Interagency Agreement (IAG) for the Pantex Superfund Site

December 2007

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

FEB 2 2 2008

VIA CERTIFIED U.S. MAIL -
RETURN RECEIPT REQUESTED

Johnnie F. Guelker
U.S. Department of Energy
National Nuclear Security Administration
Pantex Site Office
P.O. Box 30030
Amarillo, TX 79120-0030

Re: In The Matter of U.S. Department of Energy, Pantex Plant, Carson County Texas, Interagency Agreement Effective Date.

Dear Mr. Guelker:

The purpose of this letter is to inform you that the Interagency Agreement ("IAG") between the United States Environmental Protection Agency ("EPA"), the U.S. Department of Energy, Pantex Site Office ("DOE"), and the Texas Commission on Environmental Quality ("TCEQ") is effective per the date of this notification as required under Article 35 of the IAG. On February 19, 2008, EPA received your letter dated February 14, 2008, which demonstrated your Agency's compliance with the IAG's public participation requirements under Article 35. Because no comments were received during the public review and comment period, there were no issues to consider before issuance of this effective date notification.

The EPA looks forward to continuing the response work at the Pantex Site with the Pantex Site Office, and the TCEQ, per the IAG. With the above in mind, please note the following modifications to the work schedule for which we have discussed and agreed. The final Proposed Plan shall be published for public notice and comment no later than 30 days after the effective date established by this letter. Approval and signature of the final Record of Decision (ROD) shall be no later than 90 days after the Proposed Plan public notice date. All post-ROD

deliverables and schedules will remain as negotiated in the IAG. Should you have questions concerning this matter, please contact me at (214) 665-2231. Thank you for your cooperation in this matter.

Sincerely,

Camille D. Hueni, P.G.
Remedial Project Manager
AR/TX Remedial Branch
Superfund Division (6SF-RA)

cc: Fay Duke, TCEQ
Darrell Rickenburg, DOE, NNSA, PXSO counsel
Dennis Huddleston, B&W Pantex
John Alan Jones, B&W Pantex
George Malone, EPA

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 6;
THE UNITED STATES DEPARTMENT OF ENERGY; and,
THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF:	**INTERAGENCY AGREEMENT**
The U.S. Department of Energy,	**UNDER CERCLA SECTION 120**
Pantex Plant	**Administrative Docket No.:**
Carson County, Texas	**CERCLA - 06-13-07**

PANTEX PLANT INTERAGENCY AGREEMENT

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THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 6;
THE UNITED STATES DEPARTMENT OF ENERGY; and
THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF:	§	**INTERAGENCY AGREEMENT**
The U.S. Department of Energy,	§	**UNDER CERCLA SECTION 120**
Pantex Plant	§	**Administrative Docket No.:**
Carson County, Texas	§	**CERCLA - 06-13-07**

PANTEX PLANT INTERAGENCY AGREEMENT

The Pantex Plant Interagency Agreement ("Agreement") is a legally binding agreement among the United States Department of Energy ("DOE"), the United States Environmental Protection Agency ("EPA"), and the Texas Commission on Environmental Quality ("TCEQ") (collectively hereinafter referred to as the "Parties/Agencies") to accomplish the cleanup of hazardous substances contamination at and from the Pantex Plant National Priorities List Site ("Site" or "Pantex Plant Site") pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601, *et seq.*, the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300, and Executive Order 12580 (January 23, 1987), as amended by Executive Order 13016 (August 29, 1996) (together, the "Executive Orders"). Based on the information available to the Parties on the effective date of this Agreement and without trial or adjudication of any issues of fact or law, the Parties have exercised good faith and due diligence in establishing both the procedural and substantive requirements of this Agreement. Therefore, the Parties agree as follows.

PART ONE
LEGAL FOUNDATION

1. GENERAL

1.1 This Agreement serves as the Interagency Agreement required by Section 120(e) of CERCLA, 42 U.S.C. § 9620(e). This Agreement is divided into three Parts: Part One contains introductory provisions; Part Two contains provisions addressing remedial action activities and provisions which delineate in part the respective roles and interrelationships among DOE, EPA, and TCEQ with regard to the Site; and Part Three contains remedial activities and general provisions applicable to this Agreement.

1.2 This Agreement governs response actions as that term is defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), to be taken by the Parties at the Pantex Plant Superfund Site.

1.3 Nothing in this Agreement shall affect the obligations or liability of any entity that is not a party to this Agreement, and nothing shall affect the rights of any Party against a non-party.

1.4 The Parties agree that this Agreement is subject to the applicable requirements of CERCLA Section 120(j), 42 U.S.C. § 9620(j) and the Atomic Energy Act of 1954 ("AEA"), 42 U.S.C. § 2011 et. seq, applicable DOE Orders governing classified and national security information, and applicable regulations protecting national security information, restricted information, unclassified controlled information and classified information.

2. AUTHORITY/JURISDICTION

2.1 EPA enters into this Agreement pursuant to Sections 120(e) and (f) of CERCLA, 42 U.S.C. § 9620(e) and (f), and the 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"), and Executive Orders 12580 (January 23, 1987), as amended by Executive Order 13016 (August 29, 1996).

