideration to all written comments on the draft document submitted during the comment period. Within thirty (30) days of the close of the comment period on a draft secondary document, DOE shall transmit to EPA and NYSDEC its written response to comments received within the comment period. Within thirty (30) days of the close of the comment period on a draft primary document, DOE shall transmit to EPA and NYSDEC a draft final primary document, which shall include DOE's response to all written comments received within the comment period. While the resulting draft final document shall be the responsibility of DOE, it shall be the product of consensus to the maximum extent possible.

6. DOE may extend the thirty (30) day period for either responding to comments on a draft document or for issuing the draft final primary document for an additional twenty (20) days by providing written notice to EPA and NYSDEC. In appropriate circumstances, this time period may be further extended in accordance with Part XXXVI (Extensions) hereof.

H. **Availability of Dispute Resolution for Draft Final Primary Documents:**

1. Dispute resolution shall be available to the Parties for draft final primary document as set forth in Part XVI (Resolution of Disputes). Draft final primary documents shall be subject to a thirty (30) day hold period while EPA and NYSDEC review DOE's response to comments.

2. When dispute resolution is invoked on a draft final primary document, work may be stopped in accordance with the procedures set forth in Part XVI (Resolution of Disputes) regarding dispute resolution.

I. **Finalization of Documents:**

The draft final primary document shall serve as the final primary document if no Party invokes dispute resolution regarding the document or, if invoked, at completion of the dispute resolution process should DOE's position be sustained. If DOE's determination is not sustained in the dispute resolution process, DOE shall prepare, within not more than thirty-five (35) days after receipt of written resolution of the dispute, a revision of the draft final primary document which conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Part XXXCVI (Extensions) hereof.

J. **Subsequent Modifications of Final Documents:**

Following finalization of any primary documents pursuant to Paragraph I above, EPA, NYSDEC, or DOE may seek to modify the document, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in Paragraphs 1 and 2 below.

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

2. In the event that a consensus is not reached by the Project Managers on the need for a modification, any Party may invoke dispute resolution to determine if such modification shall be conducted. Modification of a document shall be required only upon a showing that: 1) the requested modification is based on significant new information, and 2) the requested modification could be of significant assistance in evaluating impacts on the public health or welfare or the environment, in evaluating the selection of remedial alternatives, or in protecting human health or welfare or the environment.

3. Nothing in this Subpart shall alter EPA's or NYSDEC's ability to request the performance of additional work pursuant to Part XVIII (Additional Work) of this Agreement which does not constitute modification of a final document.

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XVI. Resolution of Disputes

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

A. Within thirty (30) days after: (1) the period established for review of a draft final primary document pursuant to Part XV (Consultation) of this Agreement, or (2) any action which leads to or generates a dispute (including a failure of the informal dispute resolution process), the disputing Party shall submit to the Dispute Resolution Committee (DRC) a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute and the information the disputing Party is relying upon to support. its position. Within thirty (30) days of receipt of notice of dispute, the other Parties may submit written statements of position.

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

C. If agreement cannot be reached on any issue within the informal dispute resolution period, the disputing Party shall forward the written statement of dispute to the Dispute Resolution Committee (DRC) thereby elevating the dispute to the DRC for resolution. The other Parties may submit statements setting forth their positions and supporting information.

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

E. Following the receipt of all statements of position or the expiration of the period provided for their submittal, the DRC shall have twenty-one (21) days to unanimously resolve the dispute and issue a written decision. If the DRC is unable to unanimously resolve the dispute within this twenty-one (21) day period, the written statement of dispute shall be forwarded within seven (7) days to the Senior Executive Committee (SEC) for resolution.

F. The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. EPA representative on the SEC is the Regional Administrator of EPA's Region II. NYSDEC's representative on the SEC is the Assistant Commissioner of Hazardous Waste Remediation. DOE's representative on the SEC is the DOE Chicago Operations Office Manager. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision. If unanimous resolution of the dispute is not reached within twenty-one (21) days, EPA's Regional Administrator shall issue a written position on the dispute within twenty-one (21) days of the close of the twenty-one (21) day resolution period. DOE or NYSDEC may, within twenty-one (21) days of the Regional Administrator's issuance of EPA's position, issue a written notice elevating the dispute to the Administrator of EPA for resolution in accordance with all applicable laws and procedures. In the event that DOE and NYSDEC elect not to elevate the dispute to the Administrator within the designated twenty-one (21) day escalation period, they shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.

G. Upon escalation of a dispute to the Administrator of EPA pursuant to Subpart F, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the EPA Administrator shall meet and confer with the Secretary of Energy and the Commissioner of NYSDEC to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide DOE and NYSDEC with a written final decision setting forth resolution of the dispute. The duties of the Administrator set forth in this Part shall not be delegated.

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

I. When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Emergency and Remedial Response Division (ERRD) Director for EPA's Region II or NYSDEC'S Director of Hazardous Waste Remediation requests, in writing, that work related to

the dispute be stopped because, in EPA's or NYSDEC's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or welfare or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. To the extent possible, EPA or NYSDEC shall give DOE prior notification that a work stoppage request is forthcoming. After stoppage of work, if DOE believes that the work stoppage is inappropriate or may have potential significant adverse impacts, DOE may meet with the EPA Region II ERRD Director or NYSDEC's Director of Hazardous Waste Remediation, as appropriate, to discuss the work stoppage. Following this meeting, and further consideration of the issues, the EPA Region II ERRD Director or NYSDEC's Director of Hazardous Waste Remediation will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the Division Director may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the disputing Party.

J. Within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this Part, DOE shall incorporate the resolution and final determination into the appropriate plan, schedule or procedures and proceed to implement this Agreement according to the amended plan, schedule or procedures.

K. Except as provided below in Subpart L of this Part, resolution of a dispute pursuant to this Part of the Agreement constitutes a final resolution of that dispute arising under this Agreement. The DOE shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Part of this Agreement.

L. Notwithstanding the provisions of this Part:

1. The resolution of a dispute pursuant to the procedures of this Part shall not preclude NYSDEC from exercising its authorities consistent with Part XXXIV B., below.

2. NYSDEC reserves its rights to seek judicial review of any remedy selected by the Administrator and all rights reserved pursuant to Part XXXIV (Covenant Not to Sue and Reservation of Rights).

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XVII. Project Schedules and Deadlines

A. All project schedules and deadlines agreed upon before the effective date of this Agreement shall become a part of this Agreement, as reflected in Attachment 4. To the extent that deadlines have already been mutually agreed upon by the Parties prior to the execution of this Agreement, they will satisfy the requirements of this Part and remain in effect, shall be published in accordance with Part XVII (Project Schedules and Deadlines), and shall be incorporated into the appropriate Work Plans.

B. DOE submitted a draft Solid Waste Management Unit (SWMU) Classification Report (SCR) on July 15, 1990, in support of the RCRA Part B permit application. The SCR is a primary document that will undergo the review and comment process described in Part XV (Consultation). The SCR is described in Attachment 2.

C. On August 1, 1990, DOE submitted a generic RI/'FS schedule which identifies discrete components of the RI/FS activity and general process for accomplishing these activities. The generic RI/FS schedule is not intended by the parties to this Agreement to be a binding or enforceable for the

purpose of RI/FS schedules for any Operable Unit, stipulated penalties, or other provisions of the Agreement, and shall not be construed as such by any party.

D. On October 1, 1990, DOE submitted a draft Work Plan for Historical Site Review. The Work Plan for Historical Site Review is a secondary document that will undergo the review and comment process described in Part XV (Consultation). The Work plan for Historical Site Review is described in Attachment 2.

E. In conformance with the schedule in the Work Plan for Historical Site Review, DOE shall submit the draft Historical Site Review Report based on results gathered during the Historical Site Review. The Historical Site Review Report is a primary document that will undergo the review and comment process described in Part XV (Consultation).

F. On March 1, 1991, DOE submitted the Site Baseline Report, a secondary document (described in Attachment 2).

G. By April 1, 1991, DOE shall submit a draft Site Community Relations Plan, for activities under this Agreement, in accordance with Part XXXVII (Public Participation).

H. By July 1, 1991, DOE shall submit the following draft primary documents:

1. Response Strategy (described in Attachment 2)

2. Schedule (described in Subpart I of this Part).

I. **Schedule.** The proposed Schedule shall identify, as described below, when work is to begin for each Operable Unit or Removal Action identified in the Response Strategy, the calendar quarter and year in which work is planned to begin. It shall also include a date for submittal of a Completion Report for each AOC for which DOE believes that response action previously taken is adequate and that no further response is required.