2.2 DOE enters into this Agreement pursuant to Sections 120(e) and (f) of CERCLA, 42 U.S.C. § 9620(e) and (f), Sections 6001, 3008(h) and 3004(u) and (v) of RCRA, Executive Order 12580 (January 23, 1987), as amended by Executive Order 13016 (August 29, 1996), and the Atomic Energy Act ("AEA"), as amended 42 U.S.C. § 2201. DOE maintains jurisdiction, custody, or control of the property on which the Pantex Plant rests. Accordingly, DOE is the lead agency under the NCP responsible for planning and implementing remedial actions and removal actions necessary to protect public health or welfare or the environment from the release or threatened release of hazardous substances at or solely from the Site.

2.3 TCEQ enters into this agreement pursuant to Section 120(f) of CERCLA, 42 U.S.C. § 9620(f), Section 3006 of RCRA, 42 U.S.C. § 6926, and the Texas Solid Waste Disposal Act, Chapter 361, Texas Health & Safety Code.

2.4 On May 31, 1994, the Pantex Plant Site was listed by EPA on the National Priorities List ("NPL"), 59 Fed. Reg. 27989 (May 31, 1994).

2.5 This Interagency Agreement serves as the Interagency Agreement required by Section 120(e) of CERCLA, 42 U.S.C. § 9620(e). The Parties agree that they are bound by this Agreement and that the requirements of this Agreement may be enforced pursuant to the terms of this Agreement or as otherwise provided by law. The Parties consent to and will not contest each Party's jurisdiction solely for the purposes of executing and enforcing this Agreement and its requirements.

3. PARTIES BOUND

3.1 The Parties to this agreement are EPA, DOE, and TCEQ, acting on behalf of the State of Texas.

3.2 DOE shall provide a copy of this Agreement and relevant attachments to each of its prime contractors prior to any work being performed pursuant to this Agreement. A copy of this Agreement shall be made available to all other managing contractors and their successors retained to perform work under this Agreement. DOE shall provide a copy of this Agreement to any successor in interest prior to any transfer of ownership or operation in accordance with Section 120(h) of CERCLA, 42 U.S.C. § 9620(h).

3.3 DOE shall notify EPA and TCEQ in writing of the identity and assigned tasks of each of its prime contractors and their successors performing work under this Agreement in advance of their involvement in such work. Notwithstanding, DOE has already notified EPA and TCEQ that BWXT Pantex, a limited liability enterprise of BWX Technologies, Inc., Honeywell Inc., and Bechtel, Inc., has been tasked to perform the work required under this Agreement. BWXT performed the investigative work specified in Paragraphs 6.4 and 6.9 of this Agreement. Upon request, DOE shall also provide the identity and scope of work of any other contractors and successors performing work under this Agreement. DOE shall take all necessary measures to assure that its contractors, subcontractors and consultants performing work under this Agreement act in a manner consistent with the terms of this Agreement.

3.4 This Agreement shall not be construed as indemnifying any person.

3.5 The Parties remain obligated by this Agreement regardless of whether they carry out the terms through agents, contractors, and/or consultants. Any failure of DOE to provide proper direction to its contractors and any resultant noncompliance with this Agreement by a contractor shall not be considered a *force majeure* event or other good cause for an extension.

4. PURPOSE

4.1 The general purposes of this Agreement are to:

4.1.1 Ensure that the environmental impacts associated with past and present activities at the Site have been analyzed, tested, thoroughly evaluated and appropriate remedial action is taken as necessary to protect the public health, welfare and the environment.

4.1.2 Establish a procedural framework and schedule for developing, implementing, and monitoring appropriate Site response actions in accordance with CERCLA, the NCP, Superfund policy, RCRA, RCRA policy, and applicable, relevant and appropriate environmental laws.

4.1.3 Facilitate continued cooperation, exchange of information and participation of the Parties in such actions.

4.2. The specific purposes of this Agreement are to:

4.2.1 Provide for a review of alternative remedial actions and selection of a remedial action by DOE and EPA or, if DOE and EPA are unable to reach agreement on selection of a remedial action, selection by EPA, as required by Section 120(e)(4)(A) of CERCLA, 42 U.S.C. § 9620(e)(4)(A), and Section 300.430(f)(4)(iii) of the NCP, 40 C.F.R. § 300.430(f)(4)(iii).

4.2.2 Provide and facilitate compliance with a schedule for the completion of the remedial action as expeditiously as possible under Section 120(e)(3) and (4)(B) of CERCLA, 42 U.S.C. § 9620(e)(3) and (4)(B), and to implement the selected remedy in accordance with CERCLA Section 120(e).

4.2.3 Provide and facilitate compliance with the long-term operation and maintenance of the remedial action at the facility as required by Section 120(e)(4)(C) of CERCLA, 42 U.S.C. § 9620(e)(4)(C).

4.2.4 To recognize TCEQ's participation, and to continue to afford TCEQ the opportunity to participate in the planning and selection of the remedial action as provided in Section 121 of CERCLA, 42 U.S.C. § 9621, and the NCP, including, but not limited to the review of all applicable data as it becomes available and the development of studies, reports, and action plans, as required by Section 120(f) of CERCLA, 42 U.S.C. § 9620(f).

4.2.5 Provide for compliance with the public participation requirements of Section 117 of CERCLA, 42 U.S.C. § 9617, as required by Section 120(e)(2) of CERCLA, 42 U.S.C. § 9620(e)(2).

4.2.6 Provide for the design and implementation of the remedial action to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants or contaminants at or from the Site in accordance with CERCLA and identified ARARs.