1. For Operable Units scheduled to begin in FY 1991 and 1992, by July 1, 1991, DOE shall propose final schedules and deadlines for submittal of the following draft primary documents and target dates for submittal of the associated secondary documents:

a. RI/FS Work Plan(s), including the Sampling and Analysis Plan(s)

b. RI Report(s)

c. FS Report(s)

d. Proposed Remedial Action Plan(s)

e. Record(s) of Decision.

2. For other proposed Operable Units, DOE shall identify the calendar quarter and year in which the first primary document, the RI Scope of Work, is scheduled to be submitted to EPA and NYSDEC. DOE shall submit a revised schedule by November 30 of each year which will provide deadlines for draft primary documents and target dates for secondary documents for those operable Units scheduled

to begin in the following two fiscal years.

3. By July 1, 1991, for each Removal Action scheduled to begin or continue in FY 1991 or 1992, DOE shall propose schedules for submittal of the Environmental Evaluation/Cost Analysis (EE/CA) for review and comment, for commencement of response work, and for submittal of the Completion Report. By November 30 of each year, DOE shall provide an updated schedule, which will contain this information for those Removal Actions scheduled to begin in the following two fiscal years.

J. *Near Team Work.* A draft schedule is attached for those remedial and Removal activities scheduled to begin in FY 1990 and 1991 (described in Attachment 4).

K. *Additional Operable Units.* Upon identification of additional Operable Units, DOE shall propose within thirty (30) days of such identification a deadline for submittal of the RI Scope of Work and the RI Work Plan.

L. Within thirty (30) days of issuance of any Record of Decision (ROD) DOE shall propose project schedules and deadlines for completion of the following draft primary documents:

1. Remedial Design Work Plan

2. Remedial Action Work Plan (including the final Remedial Design, the Construction QA/QC plan, and the Contingency Plan)

M. Within thirty (30) days of receipt of any proposed project schedule or deadline, EPA and NYSDEC shall review and provide comments to DOE regarding the proposed project schedule or deadline. Within thirty (30) days following receipt of the comments, DOE shall, as appropriate, make revisions and reissue the proposal. The Parties shall meet as necessary to discuss and finalize the proposed project schedules and deadlines. If the Parties agree on proposed project schedules and deadlines, the finalized project schedules and deadlines shall be incorporated into the appropriate Work Plans. If the Parties fail to agree within thirty (30) days on proposed project schedules and deadlines, the matter shall immediately be submitted for dispute resolution pursuant to Part XVI (Resolution of Disputes). The final project schedules and deadlines established pursuant to this Paragraph shall be published by EPA, in conjunction with NYSDEC.

N. The project schedules and deadlines set forth in this Part, or to be established as set forth in this Part, may be extended only as explicitly provided in this Agreement. The Parties recognize that one possible basis for extension of the project schedules and deadlines for completion of an RI and an FS is the identification of significant new or heretofore unknown conditions at the Site during the performance of the terms of this Agreement.

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XVIII. Additional Work or Modification to Work

A. In the event that EPA or NYSDEC determines that additional work, or modification to work, including Remedial Investigatory work, engineering evaluation or minor field modifications, is necessary to accomplish the objectives of this Agreement, notification of such additional work or modification to work, with appropriate deadlines, shall be provided in a timely fashion to DOE. DOE agrees, subject to the dispute resolution procedures set forth in Part XVI (Dispute Resolution), to

implement any such work.

B. Any additional work or modification to work determined to be necessary by DOE shall be proposed by DOE and shall be subject to the review and comment procedures described in Part XV (Consultation) of this Agreement prior to initiation of any work or modification to work.

C. Within fifteen (15) days following a modification pursuant to Subpart A or B of this Part, the DOE Project Manager shall prepare a memorandum detailing the modifications and provide or mail a copy of the memorandum to the other Project Managers.

D. Any additional work or modification to work approved pursuant to Subpart A or B of this Part shall be completed in accordance with the standards, specifications, and schedule determined or approved by the Parties. If any additional work or modification to work will adversely affect work scheduled or will require significant revisions to an approved Work Plan, the EPA and NYSDEC Project Managers shall be notified immediately by DOE of the circumstances, followed by a written explanation within five (5) business days of the initial notification.

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

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XIX. Permits

A. The Parties recognize that under Sections 121(d) and 121(e)(1) of CERCLA, 42 U.S.C. §§ 9621 (d) and 9621(e)(1), and the NCP, portions of the response actions called for by this Agreement and conducted onsite, as that term is defined in the NCP, are exempted from the procedural requirement to obtain any federal, state, or local permit but must satisfy, consistent with Section 121(d) of CERCLA, 42 U.S.C. §9621(d), all the applicable or relevant and appropriate federal and state substantive standards, requirements, criteria, or limitations which, would have been included in any such permit. When DOE proposes a response action to be conducted onsite which would require, in the absence of Section 121(e)(1) of CERCLA and the NCP, a federal or state permit, and for which DOE is not required to seek a permit, DOE shall include in a Submittal to the Parties the following:

(1) Identification of each permit which would otherwise be required;

(2) Identification of the substantive standards, requirements, criteria, or limitations which would have had to have been met to obtain each such permit;

(3) Explanation of how the response action proposed will meet the substantive standards, requirements, criteria or limitations identified in Subparagraph (2) immediately above or a statement of the basis for any proposed waiver pursuant to Section 121(d)(4)(AE) of CERCLA, 42 U.S.C. §9621(d)(4)(AE).

Upon request of DOE, EPA and NYSDEC will provide their position with respect to (2) and (3) above in a timely manner.

B. Subpart A above is not intended to relieve DOE from any requirements to obtain a permit whenever it proposes a response action involving the shipment or movement of a hazardous

substance from the Site.

C. DOE shall be responsible for obtaining all federal, state or local permits which are necessary for the performance of any work under this Agreement. DOE shall notify EPA and NYSDEC in writing of any permits required for offsite activities as soon as it becomes aware of the requirement. Upon request, DOE shall provide EPA and NYSDEC copies of all such permit applications and other documents related to the permit process. DOE shall furnish EPA and NYSDEC with copies of all permits obtained in implementing this Agreement. Such copies shall be appended to the appropriate submittal or monthly report.

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

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

F. During any appeal related to any permit required to implement this Agreement or during review of any of DOE's proposed modifications as provided in Subpart D of this Part, DOE shall continue to implement those portions of this Agreement which can be reasonably implemented pending final resolution of the permit issue(s).

G. DOE shall comply with applicable state and federal hazardous waste management requirements at the Site.

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XX. Creation of Danger

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

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

C. **Protective Measures.** In the case of contamination originating on the Site or resulting from activities in connection with the Site, DOE will expeditiously take appropriate measures to protect the public health or welfare or the environment affected. If directed by EPA, in consultation with NYSDEC, to undertake such measures, DOE shall immediately comply notwithstanding the invocation of Dispute Resolution hereunder. EPA or NYSDEC may direct DOE to stop further implementation of this Agreement for such period of time as needed to abate the danger.

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XXI. Reporting

A. **Monthly Reports:** DOE agrees it shall submit to EPA and NYSDEC monthly written progress reports which shall include, but not be limited to, the following:

(1) The actions which DOE has taken during the previous Month to implement the requirements and time schedules of this Agreement;

(2) A description of all actions scheduled for completion during the month that were not completed along with a statement indicating why such actions were not completed and an anticipated completion date;

(3) Identification as early as possible of any anticipated delays in meeting time schedules, the reasons for the delay, and actions taken to prevent or mitigate the delay, including Force Majeure;

(4) Copies of all Quality Assured Data and sampling and test results and all other laboratory deliverables received by DOE during the month;

(5) A description of the actions which are scheduled for the following month.

Progress reports shall be submitted by DOE on or before the fifteenth (15) day of each month following the effective date of this Agreement.

B. **Annual Reports:** DOE agrees it shall report to the Parties annually on the progress of any RI/FS and Remedial Design and Remedial Action programs. Each such report shall summarize all work accomplished and provide updated maps and illustrations and an updated schedule of sampling and analysis for each monitoring location.

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XXII. Notification

A. Unless otherwise specified, ten (10) copies to EPA and eight (8) copies to NYSDEC of any document or submittal provided pursuant to a schedule or deadline identified herein, developed or incorporated under this Agreement, shall be sent by certified mail or by overnight mail, return receipt requested, or hand delivered to each of the Project Managers for EPA and NYSDEC, as identified in Attachment 5 to this Agreement.

Unless otherwise requested, all routine correspondence may be sent via regular mail to the above named persons.

B. EPA shall provide the Secretary of Energy and NYSDEC with a forty-five (45) day advance notice of any delegation by the EPA Administrator to the Regional Administrator of the authority to select appropriate Remedial Actions pursuant to this Agreement, excluding remedies selected as a result of Dispute Resolution.

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

D. If hazardous substances from the Site generated by activities pursuant to this Agreement are to be shipped to a waste management facility outside of New York State, DOE shall notify the environmental agency of the state in which the facility is located of the following: (i) the name and location of the facility to which the wastes are to be shipped; (ii) the type and quantity of wastes to be shipped; (iii) the expected schedule for the waste shipments; (iv) the method of transportation; and (v) the name and phone number of the contact person at the originating facility. DOE shall provide such notification in writing as soon as practicable, but in any event at least fourteen (14) business days prior to the shipments.

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XXIII. Project Managers

A. EPA, NYSDEC and DOE shall each designate a Project Manager and Alternate (hereinafter jointly referred to as Project Manager) for the purpose of overseeing the implementation of this Agreement. Within fifteen (15) days of the effective date of this Agreement, each Party shall notify all the other Parties of the name and address of its Project Manager. The list of Project Managers is incorporated as Attachment 5. Any Party may change its designated Project Manager by notifying the other Parties, in writing, within ten (10) days of the change.

B. To the maximum extent possible, communications between the Parties concerning the terms and conditions of this Agreement shall be directed through the Project Managers as set forth in Part XXII (Notification) of this Agreement. Each Project Manager shall be responsible for assuring that all communications from the other Project Managers are appropriately disseminated and processed by the entities which the Project Managers represent.

C. Subject to the limitations set forth in Part XXVI (Site Access), Subpart A, the EPA and NYSDEC Project Managers shall have the authority to engage in activities, including but not limited to the following:

(1) To take samples, request split samples of DOE samples and ensure that work is performed properly and pursuant to EPA protocols as well as pursuant to Attachment 2 and plans incorporated into this Agreement;

(2) To observe all activities performed pursuant to this Agreement, take photographs and make such other reports on the progress of the work as the Project Manager deems appropriate;

(3) To review records, files and documents relevant to this Agreement; and

(4) To recommend and request minor field modifications to the work to be performed pursuant to this Agreement, or in techniques, procedures or design utilized in carrying out this Agreement, which are necessary to the completion of the project.

D. The DOE Project Manager may also recommend and request minor field modifications to the work to be performed pursuant to this Agreement, or in techniques, procedures or designs utilized in carrying out this Agreement, which are necessary to the completion of the project.

E. Any field modifications proposed under this Part by any Party must be approved by Project Managers for EPA, NYSDEC, and DOE to be effective. If agreement cannot be reached by the Parties on any proposed additional work or modification to work, the dispute resolution procedures set forth in Part XVI (Resolution of Disputes) may be used in addition to this Part.

F. Within ten (10) days following a modification made pursuant to this Part, the Project Manager requesting the modification shall prepare a memorandum detailing the modification and the reasons therefore and shall provide or mail a copy of the memorandum to the other Project Managers.

G. The Project Manager for DOE shall either be physically present at the Site or reasonably available to supervise work performed at the Site during implementation of the work performed pursuant to this Agreement and shall be available to EPA and NYSDEC Project Managers for the pendency of this Agreement. The absence of a EPA or NYSDEC Project Manager from the Site shall not be cause for work stoppage.

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XXIV. Sampling and Data/Document Availability

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

B. DOE shall inform the EPA and NYSDEC Project Managers in advance as to which laboratories will be used by DOE and ensure that EPA and NYSDEC personnel and EPA authorized and NYSDEC-Authorized Representatives have reasonable access to the laboratories and personnel used for analyses.

C. DOE shall ensure that laboratories used by DOE for the performance of analyses conduct those analyses in accordance with available EPA methods. DOE shall submit all protocols to be used for analyses to EPA and NYSDEC as part of the Field Sampling and Analysis Plan.

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

(1) be in EPA's Contract Laboratory Program (CLP),

(2) participate in EPA's CLP quarterly blind samples,

(3) supply state certifications for the parameters/methods of interest,

(4) perform acceptably on samples supplied by EPA, or

(5) be otherwise approved by EPA and NYSDEC.

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

E. The Parties shall make available to each other hard copy quality assured results of sampling, tests or other data generated by any Party, or on their behalf, with respect to the implementation of this Agreement within forty-five (45) days of performance of such sampling or tests. If quality assurance is not completed within forty-five (45) days, hard copy, Quality Assured Data or results shall be submitted as soon as they become available. In addition, DOE shall make available data validation protocols, upon request, if EPA Region II data validation protocols are not used.

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

G. Upon request, DOE shall submit to EPA and submit or otherwise make available to NYSDEC at such locations as it designates, copies of records and other documents, including sampling and monitoring data.

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XXV. Retention of Records

DOE shall preserve for a minimum of ten (10) years after termination and satisfaction of this Agreement all of its records and documents, except drafts of finalized documents, in its possession or in the possession of its contractors, which relate to the release or threat of release of hazardous substances, pollutants or contaminants at the Site, to the implementation of this Agreement, including, but not limited to, the complete Administrative Record, post-Record of Decision primary and secondary documents, and monthly and annual reports, despite any document retention policy to the contrary. After this ten (10) year period, DOE shall notify EPA and NYSDEC at least ninety (90) days prior to destruction or disposal of any such documents or records. Upon request by EPA or NYSDEC, DOE shall make available such records or documents to EPA or NYSDEC.

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XXVI. Site Access

A. Without limitation on any authority conferred on EPA or NYSDEC by statute or regulation, EPA, NYSDEC or their Authorized Representatives shall have authority to enter the Site at all reasonable times for the purposes of, but not limited to, the following:

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

(2) Inspecting field activities to review the progress of DOE, its response action contractors or lessees in implementing this Agreement;

(3) Conducting such tests as the EPA and NYSDEC Project Managers deem necessary;

(4) Verifying the data submitted to EPA and NYSDEC by DOE; and

(5) Using sound, optical or other types of recording equipment to record activities which have been or are being conducted pursuant to this Agreement.

DOE shall honor all requests for access to unrestricted areas. Access to restricted or classified areas is conditioned upon presentation of proper credentials, operational requirements, and the requirements identified in Part XXXI (Confidential Information). DOE shall identify to EPA and NYSDEC restricted or classified areas within thirty (30) days of the effective date of this Agreement.

B. All Parties with access to the Site pursuant to this Part shall comply with all approved Health and Safety Plans. Implementation of the Health and Safety Plan during BNL activities under this Agreement will remain the responsibility of DOE.

C. To the extent that access is required to areas of the Site presently owned by or leased to parties other than DOE, DOE agrees to exercise its authorities to obtain access pursuant to Section 104(e) of CERCLA from the present owners or lessees within thirty (30) calendar days after the effective date of this Agreement or, where appropriate, within thirty (30) days after the relevant Submittals which require access have been received by EPA and NYSDEC. DOE shall use its best efforts to obtain access agreements that include provisions which grant access to EPA and NYSDEC or their Authorized Representatives.

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

D. In the event that Site access is not obtained within the thirty (30) day time period set forth in Subpart C of this Part, DOE shall notify EPA and NYSDEC within fifteen (15) days after the expiration of the thirty (30) day period regarding the lack of such access agreements and efforts to obtain them. Within fifteen (15) days of any such notice, DOE shall submit appropriate modification (s) in response to such inability to obtain access.

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

F. DOE may request the assistance of EPA and NYSDEC where DOE has failed, despite its best efforts in accordance with Subparts C and D of this Part, to obtain any access agreement or to obtain access necessary to carry out its obligations under this Agreement; however, DOE shall have ultimate responsibility to obtain access.

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XXVII. Five-Year Review

If a remedy is selected for the Site which results in any hazardous substances, pollutants or contaminants remaining on the Site, DOE agrees that EPA and NYSDEC shall, consistent with Section 121(c) of CERCLA, and in accordance with this Agreement, review the Remedial Action no less often than each five years after the initiation of such Remedial Action to assure that human health and the environment are being protected by the Remedial Action implemented. If upon such review it is the judgement of EPA, in consultation with NYSDEC, that additional action or modification of the Remedial Action is appropriate, in accordance with Section 104 or 106 of CERCLA, EPA shall require DOE to implement such additional or modified action.