4.2.7 Satisfy the requirements of Section 120(e) of CERCLA, 42 U.S.C. § 9620(e), for an Interagency Agreement.

5. DEFINITIONS

5.1 For purposes of this Agreement, any term used in this Agreement that is defined in Section 101 of CERCLA, 42 U.S.C. § 9601, or Section 300.5 of the NCP, 40 C.F.R. § 300.5, shall have the meaning established by such definition. When a term is defined in CERCLA or the NCP and also is defined in this Article (Article 5), the definition provided by CERCLA or the NCP shall control in the event there is any inconsistency between such definition and any definition provided in this Article.

5.2 "Administrative Record" shall mean all documents that form the basis for the selection of a response action, consistent with CERCLA Section 113(k), 42 U.S.C. § 9613(k), and the NCP.

5.3 "Agencies" shall mean DOE, EPA, and TCEQ.

5.4 "Agreement" shall mean this document and includes all attachments, addenda and modifications to this

document. All such attachments, addenda and modifications are incorporated into and are enforceable per this Agreement.

5.5 "ARAR" or "ARARs" shall mean any legally applicable or relevant and appropriate standard, requirement, criteria or limitation of Federal environmental law or State environmental or facility siting law as provided in Section 121(d)(2) of CERCLA, 42 U.S.C. § 9621(d)(2), and defined in 40 C.F.R. § 300.5.

5.6 "Authorized Representative" shall mean any person, including a contractor, who is specifically designated by a Party to act on behalf of that Party in any capacity, including an advisory capacity.

5.7 "DOE" shall mean, except as expressly provided elsewhere in this Agreement, the Department of Energy and any successors or assigns, and its employees and Authorized Representatives.

5.8 "Days" shall mean calendar days, unless otherwise specified.

5.9 "Deadline" shall mean the time limitation applicable to the submission or completion of a primary document, or the performance of work as delineated in work plans. Deadlines are subject to Stipulated Penalties provided in Article 12.

5.10 "Documents" shall mean any records, reports, correspondence, or retrievable information of any kind, including electronic information, relating to the treatment, storage, disposal, investigation, and remediation of hazardous substances, pollutants, or contaminants at or migrating from the Site. Such terms shall be construed broadly to reflect a clear preference to share and disclose information concerning this Agreement among the Parties.

5.11 "EPA" shall mean the United States Environmental Protection Agency, its successors or assigns, and its employees and Authorized Representatives.

5.12 "Feasibility Study" or "FS" shall mean the evaluation, development, and recommendation of remedial alternatives for the Site as defined in 40 C.F.R. Part 300.

5.13 "Lead Agency" shall mean DOE as the release is on, or the sole source of the release is from, a facility under the jurisdiction, custody, or control of DOE. DOE will maintain its lead agency responsibilities whether the remedy is selected by EPA and DOE or by EPA alone under Section 120 of CERCLA, 42 U.S.C. § 9620.

5.14 "Pantex Plant" shall mean the property owned by the U.S. Department of Energy, located approximately 17 miles northeast of Amarillo, Texas. This definition is for the purpose of describing a geographical area and not a governmental entity. The Pantex Plant is bounded on the north by Farm-to-Market Road (FM) 293, on the east by FM 2373, and on the west by FM 683. To the South, the Pantex Plant extends to within one mile of U.S. Highway 60.

5.15 "TCEQ" shall mean the Texas Commission on Environmental Quality or any successor agencies, and its employees and Authorized Representatives.

5.16 "Proposed Plan" shall mean the document which describes the evaluation of proposed remedial action alternatives and the preferred-alternative.

5.17 "Record of Decision" or "ROD" shall mean the public document that explains which remedial alternatives will be implemented for the final remedial action for the Site, and includes the basis for the selection of the remedy. The basis for the selection of the remedy shall include information and technical analysis generated during the RI and FS and consideration of public comment and community concerns.

5.18 "Remedial Investigation" or "RI" shall mean that investigation, as defined in 40 C.F.R. Part 300.5, conducted to determine the nature and extent of contamination in and from the Site, and to gather necessary data to support the Feasibility study.

5.19 "Site" or "Pantex Plant Site" shall mean the Pantex Plant (*See* Appendix 1), and includes any other areas where a hazardous substance, pollutant, or contaminant from the Pantex Plant has come to be located. The term "Site," as used herein, shall have the same meaning as "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C.

§9601(9).

5.20 "Schedule" shall mean the deadlines and timetables established by this Agreement.

5.21 "Timetables" shall mean the time frames within or by which work and actions will be conducted, as set forth in this Agreement and delineated in the supporting work plans (including performance of actions established pursuant to the Dispute Resolution procedures set forth in this Agreement).

5.22 "Remedial Design" or "RD" shall have the same meaning as provided in the National Contingency Plan, 40 C.F.R. § 300.5.

5.23 "Remedial Action" or "RA" shall have the same meaning as provided in the National Contingency Plan, 40 C.F.R. § 300.5.

5.24 "Milestones" shall mean the dates established by the Parties in the Site Management Plan for the initiation or completion of primary actions and the submission of primary documents and project end dates. Near term milestones constitute milestones within the current fiscal year, the next fiscal year or budget year, and the year for which the budget is being developed (i.e., planning year). Out year milestones constitute milestones occurring after the planning year until completion of the remedial action or a phase of the remedial action.

6. FINDINGS OF FACT AND CONCLUSIONS OF LAW

6.1 The following paragraphs included in this Article (Article 6) constitute a summary of findings and determinations upon which the Parties have entered into this Agreement. Except for the purposes of enforcing the terms of this Agreement, none of the facts provided or conclusions of law herein shall be considered admissions by any Party.