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XXVIII. Other Claims

A. DOE agrees to assume full responsibility for cleanup of the Site in accordance with CERCLA and the NCP. However, nothing in this Agreement shall constitute or be construed as a bar or release by any Party from any claim, cause of action or demand in law or equity by or against any person, firm, partnership or corporation not a Party to this Agreement for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, pollutants, or contaminants found at, taken to, or taken from the Site.

B. This Agreement does not constitute any decision or preauthorization by EPA of funds under Section 111(a)(2) of CERCLA for any person, agent, contractors or consultant acting for DOE.

C. EPA and NYSDEC shall not be held as a party to any contract entered into by DOE to implement the requirements of this Agreement.

D. This Agreement shall not restrict EPA or NYSDEC from taking any legal or response action for

any matter not specifically covered by this Agreement.

E. This Agreement shall not preclude, restrict or affect in any manner any claims against or by DOE for natural resource damage assessments or natural resource damages.

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

G. Nothing in this Agreement shall be considered admissions by any Party with respect to any unrelated claims by a Party or any claims by persons not a party to this Agreement.

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XXIX. Other Applicable Laws

All actions required to be taken pursuant to this Agreement shall be undertaken in accordance with the requirements of all applicable or relevant and appropriate state and federal laws and regulations to the extent required by CERCLA.

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XXX. Incorporation of Submittals

All reports, documents, plans, specifications, and schedules submitted pursuant to this Agreement are, upon approval by EPA and NYSDEC, incorporated into this Agreement.

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XXXI. Confidential Information

A. DOE may assert a confidentiality claim covering all or part of the information requested under this Agreement. A claim of confidentiality shall not alter DOE's obligation to provide or make available to other Parties any information as required under this Agreement. Analytical data shall not be claimed as confidential by DOE. Information determined to be confidential by EPA, pursuant to 40 CFR Part 2, shall be afforded the protection specified therein and such information shall be treated by NYSDEC as confidential to the extent allowed by New York State law. If no claim of confidentiality accompanies the information when it is submitted to EPA or NYSDEC, the information may be made available to the public without further notice to DOE.

No document marked draft may be made available to the public without prior consultation with the generating party.

B. Notwithstanding any other provision of this Agreement, all requirements of the Atomic Energy Act and Executive Orders concerning the handling of unclassified controlled nuclear information, restricted data and national security information, including "need to know" requirements, shall be applicable to requests for access to information or facilities at the Site.

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XXXII. Recovery of New York State Expenses

A. DOE agrees to reimburse the State for all reasonable administrative and technical review costs incurred by the State in providing services specifically related to the implementation of this Agreement at BNL and not inconsistent with the National Contingency Plan and the terms of the funding document, provided that such costs have not been otherwise reimbursed. Such costs include, but are not limited to, overhead and fringe benefits, as well as costs of obtaining and analyzing samples independently collected by the State. The amount of reimbursement for administrative and technical review shall not exceed $150,000.00 per year, which amount is subject to adjustment for inflation, beginning in the second funding period, based on the Consumer Price Index. DOE further agrees to reimburse the State for costs of collecting and analyzing split or duplicative samples (as specified in Part XXIII (Project Managers)). The number of samples collected by the State in a funding period shall be limited to ten percent (10%) of those collected in connection with RI/FS activities during such funding period. The State agrees to provide DOE with the percent of split or duplicative samples the State expects to receive for each RI/FS in sufficient time to include the request within the sampling and analysis work plan for the respective RI/FS.

B. A separate funding agreement between DOE and the State will be executed within ninety (90) days after the effective date of this Agreement, which shall be the specific mechanism for the transfer of funds (e.g., a Grant) between DOE and the State for payment of the costs referredto in paragraph A above.

C. For the purposes of budget planning only, the State shall annually provide DOE on or before the beginning of the State fiscal year a written estimate of the State's projected costs to be incurred in implementing this Agreement in the upcoming two federal fiscal years. DOE and NYSDEC agree to renegotiate reimbursement for reasonable administrative and technical review costs, beginning in the fourth funding period following the effective date of this Agreement. The amount of reimbursement shall be increased or decreased only to the extent that State oversight activities have been affected by changes in the projections on which reimbursement for the first three funding periods were based. In the event NYSDEC determines that adequate reimbursement is not being made available to meet its commitments established by this Agreement, beginning in the fourth funding period, NYSDEC may withdraw from this Agreement upon written notice to DOE and EPA.

D. The State reserves all rights it may have to recover any other past and future costs incurred by the State in connection with CERCLA activities conducted at the Site. DOE reserves any and all defenses it may have with respect to NYSDEC recovery of oversight costs in excess of the costs provided herein.

E. Any dispute arising under this Part (e.g., a disputed cost item) is not subject to the dispute resolution process established in Part XVI (Resolution of Disputes) of this Agreement, but will be resolved in accordance with the dispute resolution process to be included in the funding document between the State and DOE identified in paragraph B above. Until the funding document is executed, any dispute arising under this Part shall be resolved by the DOE and State signatories of this Agreement. If the signatories are unable to resolve such dispute, the matter shall be elevated to successively higher levels of decision making, ultimately to the Commissioner of NYSDEC and the Under Secretary of Energy. To the extent that such dispute arising prior to execution of the funding document remains unresolved, the State reserves any rights it may have to recoup costs not reimbursed by DOE under applicable law.

F. It is the intent of NYSDEC and DOE that nothing in this Agreement, including this Part, shall be construed to affect pending litigation regarding the applicability of the State hazardous waste program fee assessment to the BNL site or preclude DOE from procuring additional services from the State.

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XXXIII. Amendment of Agreement

A. This Agreement may be amended by written agreement of the Parties. Such amendments shall be in writing and shall have as the effective date that date on which such amendments are signed by all Parties, with EPA signing last, provided that, except for changes in the schedules to be submitted hereunder, public participation as specified in §117 of CERCLA shall be satisfied, where applicable, prior to signing by EPA.

B. No written or oral informal advice, guidance, suggestions or comments by EPA or NYSDEC regarding reports, documents, plans, specifications, schedules, and any other writing submitted by DOE will be construed as modifying this Agreement or as relieving DOE of its obligation to obtain approvals as may be required by this Agreement.

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XXXIV. Covenant Not to Sue and Reservation of Rights

A. In consideration of DOE'S compliance with this Agreement, and based on the information known to the Parties on the effective date of this Agreement, EPA agrees that compliance with this Agreement shall stand in lieu of any administrative, legal and equitable remedies against DOE available to it regarding the currently known release or threatened release of hazardous substances including hazardous wastes, pollutants or contaminants at the Site which are the subject of any RI/FS (s) and which will be addressed by the Remedial Action provided for under this Agreement. Nothing in this Agreement shall preclude EPA from exercising any administrative, legal or equitable remedies available to it to require additional response actions by DOE in the event that (1) conditions previously unknown or undetected by EPA arises or are discovered at the Site, or (2) EPA receives additional information not previously available concerning the premises which it employed in reaching this Agreement, or (3) the implementation of the requirements of this Agreement is no longer protective of public health or welfare or the environment.

B. In consideration of DOE's compliance with this Agreement, and based on the information known to the Parties on the effective date of this Agreement, NYSDEC agrees that compliance with this Agreement shall stand in lieu of the remedies under CERCLA and applicable state law against DOE available to it regarding the currently known release or threatened release of hazardous substances including hazardous wastes, pollutants or contaminants at the Site which are the subject of any RI/FS (s) and which will be addressed by the Remedial Action provided for under this Agreement. Subject to Subpart E of this Part, nothing in this Agreement shall preclude NYSDEC from exercising any administrative, legal, or equitable remedies available to it to require additional response actions by DOE in the event that (1) conditions previously unknown or undetected by NYSDEC arise or are discovered at the Site, or (2) NYSDEC receives additional information not previously available concerning the premises which it employed in reaching this Agreement, or (3) the Commissioner of NYSDEC determines that the implementation of the requirements of this Agreement is no longer

protective of the public health or welfare or the environment. Prior to making such a determination, NYSDEC agrees to exhaust the dispute resolution process described in Part XVI (Resolution of Disputes) except under circumstances where the Commissioner believes imminent and substantial endangerment to public health or welfare or the environment warrants the immediate exercise of any administrative, legal, or equitable remedies available to NYSDEC to require additional response actions by DOE. As to disputes arising under this subpart, any final resolution under Part XVI (Resolution of Disputes) by the Administrator shall not preclude NYSDEC from exercising any administrative, legal, or equitable remedies available to it to require additional response actions by DOE.