6.2 The Pantex Plant was established in 1942 to build conventional munitions and high explosive compounds in support of World War II. The Pantex Plant facility was deactivated in 1945 and sold to Texas Technological University, currently known as Texas Tech University ("TTU"), subject to recall by the War Assets Administration. TTU used the property for agricultural purposes until 1951, when the Pantex Site was reclaimed for use by the Atomic Energy Commission (a predecessor agency of DOE) as a nuclear weapons production facility. Portions of the conventional weapons plant were renovated and new facilities built for the manufacture of High Explosive ("HE") compounds. Current operations include the development, testing, and fabrication of HE components; nuclear weapons assembly and disassembly; interim storage of plutonium and weapon components; and component surveillance. The DOE Pantex Plant facility is currently operated under contract by BWXT Pantex, L.L.C ("BWXT"). DOE is the owner of the facility consistent with the term "owner" as defined in Section 101(20) of CERCLA, 42 U.S.C. § 9601(20). DOE is a person as the term "person" is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

6.3 Pantex Plant historical waste management practices have included thermal treatment of explosives, explosive components and contaminated liquids and solvents (including test residues of explosives and radionuclides); burial of industrial, construction, and sanitary waste in unlined landfills; disposal of solvents in pits or sumps; discharge of untreated industrial waste waters to unlined ditches and playas; and the use of surface impoundments for the disposal of chemical constituents. These prior practices have resulted in the release of both chemical and radionuclide contaminants to the environment. Both chemical (metals, solvents, explosives) and radionuclide (uranium) contaminants were detected during the soils investigation. The primary risk contributors for soils include polyaromatic hydrocarbons ("PAHs"), uranium, RDX and TNT. Perched groundwater contaminants either above maximum contaminant level ("MCL") drinking water standards, or background concentrations include various HE compounds (e.g., RDX, TNT), metals (e.g., hexavalent chromium, total chromium, and boron), perchlorate, and VOCs (e.g., TCE and 1,2-DCA). The perched aquifer is a discontinuous saturated interval ten to twenty feet thick, located at approximately 250 feet beneath the Pantex Plant facility. Perched groundwater contamination extends off-site and is considered a potential source of

contamination of the Ogallala aquifer. The regional Ogallala drinking water aquifer is located at approximately 350 feet below ground surface in the southern area of the Pantex Plant facility to approximately 500 feet below ground surface at the northern boundary.

6.4 The nature and extent of both chemical and radionuclide contaminants in impacted media were defined during integrated RCRA and CERCLA investigative work completed at the Site in August 2005. *See* Appendix 2 incorporated into this Agreement. The substances including but not limited to those identified in paragraph 6.3 found at the Site are hazardous substances as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

6.5 The Site, as defined in this Agreement, is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and 40 C.F.R. § 300.5.

6.6 The presence of hazardous substances in Site soils, including but not limited to radionuclide and chemical contaminants identified in paragraph 6.3 for Site soils, and groundwater constitutes a "release" or "threat of release" as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. § 101(22). The release or threat of release is on, or the sole source of the release or threat of release, is from a facility under the jurisdiction, custody, or control of DOE.

6.7 On July 29, 1991, EPA proposed the Site for inclusion on the NPL. EPA listed the Site on the NPL on May 31, 1994.

6.8 Pursuant to the authorities delegated to it in the Executive Orders 12580 and 13016, and as Lead Agency under the NCP, in consultation with EPA and TCEQ, DOE has conducted "response actions," as that term is defined by CERCLA. The hazardous substance investigative and risk assessment work is a "response action" as defined by CERCLA. Such response actions have been conducted in a manner not inconsistent with the NCP.

6.9 The investigative and risk assessment work performed at the Pantex Plant Site addressed human health and environmental risks with respect to radionuclides and contaminants of concern for both soils and groundwater. The risk assessment process evaluated the site-specific exposure pathways and considered the Pantex Plant Site as a continuing and active DOE facility. The selected remedial action for the Site will address both chemical and radionuclide releases shown to pose an unacceptable risk to human health and the environment.

PART TWO
REMEDIAL PROVISIONS

7. SCHEDULE FOR COMPLETION

7.1 DOE shall submit a draft Proposed Plan to EPA and TCEQ, which describes the preferred remedial action and reviews the screening alternatives promptly after the Parties approve this Interagency Agreement. EPA and TCEQ shall provide final comments on the Proposed Plan no later than thirty (30) days after receipt of the Proposed Plan. The final Proposed Plan, subject to approval by EPA, shall be published for public notice and comment within sixty (60) days after the Parties sign the Interagency Agreement consistent with the public participation requirements of Section 117 of CERCLA, 42 U.S.C.§ 9617, and Section 120(e)(2) of CERCLA, 42 U.S.C.§ 9620(e)(2). Within thirty (30) days from the close of the public comment period, the DOE shall submit to EPA and TCEQ a draft Responsiveness Summary and a draft ROD. EPA and TCEQ shall provide comments on the draft Responsiveness Summary and draft ROD within thirty (30) days of receipt of the same. Following consideration of any comments, the ROD will be finalized by DOE. If EPA and DOE are unable to agree on the selection of the remedial action, the EPA shall make the final remedial action selection in accordance with Section 120(e)(4)(A) of CERCLA, 42 U.S.C.§ 9620(e)(4)(A). Any modification to the remedy selected in the ROD shall be comply with CERCLA Sections 117, 120(e)(2), and 40 C.F.R. §

300.435(c). The final ROD shall be issued within seven (70) days after the effective date of this Interagency Agreement. The effective date of this Interagency Agreement shall be consistent with Article 35. Within thirty (30) days after DOE issues the final ROD, EPA shall review and approve, conditionally approve or disapprove the final ROD. Within thirty (30) days after EPA makes a final determination concerning the final ROD, TCEQ shall review and concur, conditionally concur or non-concur on the final ROD.

7.2 Within seven (7) days of issuance of the ROD, DOE shall submit a Site Management Plan ("SMP"), a primary document, that includes a schedule with deadlines and timetables for completion of the following primary documents:

- Remedial Design Work Plan;
- Community Relations Plan;
- Remedial Design Submittal Package/Remedial Action Work Plan;
- Preliminary Construction Completion Report;
- Interim Remedial Action Completion Report;
- Final Remedial Action Completion Report; and
- Five-Year Review Reports.

These schedules shall be proposed, finalized and published using the procedures set forth in Paragraph 7.3.

7.3 Within seven (7) days of receipt of DOE's proposal under Paragraph 7.2, EPA and TCEQ shall review and provide comments to DOE regarding the proposed schedules. Within seven (7) days following receipt of the comments, DOE shall, as appropriate, make revisions and reissue the proposal. After such re-issuance, the Parties shall meet as necessary to discuss and finalize the proposed schedules. If the Parties agree on schedules, the finalized schedules shall be incorporated into this Agreement and the appropriate Work Plans, and become an enforceable part of this Agreement. If the Parties fail to agree on the proposed schedule within seven (7) days of DOE's response to the comments, the matter shall immediately be submitted for dispute resolution in accordance with and within the time provided by Article 11 (Resolution of Disputes).

7.4 The schedules established pursuant to this Article may be extended pursuant to Article 23 (Extensions) of this Agreement.

8. WORK TO BE PERFORMED

8.1 DOE agrees to perform the tasks, obligations and responsibilities described in this Agreement and otherwise comply with this Agreement in accordance with CERCLA, the NCP, and the Executive Orders.

8.2 All work performed under this Agreement shall be under the direction and supervision of qualified personnel. DOE shall notify EPA and TCEQ in writing of the names, titles and qualifications of the personnel that will direct and supervise the work.

8.3 In accordance with the schedule in the SMP, and the schedule established pursuant to Article 7 (Schedule for Completion), DOE shall prepare the items included in Paragraph 8.5 for review and comment by EPA and TCEQ in accordance with Article 9 (Consultation).

8.4 In accordance with Article 9 (Consultation), DOE shall submit for review and comment by EPA and TCEQ, a draft final and final Remedial Design Submittal Package/Remedial Action Work Plan in accordance with the schedule established under Paragraph 7.2.

8.5 The draft final Remedial Design Submittal Package/Remedial Action Work Plan shall include, as applicable, the following elements:

- Site Health and Safety Plan
- Spill/Volatile Emissions Contingency Plan
- Quality Assurance Project Plan
- Sampling and Analysis Plan
- Surface Water Management Report
- Requirements for additional field data collection
- Design criteria and assumptions
- Project delivery strategy
- Results of treatability studies and additional field sampling
- Construction schedule
- Cost calculations
- Final design plans and specifications
- Operation and Maintenance ("O&M") Plan, including a Ground Water Systems Evaluation Report prior to the Five-Year Review
- Long Term Monitoring/Field Sampling Plan ("FSP")
- Construction Quality Assurance Plan
- Contingency Plan
- Institutional Controls/Land Use Control Plan
- RA Work Plan, including the implementation plans and schedule for the remedial action. The schedule shall provide that DOE shall implement substantial, continuous, physical on-site remedial action within fifteen (15) months of the evaluation of the RI/FS.

8.6 After consultation with EPA and TCEQ for the final Remedial Design Submittal Package/ Remedial Action Work Plan, DOE will implement the remedial action in accordance with the plans and schedule for the remedial action established in the final Remedial Design Submittal Package/ RA Work Plan.

8.7 When DOE determines that all physical construction activities required for the remedial action have been completed in accordance with the requirements of the Agreement, it shall prepare an Interim Remedial Action Completion Report and submit copies to EPA and TCEQ for review and comment in accordance with Article 9 (Consultation). The Interim Remedial Action Completion Report will include: all data collected during the physical construction relevant to the design and implementation of the remedial action; and a narrative description summarizing major activities conducted and problems addressed during the construction. DOE shall also prepare a Preliminary Construction Completion Report ("PCOR"), to be submitted after completion of the last response action (removal or remedial) and final site inspection. DOE will also document the effective date for completion of all Site construction. The Interim Remedial Action Report will provide additional details concerning the construction of the remedial action (e.g., the details of any groundwater monitoring network and any groundwater well construction).

8.8 When DOE determines that all remedial action has been completed at the Site in accordance with the requirements of this Agreement, including meeting all performance and construction standards; including the attainment of all operational and engineering standards; and including groundwater cleanup levels, it shall prepare a Final Remedial Action Completion Report and submit copies to EPA for review and approval, and to TCEQ for review and comment in accordance with Article 9 (Consultation). The Final Remedial Action Completion Report will include: all data collected during the Site remediation relevant to the design and implementation of the remedial action; a narrative description summarizing major activities conducted and problems addressed during the remediation; a narrative description demonstrating satisfaction of all performance and construction standards; a narrative description demonstrating the

attainment of all operational and engineering standards; a narrative description concerning the attainment of all groundwater cleanup levels; and a narrative describing how the Site remedy is protective of human health and the environment.