C. These Covenants Not to Sue do not affect any claims for natural resource damage assessments or for damages to natural resources.

D. Subject to Subpart E of this Part, NYSDEC reserves any rights of the State of New York as follows:

1. The right, pursuant to Section 121 of CERCLA, 42 U.S.C. §9621, to obtain judicial review of any remedy selected by the Administrator.

2. The right to seek judicial review of the Five-Year Plan described in Part XL (Funding) of this Agreement.

3. The right to seek penalties or other relief against DOE for a failure to comply with this Agreement.

4. The right to procure enforcement of this Agreement.

5. The right, pursuant to and to the extent authorized by CERCLA, to obtain compliance with State law at the Site.

6. The right, pursuant to and to the extent authorized by other Federal law, to obtain compliance with State law at the Site with respect to matters not specifically covered by this Agreement.

E. DOE does not acknowledge the right of the State of New York to seek judicial review of the Environmental Restoration and Waste Management Five-Year Plan (the "Five-Year Plan") or to assess stipulated penalties and specifically reserves the right to assert any legal defense. DOE reserves its rights to assert any defense which DOE may have absent this Agreement with respect to any relief or penalties sought by New York State.

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XXXV. Stipulated Penalties

A. In the event that DOE fails to submit a primary document as identified in Part XV (Consultation) to EPA or NYSDEC pursuant to the appropriate Timetable or Deadline in accordance with the requirements of this Agreement, or any extension granted pursuant to this Agreement, or fails to comply with a term or condition of this Agreement which relates to Operable Units or final Remedial Action, EPA may assess a stipulated penalty against DOE. Similarly, in such instances NYSDEC may request of EPA and, pursuant to such a request, EPA may assess a stipulated penalty. A stipulated penalty may be assessed in an amount not to exceed $5,000 for the first week (or part

thereof) and $10,000 for each additional week (or part thereof) for which a failure set forth in this Paragraph occurs.

B. Upon determining that DOE has failed in a manner set forth in Paragraph A, EPA shall so notify DOE in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, DOE may invoke within fifteen (15) days after receipt of the notice dispute resolution on the question of whether the failure did in fact occur. DOE shall not be liable for the stipulated penalty assessed if the failure is determined, through the dispute resolution process, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty. In the event that any stipulated penalties are assessed, DOE shall promptly inform EPA of the actions taken by DOE to obtain such funding.

C. The DOE annual reports to Congress required by Section 120(e)(5) of CERCLA shall include, with respect to each final assessment of a stipulated penalty against DOE under this Agreement, each of the following:

1. The facility responsible for the failure;

2. A statement of the facts and circumstances giving rise to the failure;

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

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

5. The total dollar amount of the stipulated penalty assessed for the particular failure.

D. EPA and NYSDEC agree to the extent allowed by law to share equally any stipulated penalties paid by DOE under this Agreement between the Hazardous Substance Response Trust Fund and the NYSDEC. Stipulated penalties assessed pursuant to this Part shall be payable to the Hazardous Substance Response Trust Fund from funds authorized and appropriated for that specific purpose.

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

F. This Part shall not affect DOE's ability to obtain an extension of a Timetable, Deadline or schedule pursuant to Part XXXVI (Extensions) of this Agreement.

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

H. The Parties recognize that Congress is presently considering legislation that expressly waives the U.S. Governmental immunity to civil penalties under state hazardous waste laws. Nothing herein is intended to preclude the applicability of such waiver to the relationship between DOE and NYSDEC, and in the event that the same or substantially similar legislation is enacted, the Parties agree to negotiate such changes as may be appropriate and modify this Agreement accordingly.

I. In the case of a NYSDEC request for issuance of a stipulated penalty where EPA chooses not to assess the penalty requested by NYSDEC or if NYSDEC does not receive onehalf (1/2) of the penalty assessed, NYSDEC may pursue any penalty, remedy or sanction it may have under law.

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XXXVI. Extensions

A. Either a Timetable and Deadline or a schedule shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension. Any request for extension by DOE shall be submitted prior to the deadline or scheduled deliverable date in writing to EPA and NYSDEC and shall specify:

1. The Timetable and Deadline or the schedule that is sought to be extended;

2. The length of the extension sought;

3. The good cause(s) for the extension; and

4. Any related Timetable and Deadline or schedule that would be affected if the extension were granted.

B. Provided that DOE exercises due diligence to eliminate or minimize delays, good cause exists for an extension when sought in regard to:

1. An event of force majeure, provided that DOE notifies EPA and NYSDEC immediately upon its recognition that an event of Force Majeure has occurred;

2. A delay caused by failure of another Party to this Agreement to meet any requirement of this Agreement;

3. A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action by a Party to this Agreement;

4. A delay caused, or which is likely to be caused, by the grant of an extension in regard to another Timetable and Deadline or schedule; and

5. Any other event or series of events, including a delay caused by the initiation of a judicial action by anyone not a Party to this Agreement, which is mutually agreed to by the Parties as constituting good cause.

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

D. Within seven (7) days of receipt of a request for an extension of a Timetable and Deadline or a schedule, EPA and NYSDEC shall advise all the other Parties in writing of their respective positions on the request. Any failure by EPA or NYSDEC to respond within the seven (7) day period shall be deemed to constitute concurrence in the request for extension. If EPA or NYSDEC does not concur in

the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

E. If there is consensus among the Parties that the requested extension is warranted, DOE shall extend the affected Timetable and Deadline or schedule accordingly. If there is no consensus among the Parties as to whether all or part of the requested extension is warranted, the Timetable and Deadline or schedule shall not be extended except in accordance with determination resulting from the dispute resolution process.

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

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

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XXXVII. Transfer of Property

In the event DOE enters into any contract for the sale or transfer of any of the Site, DOE will comply with the requirements of CERCLA §120(h), 42 U.S.C. §9620(h), in effectuating that sale or transfer, including all notice requirements. In addition, DOE shall include notice of this Agreement in any document transferring ownership or operation of the Site from DOE to any subsequent owner and operator of any portion of the Site and shall notify EPA and NYSDEC of any such sale or transfer at least ninety (90) days prior to such transfer. DOE shall also notify EPA and NYSDEC of any substantial change of use proposed for any AOC. Neither a change in ownership of the Site or any portion thereof, nor notice pursuant to Section 120(h)(3)(B) of CERCLA, 42 U.S.C. §9620(h)(3)(B), shall relieve DOE of its obligation to perform pursuant to this Agreement. No change of ownership of the Site or any portion thereof shall be consummated by DOE without provision for continued maintenance of any containment system, treatment system, monitoring system, or other response action(s) installed or implemented pursuant to this Agreement.

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XXXVIII. Public Participation

A. The Parties agree that this Agreement and all work, including the proposed Remedial Action plan and any subsequent plan for Remedial Action at the Site arising out of this Agreement shall comply with the administrative record and public participation requirements of Sections 113 and 117 of CERCLA, 42 U.S.C. §§9613 and 9617 and the NCP, as well as regulations and EPA guidance issued with respect to public participation and administrative records.

B. DOE shall develop and implement a Site Community Relations Plan (CRP) which responds to the

need for an interactive relationship with all interested community elements at the Site regarding activities and elements of work undertaken by DOE. DOE agrees to develop and implement the CRP in a manner consistent with Section 117 of CERCLA, the NCP, EPA guidelines set forth in EPA's Community Relations Handbook and any modifications thereto, and NYSDEC's Inactive Hazardous Waste Site Citizen Participation Plan. To assure coordination and communication, DOE has established a technical group consisting of representatives from EPA, NYSDEC, Suffolk County, the Town of Brookhaven, BNL and DOE. The functions of this group will be set forth in the CRP. The CRP is subject to the review and comment process set forth in Part XV (Consultation) of this Agreement.

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

D. **Technical Assistance Grants (TAGs).** The Parties agree to address this section at a later date to reflect policies and procedures pursuant to Section 117 of CERCLA.