8.9 Notwithstanding Paragraph 8.8 above, DOE will remain responsible for performing the long-term operation and maintenance for the selected remedial action(s), and Five-Year Reviews as specified by the ROD and Section 121(c) of CERCLA, 42 U.S.C. § 9621(c). In fulfilling this responsibility, DOE may enter into agreements with responsible parties to prepare or implement all or a portion of the RD Submittal Package and RA Work Plan or conduct all or some operation and maintenance activities, subject to the requirements of this Agreement. Notwithstanding any such agreements, DOE will remain responsible for the implementation of and compliance with this Agreement. If the agreements are in the form of administrative orders or consent decrees, EPA shall participate in the negotiation of the administrative orders or consent decrees and may elect to participate as a party to the administrative order or consent decree.

8.10 Notwithstanding any part of this Agreement, TCEQ may exercise any right it might have to obtain judicial review of any final decision of EPA on selection of a final remedial action pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613. TCEQ also reserves any right it might have to obtain judicial review of any determination pursuant to Section 121 of CERCLA, 42 U.S.C. § 9621.

9. CONSULTATION

9.1 The provisions of this Article establish the Site management procedures that shall be used by DOE, EPA, and TCEQ to provide the Parties with appropriate notice, review, comment, and response to comments regarding the draft final, and final Remedial Design Submittal Package/Remedial Action Work Plan, Preliminary Construction Completion Report, Interim Remedial Action Completion Report, Final Remedial Action Completion Report, Five-Year Review Reports, and other documents generated pursuant to this Agreement. In accordance with Section 120 of CERCLA, 42 U.S.C. § 9620, 10 U.S.C. § 2705, the Executive Orders, and the NCP, DOE as lead agency will be responsible for issuing such documents. EPA and TCEQ shall be responsible for providing their respective comments to DOE on all such documents in a timely manner as specified by this Agreement. As of the effective date of this Agreement, all documents generated pursuant to this Agreement shall be prepared, distributed, and subject to dispute resolution in accordance with this Article and Article 11 (Resolution of Disputes).

9.2 Primary documents required by this Agreement are the:

- Site Management Plan;
- Community Relations Plan;
- Record of Decision;
- Remedial Design Submittal Package/Remedial Action Work Plan;
- Preliminary Construction Completion Report;
- Interim Remedial Action Completion Report;
- Final Remedial Action Completion Report; and
- Five-Year Review Reports.

DOE will initially distribute primary documents in draft final form simultaneously to EPA and TCEQ for review and comment. Documents submitted in draft final form must be substantively complete. Should EPA or TCEQ determine that any draft final document submitted is incomplete, a written notice of deficiency shall be provided. Any document where a notice of deficiency has been issued shall remain incomplete and not deemed a draft final, until the deficiencies are corrected in accordance with the conditions provided in the notice of deficiency. Following receipt of comments

from EPA and TCEQ on a particular draft final primary document, DOE will respond to the comments received and issue simultaneously to EPA and TCEQ a final primary document within thirty (30) days of the receipt of EPA's and TCEQ's comments.

9.3 Any documents not identified as primary documents in Paragraph 9.2 above are secondary documents. Secondary documents include:

- Treatability Studies;
- Sampling and Data Results; and
- 90% Draft Remedial Designs.

DOE will distribute secondary documents to EPA and TCEQ for review and comment by EPA and TCEQ. 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 by DOE.

9.4 DOE shall complete and transmit drafts of primary and secondary documents generated pursuant to this Agreement to EPA and TCEQ for review and comment in accordance with the provisions of this Paragraph 9.4. For those primary or secondary documents that consist of or include ARAR determinations, prior to the issuance of a draft report, the Project Managers shall meet to identify and propose, to the best of their ability, all potential ARARs pertinent to the report being addressed. Draft ARAR determinations shall be prepared by the 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. In identifying potential ARARs, the Parties recognize that ARARs can be identified only on a site-specific basis and that ARARs depend on the specific hazardous substances, pollutants and contaminants at a site, the particular actions proposed as a remedy and the characteristics of a site. The Parties recognize that ARAR identification is necessarily an iterative process and that potential ARARs must be re-examined throughout the RI/FS process until a ROD is issued.

9.4.1 Unless the Parties mutually agree to another time period, all draft final primary documents submitted after the effective date of this Agreement shall be subject to a forty-five (45) day period for review and comment by EPA and TCEQ. Review of any document by the EPA and TCEQ may concern all aspects of the document (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP, this Agreement and any document incorporated herein, and any pertinent guidance or policy identified by EPA or TCEQ. Comments by EPA or TCEQ 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 or TCEQ shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy documents, EPA or TCEQ may extend the comment period for an additional seven (7) days by providing written notice to DOE prior to the end of the comment period. On or before the close of the comment period, EPA and TCEQ shall transmit their written comments to DOE.

9.4.2 The DOE Project Manager shall be readily available to EPA and TCEQ during the comment period for purposes of informally responding to questions and comments on draft documents. The Parties shall meet, as they agree appropriate, for the purpose of informally discussing questions and comments on matters that are subject to comment. Oral comments made during such discussions need not be the subject of a written response by DOE on the close of the comment period. In commenting on a draft report which contains a proposed ARAR determination, EPA shall include a reasoned statement of whether they object to any portion of the proposed ARAR determination. To the extent that EPA does object, it shall explain the bases for its objection in detail and shall identify any ARARs which it believes were not properly addressed in the proposed ARAR determination.