E. **Administrative Record**. DOE agrees it shall establish and maintain an administrative record in accordance with Section 113(k) of CERCLA. The Administrative Record shall be established and maintained in accordance with EPA policy and guidelines. The establishment and maintenance of the Administrative Record shall satisfy, but not be limited to, the following requirements:

(1) The Administrative Record shall be available to the public at or near the Site. In addition, copies of the current index to the Administrative Record and selected documents from the Administrative Record shall be made available at a location in Upton, New York, which will provide convenient access to the public.

(2) The selection of each response action shall be based on the Administrative Record, in accordance with CERCLA §113(k), any regulations promulgated pursuant thereto, and applicable guidance. A copy of the Administrative Record or a complete index of the Administrative Record shall be maintained at the EPA Region II Office, currently at 26 Federal Plaza, New York, New York.

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

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

(5) DOE shall provide EPA and NYSDEC with a quarterly update of any documents added to the Administrative Record arid the updated Administrative Record index when any changes or additions to the Record have been made.

(6) Upon request by any Party, DOE shall provide a copy of any document in the Administrative Record to the requesting Party.

(7) EPA will provide DOE with guidance on establishing and maintaining the Administrative Record

as this guidance develops.

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

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XXXIX. Enforceability

A. The Parties agree that:

(1) Upon the effective date of this Agreement, any federal or state standard, regulation, condition, requirement or order which has become effective under CERCLA and is incorporated into this Agreement is enforceable by any person pursuant to Section 310 of CERCLA, and any violation of such standard, regulation, condition, requirement or order will be subject to civil penalties under Sections 310(c) and 109 of CERCLA.

(2) All Timetables or Deadlines associated with the development, implementation and completion of any RI/FS(s) shall be enforceable by any person pursuant to Section 310 Of CERCLA, and any violation of such Timetables or Deadlines will be subject to civil penalties under Sections 310(c) and log of CERCLA;

(3) All terms and conditions of this Agreement which relate to Operable Units or final Remedial Actions, including corresponding Timetables, Deadlines or schedules, and all work associated with the operable Units or final Remedial Actions, shall be enforceable by any person pursuant to Section 310(c) of CERCLA, and any violation of such terms or conditions will be subject to civil penalties under Sections 310(c) and 109 of CERCLA; and

(4) Any final resolution of a dispute pursuant to Part XVI (Resolution of Disputes) of this Agreement which establishes a term, condition, Timetable, Deadline or schedule shall be enforceable by any person pursuant to Suction 310(c) of CERCLA, and any violation of such term, condition, Timetable, Deadline or schedule will be subject to civil penalties under Sections 310(c) and log of CERCLA.

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

C. The Parties shall have the right to enforce the terms of this Agreement.

D. If any provision of this Agreement is determined to be invalid, illegal or unconstitutional, the remainder of the Agreement shall not be affected by such determination.

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XL. Funding

It is the expectation of the Parties to this Agreement that all obligations of DOE arising under this Agreement will be fully funded. DOE shall take all necessary steps and make efforts to obtain timely funding to meet its obligations under this Agreement.

DOE is preparing a Five-Year Plan to identify, integrate, and prioritize DOE's compliance and cleanup activities at all DOE nuclear facilities and sites. The Five-Year Plan will assist DOE in addressing environmental requirements at its facilities and sites and in developing and supporting its, budget requests. DOE will update its Five-Year Plan on an annual basis.

The terms of the Five-Year Plan shall be consistent with the provisions of this Agreement, including all requirements and schedules contained herein; it is the intent of the Parties that DOE's Five-Year Plan be drafted and updated in a manner that ensures that the provisions of this Agreement are incorporated into the DOE planning and budget process. Nothing in the Five-Year Plan shall be Construed to affect the provisions of this Agreement.

DOE is developing a national prioritization system for inclusion in its Five-Year Plan. DOE's application of its national prioritization system may indicate to DOE that amendment or modification of the provisions and/or milestones established by this Agreement is appropriate. In that event, DOE may request, in writing, amendment or modification of this Agreement, including deadlines established herein. Where the Parties are unable to reach agreement on a requested amendment or modification, DOE may invoke the dispute resolution provisions of this Agreement. Pending resolution of any such dispute, the provisions and deadlines in effect pursuant to this Agreement shall remain in effect and enforceable in accordance with the term of this Agreement. Any amendment or modification of this Agreement will be incorporated, as appropriate, in the annual update to DOE's Five-Year Plan.

In accordance with Section 120(e)(5)(B) of CERCLA, 42 U.S.C. §9620(e)(5)(8), DOE shall include in its annual report to Congress the specific cost estimates and budgetary proposal associated with the implementation of this Agreement.

Any requirement for the payment or obligation of funds, including stipulated penalties, by DOE established by the term of this Agreement shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. §1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds, shall be appropriately adjusted.

If appropriated funds are not available to fulfill DOE's obligations under this Agreement, EPA and NYSDEC reserve the right to initiate any action which would be appropriate absent this Agreement.

Nothing herein shall affect DOE's authority over its budget and funding level submissions.

The Parties recognize that EPA must possess adequate resources to most its commitments established by this Agreement. EPA shall take all necessary steps and make efforts to obtain timely funding to meet its obligations under this agreement.

Notwithstanding any other provision of this Agreement, in the event that EPA determines that sufficient funds have not been appropriated to meet any post-FY91 commitments established by this Agreement, EPA may terminate this Agreement by written notice to DOE and NYSDEC.

Nothing herein shall prejudice EPA's ability to exercise any right to **reimbursement** provided for by CERCLA.

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XLI. Force Majeure

A Force Majeure shall mean any event arising from cause beyond the control of a Party that causes an unavoidable delay in or prevents the performance of any obligation under this Agreement, provided that DOE shall have exercised due diligence to prevent, eliminate or minimize such delays, including, but not limited to, acts of God; fire; war; insurrection; or civil disturbance; explosion; unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance; adverse weather Conditions that could not be reasonably anticipated; unusual delay in transportation; restraint by court order or order of public authority: inability to obtain, after exercise of reasonable diligence, any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority other than DOE; delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; and insufficient availability of appropriated funds, if DOE shall have made efforts to obtain such funds as part of the budgetary process as set forth in Part XL (Funding) of this Agreement. A Force Majeure shall also include any strike or other labor dispute, whether or not within the control of the Parties affected thereby. Force Majeure shall not include increased costs or expenses of Response Actions, whether or not anticipated at the time such Response Actions were initiated.

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XLII. Public Comment

A. Within fifteen (15) days of the date of the execution of this Agreement, EPA shall announce the availability of this Agreement to the public for review and comment. The public notice shall be published in a major local newspaper of general circulation. EPA shall accept comments from the public for a period of forty-five (45) days after such announcement. At the end of the comment period, EPA and NYSDEC shall review all such comments.

(1) If both EPA and NYSDEC determine that the Agreement should be made effective in its present form, all Parties shall be so notified in writing, and the Agreement shall become effective on the date DOE receives such notice; or

(2) If either EPA or NYSDEC determines that modification of the Agreement is necessary, the Parties shall meet to discuss and agree upon any proposed changes. Upon agreement of any proposed changes, EPA shall notify all Parties in writing.

B. In the event of significant revision or public comment, notice procedures of Section 117 of CERCLA shall be followed and a responsiveness summary shall be published by EPA.

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XLIII. Termination and Satisfaction

Except as provided in Part XXVII (Five-Year Review) hereof, to the extent that response actions are conducted pursuant to the provisions of this Agreement, EPA and NYSDEC will, following the

completion of all remedial response actions and upon written request by DOE, send to DOE a written notice of satisfaction of the terms of this Agreement within ninety (90) days of the request. The notice shall state that, in the opinion of EPA and NYSDEC, DOE has satisfied all of the terms of this Agreement in accordance with the requirements of CERCLA, RCRA, the NCP and all related regulations and that the work performed by DOE was consistent with the agreed upon Remedial Actions.

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XLIV. Deletion From the NPL

EPA shall propose the Site for deletion from the NPL after all AOCs have been addressed in accordance with a ROD.

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XLV. Effective Date

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

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

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XLVI. Execution of Document

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

IT IS SO AGREED

David T. Goldman
Acting Manager
Field Office, Chicago
U.S. Department of Energy

Constantine Sidamon Eristoff
Regional Administrator, Region II
U.S.. Environmental Protection Agency

Thomas C. Jorling
New York State Department of Environmental Conservation

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Attachment 2

Deliverables

The deliverables to be furnished by DOE pursuant to this Agreement include the following:

1. **SWMU Classification Report**. The SWMU Classification Report (SCR) shall list and describe all SWMUs and their subunits on the Site,

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

b. Design and/or construction details, if applicable;

c. Waste profile, including types and amounts of wastes;

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

e. Environmental concerns, targets and pathways;

f. Corrective measures instituted;

g. Detailed maps, if needed; and

h. Releases to the environment.

The SCR shall update the NYSDEC Preliminary Review Report dated April 1987, and will comply with the requirements of the RCRA Facility Assessment (RFA) Guidance to the extent practicable. The SCR shall propose for each SWMU a classification of either "no action" or "Area of Concern." The SCR shall also contain a general map of all SWMU locations and a detailed facility map which will indicate any SWMUs from which hazardous waste or hazardous constituents may migrate or may have migrated.

2. **Generic RI/FS Schedule**. DOE shall develop and deliver to EPA and NYSDEC a generic RI/FS schedule which schedule shall provide the basic framework for development and negotiation of specific RI/FS schedules for each Operable Unit. The generic RI/FS schedule is not intended by the parties to this agreement to be binding or enforceable for purposes of RI/FS schedules for all Operable Units, stipulated penalties, or other provisions of the Agreement, and shall not be construed as such by any party.

The generic schedule identifies discrete components of the RI/FS activity, provides a general process for accomplishing these activities, categorizes the status of deliverables, describes necessary interaction among the parties, provides instances where concurrent or overlapping events may occur, and provides representative timeframes for conducting RI/FS activities, all based on typical conditions.

The parties recognize that RI/FS schedules for any Operable Unit may consume more or less time

than the target dates afforded by the generic schedule, dependent upon variables including but not limited to, the scope of the undertaking, the nature and complexity of the Operable Unit, and the duration and quantity of field work required.

The parties agree to work in good faith to negotiate reasonable schedules, using the understandings inherent in the generic schedule.

3. **Work Plan for Historical Site Review**. The Work Plan for Historical Site Review will identify tasks, in addition to the work previously carried out, to identify any other potential AOCs. The Work Plan shall include obtaining available information relating to releases during the Army's ownership of the current BNL property, as well as any other uses of the property before DOE or its predecessor agencies took possession of the property. It may also include, for example, additional interviews with longtime and former site workers, and/or review of additional available historical aerial photography. The Work Plan for Historical Site Review will include a schedule for submittal of the Historical Site Review Report.

4. **Site Baseline Report**. The Site Baseline Report will be a technical report describing the current status of and knowledge about each AOC. The purpose of the report is to provide a summary of existing historical and sampling/monitoring information about the Site relevant to actions anticipated under this Agreement.

The Site Baseline Report will include the following information:

a. A description of each AOC identified in Attachment 3 including:

i. Operational and disposal history. Include past and present practices. State whether the AOC is still operational, and if not, when operations ceased;

ii. Design or construction details, if applicable;

iii. Waste profile, including types and amounts of wastes;

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

v. Environmental concerns, targets, and pathways;

vi. Corrective measures instituted.

b. Site maps and photographs, including:

i. A sitewide map of all AoCs, (with overlays);

ii. Map(s) of existing and proposed groundwater monitoring,

production, and all other wells, and sampling locations for all media;

iii.A map showing all offsite production wells; and

iv. Available topographic maps and aerial photographs.

c. A compilation and summary of previous and current monitoring and sampling data for all media and radiological surveillance.

d. A description of the Site geology and hydrology

(including geologic maps, cross sections, and groundwater contours and flow patterns).

e. Sampling information for each well, including: well location, elevation, installation and construction data; sampling procedures; QA/QC procedures, and a list of sampling parameters for each well. How sampling parameters changed with time. This information should be historical to the extent that data are available.

f. Changes in groundwater elevation with time. Groundwater flow changes, especially the effect of the aquifer restoration project.

g. Surface hydrology.

h. Soil and sediment data.

i. Summary of groundwater chemistry and assessment of groundwater flow, as well as vertical and horizontal gradients.

j. Analytical information for all analyses, including analytical procedures and QA/QC procedures.

k. Background information on site land use and sensitive

areas including endangered species, wetlands, and archeological sites.

1. A description of offsite targets and pathways, including local population data, local land use, location of off-BNL water supply wells, description of ambient air monitoring data, and off-BNL radiological monitoring.

m. A bibliography of existing reports and documents.

5. **Response Strategy.** DOE shall prepare and submit to EPA and NYSDEC a Response Strategy document identifying how each AOC will be addressed. It will include:

a. The proposed grouping of AOCs into Operable Units, including a list of Operable Units, for which RI/FSs will be prepared; and,

b. Ongoing and anticipated Removal Actions.

The Response Strategy will identify the health and safety priority of each operable Unit and identify

those technical interrelationships among AOCs or Operable Units which would affect the grouping or the order of response. The Response Strategy will be revised as necessary to reflect those changes approved by the Parties to this Agreement.

6. **RI/FS Work Plan(s)**: Any Remedial Investigation/Feasibility Study (RI/FS) Work Plan(s) will describe the organization of the project or Operable Unit, identify the appropriate administrative guidance, and outline the elements of work planned to complete any RI/FS(s) in accordance with CERCLA. The documents will be consistent with CERCLA, the NCP, and the **Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA**, EPA, Interim Final, October, 1988, any subsequent revisions of these documents thereof (where such revisions are provided to DOE prior to submittal of the subject deliverable) and any other applicable or relevant EPA guidance. Any RI/FS work plan(s) will include the Sampling and Analysis Plan. The RI/FS(s) will address all AOCs identified in Attachment 3.

7. **Quality Assurance Project Plan(s)**: The Quality Assurance Project Plan(s) (QAPP) will meet CERCLA guidance by defining data objectives, establishing sampling criteria, and incorporating a set of Standard Operational Procedures (SOPS) to meet those goals. The QAPP(S) will be developed in accordance with the **Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA**, EPA, Interim Final, October, 1988, any subsequent revisions thereof (where such revisions are provided to DOE prior to submittal of the subject deliverable), the **Compendium of Superfund Field Operations Methods**, EPA, December, 1987, and the Region II: CERCLA Quality Assurance Manual, EPA, March, 1988, and any other applicable or relevant EPA guidance.

8. **Community Relations Plan**: Following CERCLA guidance, the Community Relations Plan (CRP) provides a framework for presenting understandable and consistent information to interested parties during any RI/FS(s), and Remedial Action(s) at the Site. The CRP documents the history of community involvement and community concerns regarding the Site and provides an explanation of the Community Relations Program. It is meant to assist DOE in determining the concerns of the community while informing the community about all aspects of environmental restoration activities at the Site. Implementation of the CRP ensures that all concerned parties are involved in the CERCLA process in a meaningful manner. The CRP will be consistent with CERCLA, the NCP, the **Community Relations in Superfund: A Handbook**, Interim Version, EPA, June, 1988, any revisions thereof (where such revisions are provided to DOE prior to Submittal of the subject deliverable), and any other applicable or relevant EPA guidance.

9. **Risk Assessment(s)**: Through the identification of potential pathways, appropriate solute transport modeling, and the use of available toxicological data, the Risk Assessment(s) analyze the potential risks to the public for the "no action" alternative(s). The documents will be consistent with the **Risk Assessment Guidance for Superfund**, EPA, December, 1989, and any revisions thereof (where such revisions are provided to DOE prior to submittal of the subject deliverable), and any other applicable or relevant EPA guidance.

10. **Remedial Investigation(s)**: Any such report(s) will be consistent with CERCLA, the NCP, the **Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA**, EPA, Interim Final, October, 1988, any subsequent revisions thereof (where such revisions are provided to DOE prior to submittal of the subject deliverable), and the **Compendium of Superfund Field Operations Methods**, EPA, December, 1987, and any other applicable or relevant EPA guidance.

11. **Initial Screening of Alternatives**: Any such report(s) will be consistent with CERCLA, the NCP, the **Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA**, EPA, Interim Final, October, 1988, and any subsequent revisions thereof (where such revisions are provided to DOE prior to submittal of the subject deliverable) and any other applicable or relevant EPA guidance.

12. **Feasibility Studies** Any such report(s) will be consistent with CERCLA, the NCP, the **Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA**, EPA, Interim Final, October" 1988, any subsequent revisions thereof (where such revisions are provided to DOE prior to submittal of the subject deliverable), and any other applicable or relevant EPA guidance.