9.4.3 Following the close of the comment period for a draft final 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 primary document, DOE shall issue to EPA and TCEQ a final primary document which shall include DOE's response to all written comments received within the comment period, including comments concerning draft secondary documents.

9.4.4 DOE may extend the period for issuing a final primary document for an additional seven (7) days by providing written notice to EPA and TCEQ prior to the end of the period. In appropriate circumstances, this time period may be further extended in accordance with Article 23 (Extensions).

9.4.5 The draft final primary document will become the final primary document thirty (30) days after the period established for review of the draft final document, unless dispute resolution is invoked by one or more of the Parties. If dispute resolution is invoked, the draft final document, including any modifications resulting from the dispute resolution process, will become final within thirty (30) days of the conclusion of the dispute resolution process. Only upon DOE's transmittal of the draft final primary document identified in Paragraph 9.2 may dispute resolution as to the content or requirements of the primary document and any associated secondary documents be invoked. The selection of the final remedy is not subject to dispute resolution.

9.4.6 If dispute resolution is invoked regarding a document, work may be stopped in accordance with procedures set forth in Article 11 (Resolution of Disputes).

9.4.7 A draft final document shall serve as the final document if no Party invokes dispute resolution regarding the document or, if dispute resolution is invoked, if no changes are required as a result of the dispute resolution process. If the outcome of the dispute resolution process makes revision of the final document necessary, DOE shall prepare, within thirty (30) days of the completion of the dispute resolution process, a revision of the final document which conforms to the results of the dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Article 23 (Extensions).

9.4.8 Final documents, including all requirements contained therein, are incorporated herein by reference upon approval by EPA and review and comment by TCEQ.

9.5 Following finalization, EPA approval, and review and comment by TCEQ of any document pursuant to Paragraph 9.4 above, DOE, EPA, or TCEQ may seek to modify the document including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in this Paragraph 9.5, subject to funding as provided in Paragraphs 30 and 31.

9.5.1 DOE, EPA, or TCEQ may seek to modify a primary document after finalization, approval by EPA, and review and comment by TCEQ if it determines, based on new information (i.e., information that became available, or conditions that became known, after the document was finalized) that the requested modification is necessary. EPA, TCEQ, 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.

9.5.2 In the event that there is not unanimous agreement by the Project Managers on the need for a modification, either EPA, TCEQ, or DOE may invoke dispute resolution under Article 11 (Resolution of Disputes) to determine if the modification shall be conducted. Modification of a document shall be required only upon a showing that the requested modification is based on significant new information and the requested modification could be of significant assistance in implementing a selected remedy, or in protecting human health and the environment.

9.5.3 Nothing in this Article shall alter EPA's or TCEQ's ability to request the performance of additional work pursuant to Article 14 (Additional Work) of this Agreement which does not constitute modification of a

final document.

9.5.4 Nothing in this Article shall be construed to permit any person to modify or amend a Record of Decision other than as provided in CERCLA, the NCP, and the Executive Orders.

10. PERMITS

10.1 Under Section 121(e) of CERCLA, 42 U. S. C. § 9621(e), and the NCP, response actions delineated by this Agreement and conducted entirely on-site are exempt from the procedural requirements to obtain Federal, State, or local permits, but must satisfy all ARARs which would have been included in any such permit. Nothing in this Agreement shall limit TCEQ's regulatory or statutory authority regarding any existing, ongoing, or future regulatory activity or process.

10.2 If DOE proposes a response action to be conducted entirely on-site, which in the absence of Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), and the NCP would require DOE to obtain a Federal or State permit, DOE shall include in the proposal:

10.2.1 Identification of each permit which would otherwise be required;

10.2.2 Identification of the standards, requirements, criteria, or limitations which are ARARs and which would be required pursuant to each such permit;

10.2.3 Explanation of how the response action proposed will meet the standard, requirements, criteria or limitations identified in Subparagraph 10.2.2 above.

10.3 Within thirty (30) days of a request from DOE for information pertaining to Subparagraphs 10.2.1, 10.2.2 and 10.2.3 above, EPA and TCEQ will provide such information.

10.4 DOE will submit timely applications for any required permits for off-site activity. EPA and TCEQ will promptly consider any permit applications made to them by DOE.

10.5 If a permit which is necessary for implementation of off-site activities under this Agreement is not issued, or is issued or renewed containing terms or conditions inconsistent with the requirements of this Agreement or a document required under this Agreement, DOE shall notify TCEQ and EPA of its intention to propose modifications to this Agreement or the document required under this Agreement, consistent with the outcome of the permit action. DOE will provide such notification within fourteen (14) 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 TCEQ and EPA its proposed modifications with an explanation of its reasons in support thereof. EPA and TCEQ may provide their written positions on the proposed modification within twenty-one (21) days after receipt of DOE's explanation of the proposed modifications.

10.6 If DOE submits proposed modifications prior to a final determination of any appeal taken on a permit needed to implement this Agreement, TCEQ and EPA may elect to delay review of the proposed modifications until after such final determination is entered. If TCEQ and EPA elect to delay review, DOE shall proceed with those portions of the response action or those portions of preparations for the response action which are not the subject of the permit appeal or which are not subject to DOE's proposed modifications to this Agreement pending final resolution of the permit appeal or modification of this Agreement. Modification to this Agreement shall be made pursuant to Article 22 (Amendment or Subsequent Modification of Agreement). Modification to documents shall be made pursuant to Paragraph 9.5 of Article 9 (Consultation) of this Agreement.