13. **Proposed Remedial Action Plan(s)**: Any such report(s) draws from the information in an RI/FS and is designed to identify the preferred alternative and the rationale for its choice, for the purpose of public participation. The documents are equivalent to the Proposed Plan as that term is used in CERCLA §117 and as such are subject to a formal public review period and subsequent public hearing. The documents shall be consistent with CERCLA, the NCP, the draft **Guidance on Preparing Superfund Decision Documents: The Proposed Plan and Record of Decision**, EPA, Draft, March, 1988, any subsequent revisions thereof (where such revisions are provided to DOE prior to submittal of the subject deliverable), and any other applicable or relevant EPA guidance.

Any ROD shall be consistent with CERCLA, **Guidance on Preparing Superfund Decision Plan and Record of Decision**, EPA, Draft, subsequent revisions thereof (where such to DOE prior to submittal of the subject applicable or relevant EPA guidance, and

14. **Records of Decision:** Any Record(s) of Decision (ROD(s)) will document the final remedy(s) selected for the Site. Any ROD must be based on the material contained within the Administrative Record and will include a responsiveness **summary** which addresses major comments, concerns, criticisms, or new data raised during the comment period on the Proposed Remedial Action Plan(s), including those that may have led to significant changes from the proposal(s) contained in the Proposed Remedial Action Plan(s). Any ROD shall be consistent with CERCLA, the NCP, the draft **Guidance on Preparing Superfund Decision Documents: The Proposed Plan and Record of Decision**, EPA, Draft, March, 1988, any subsequent revisions thereof (where such revisions are provided to DOE prior to submittal of the subject deliverable), any other applicable or relevant EPA guidance, and shall describe, as stated in §121 of CERCLA, a remedy(s) that:

a. Is protective of human health or welfare or the environment,

b. Attains all ARARs or provides the grounds for invoking one of the waivers CERCLA provides,

c. Is cost effective, and

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

15. **Remedial Design Work Plan(s):** Any such plan(s) will establish a schedule of planned actions to implement the remedy(s) selected in the ROD. To the degree feasible the Plan(s) will document engineering decisions or the decision process, including the nature of ongoing investigations, studies

or tests. The Plan(s) will provide a detailed list of deliverables and Timetables and Schedules with sufficient detail to enable comprehensive understanding of the upcoming implementation of the selected remedy(s). Any such document(s) shall be consistent with CERCLA, the NCP, the **Interim Final Guidance on EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties**, EPA, Pre-Publication Version, February 1990, any subsequent revisions thereof (where such revisions are provided to DOE prior to submittal of the subject deliverable), and any other appropriate or applicable guidance.

16. **Remedial Action Work Plan(s):** Any Remedial Action Work Plan(s) shall include the final Remedial Design, the Construction QA/QC Plan and the Contingency Plan, and shall be sufficiently detailed to allow the Parties an opportunity to review and comprehend all aspects of the selected remedy(s). Any such document(s) shall be consistent with CERCLA, the NCP, the **Interim Final Guidance on EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties**, EPA, PrePublication Version, February 1990, any subsequent revisions thereof (where such revisions are provided to DOE prior to submittal of the subject deliverable), and any other appropriate or applicable guidance.

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Attachment 3 List of Areas of Concern

1. Hazardous Waste Management Facility (HWMF)

    a. Open Burning/Detonation Area (SWMU 42)

    b. Spray Aeration Site

    c. Salvage Storage Areas (Boneyard) (SWMU 43)

    d. HWMF Fields (Boneyard) (SWMU 57)

    e. Drum Rinsing Area (SWMU 55)

    f. Radioactive Material (Fission Product) Injection Site

    g. Miscellaneous Spill Sites

2. Former Landfill Area

    a. Former Landfill (SWMU 58)

    b. Chemical/Animal Pits (SWMU 59)

    c. Glass Holes (SWMU 60)

    d. Interim Dump (SWMU 62)

3. Current Landfill (SWMU 48)

4. Sewage Treatment Plans

    a. Sludge Drying Beds (SWMU 46)

    b. Sand Filters (SWMU 47)

    c. Imhoff Tank Sludge

    d. Holdup Pond

5. Central Steam Facility (CSF) 1977 Oil/Solvent Spill

6. Reclamation Facility Building 650 Sump

7. Paint Shop

8. Upland Recharge Area/Meadow Marsh

9. Brookhaven Graphite Reactor

    a. Canal

    b. Underground Duct Work

    c. Spill Sites

10. Waste Concentration Facility

a. Tanks D1, D2, D3

b. Underground Pipelines

11. Building 830 Pipe Leak

12. Tanks (Tanks 445, 462, 463(1) and(2), 527, 650(1),(2),(3) and (4), 703, 830 (1) and (2), 927 and 931)

13. Cesspools (Buildings 51, 197, 244, 348, 422, 449, 452, 624, 904, 905, 914, 919A, 919B, 926, 935, 940, 945, 975, T122, and T945)

14. Bubble Chamber Spill Areas

15. Potable Wells

16. Aerial Radioactive Monitoring System Results

    a. Alternating Gradient Synchrotron (AGS) Storage Area

b. Warehouse Near Building 196

c. Warehouse Area, Space Effects Research Lab Magnets

d. Accelerator Storage

e. Field Behind Medical Building

f. Field behind Chemistry Building

g. Field East of Brookhaven Center

h. Decontamination and Hot Laundry

i. South End of LINAC, Building 930

j. CLIF, Building 931A

k. BLIP, Building 931B

1. Peconic River Station M, Flow Gate Measurement Device Plus Sedimentation Due to Bend in Stream

m. AD Beam Components Assembly Facility, Extraction magnet Repair Facility, Building 914

n. Trailers North of Building 919A, Cryogenic Target Assembly Building, Service Area Adjacent to Gate 3 of Fast Beam Tunnel

o. Helium Systems Compressor Room, North Conjunction Area Used for Beam Pipe Modification, Building 919

p. On-Line Data Facility, Experimental Area Operations, Hot Magnet Storage Area, Building 912

q. Trailers Worth and East of Building 912, Storage Area for Surplus Steel Shielding

r. Nuclear Waste Management Facility, Radioactive Waste Research Program and High Intensity Rad Lab, Building 830

s. Contaminated Landscaping Soil

17. Area Adjacent to Former Low-Mass Criticality Facility

18. AGS Scrapyard (Boneyard)

19. TCE Spill Area, Building 109

20. Recharge Basin at the North End of the Linear Accelerator

21. Leaking Sewer Pipes

22.Old Firehouse (Soil Remediation Project)

23. Off Site Tritium Plume

24. Process supply Wells "#104 and "#105 and Medical Research Reactor recharge basins.

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Attachment 4 Schedule for FY 1990 and 1991

I. **Removal Actions**: The following tasks associated with removal activities are scheduled for the following dates:

1. D' Tank Removal

Submit EE/CA to EPA & NYSDEC for review.	6/1/91
Publish Notice of Availability of EE/CA for public comment.	9/15/91
Commence Removal Action in accordance with schedule in approved EE/CA.	1/1/92

2. UST Removal

Submitted S&A Plan for Tank Sludge to EPA & NYSDEC for review.	4/22/90
Submit EE/CAEA to EPA & NYSDEC for review.	7/1/91
Publish Notice of Availability of EE/CAEA for Public Comment.	10/15/91
Commence Removal Action in accordance with schedule in approved EE/CAEA	2/1/92

3. Cesspool Removal

Submit S&A Plan for cesspools to EPA & NYSDEC for review.	(was submitted 11/21/90)
Submit EE/CAEA to EPA & NYSDEC for review.	1/1/92
Publish Notice of Availability of EE/CAEA for public comment.	4/15/92
Commence Removal Action in accordance with schedule in approved EE/CAEA.	5/30/92

II. **Completion Reports:** The following No Action Completion Reports are scheduled to be submitted on the following dates:

1. Building 830 Pipe Leak AOC # 11	(was submitted 12/19/90)

III. **RI/FS Activities**: The following RI/FS deliverables shall be submitted for the Central Steam Facility on the following dates:

Submit Scope of Work to EPA & NYSDEC for review	(was submitted 7/20/90)
Submit draft Work Plan to EPA & NYSDEC for review	4/1/91

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Attachment 5

The Alternate Project Manager for DOE is

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