11. RESOLUTION OF DISPUTES

11.1 Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Article shall apply. All parties to this Agreement shall make reasonable efforts to informally resolve disputes at the Project Manager or Project Manager Supervisor level. The Parties agree that disputes should be addressed at the lowest level practicable.

11.2 Disputes arising under this Agreement shall be considered at the following levels in accordance with the procedures set forth in this Article.

11.2.1 Informal Dispute Resolution - Informal resolution of all disputes shall be pursued at the Project Manager and Project Manager Supervisor level. The Parties agree to attempt to resolve and confirm all disputes at the Project Manager level.

11.2.2 Dispute Resolution Committee ("DRC") - The DRC will serve as a formal forum for resolution of disputes that are not resolved through informal dispute resolution. The EPA's designated representative on the DRC is the Superfund Division Director of EPA Region 6. The DOE's designated representative on the DRC is the DOE Assistant Manager for Environmental and Site Engineering Programs. The State's designated representative on the DRC is the TCEQ Director of Permitting, Remediation and Registration. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all Parties pursuant to the procedures of Article 34 (Notification).

11.2.3 Senior Executive Committee ("SEC") - The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The EPA representative on the SEC is the Regional Administrator of EPA Region 6 or his or her delegatee. The DOE representative on the SEC is the DOE Pantex Site Manager, or his or her delegatee. The State representative on the SEC is the Executive Director of TCEQ, or his or her delegatee. In the event of a delegation, the positions presented by the delegates shall represent the positions of the Regional Administrator of EPA Region 6, the DOE Pantex Site Manager, and the Executive Director of TCEQ. Notice of a delegation of authority from a Party's designated representative on the SEC shall be provided to the other Parties in writing pursuant to the procedures of Article 34 (Notification) before the delegation takes effect.

11.3 Dispute Resolution Procedures:

11.3.1 Informal Dispute Resolution - Within thirty (30) days after: (1) the period established for review of a draft final primary document pursuant to Article 9 (Consultation), or (2) any action which leads to or generates a dispute, the Project Manager for the disputing Party shall notify the other Project Managers in writing of the existence of the 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 on to support its position, and the commencement of a thirty (30) day period of informal dispute resolution. During the thirty (30) day period, the Project Managers and their immediate supervisors shall meet at least once to attempt to resolve the dispute.

11.3.1.1 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 and/or their immediate supervisors. During this informal dispute resolution period the Parties shall meet as many times as are necessary to discuss and attempt resolution of the dispute.

11.3.2 Elevation to the DRC - If, after the conclusion of the thirty (30) day period for informal dispute resolution, a Party wishes to elevate some or all of the dispute to the DRC, within seven (7) days of the conclusion of the informal dispute resolution period, the Project Manager for the Party seeking elevation shall submit to the DRC a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the elevating Party's position with respect to the dispute, and the technical, legal or factual information the elevating Party is

relying upon to support its position. The other Parties shall have seven (7) days to provide a written response. Following elevation of a dispute to the DRC, the DRC shall have twenty-one (21) days to resolve unanimously the dispute and issue a written decision signed by each Party.

11.3.3 Elevation to the SEC - If the DRC is unable to resolve unanimously the dispute within its twenty-one (21) day period, the written statement of dispute and the other Parties' written response thereto shall be forwarded to the SEC within seven (7) days after the close of the twenty-one (21) day dispute resolution period. The SEC members shall, as appropriate, confer, meet, and exert their best efforts to resolve the dispute and issue a unanimous written decision signed by each Party. If unanimous resolution of the dispute is not reached within twenty-one (21) days, the Regional Administrator of EPA Region 6 shall issue a written position on the dispute. The Regional Administrator's written position shall constitute the final resolution of the dispute unless DOE or TCEQ elects to elevate the dispute to the EPA Administrator or delegatee.

11.3.4 Elevation to the EPA Administrator or delegatee - The Secretary of DOE or delegatee, or the Executive Director of TCEQ may, within thirty (30) days of the Regional Administrator's issuance of his written position, issue a written notice elevating the dispute to the Administrator of EPA, or assigned delegatee, for resolution. Upon elevation of a dispute to the Administrator of EPA or delegatee, the Administrator or delegatee will review and resolve the dispute within twenty-one (21) days. Prior to resolving the dispute, the EPA Administrator or delegatee shall, upon request, meet and confer with the Under Secretary of DOE and the Administrator for the National Nuclear Security Administration, or the Executive Director of the TCEQ, to discuss and resolve the issue(s) under dispute. Upon resolution, the Administrator or delegatee shall provide DOE and TCEQ with a written final decision setting forth resolution of the dispute.

11.4 The pendency of any dispute under this Article shall not affect any DOE responsibility for timely performance of the work required by this Agreement, except that the schedule for completion of work affected by such dispute shall be extended for a period of time at least as long as 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 that are not affected by the dispute shall continue and be completed in accordance with the applicable schedule.

11.5 When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Superfund Division Director of EPA Region 6 or the TCEQ Director of Permitting, Remediation and Registration requests, in writing, that work related to the dispute be stopped because, in EPA's or TCEQ's opinion, such work is inadequate or defective and such inadequacy or defect is likely to cause adverse effects on human health or the environment, or is likely to have a substantial adverse affect on the selection or implementation of response actions. To the extent possible, the Party seeking a work stoppage shall consult with the other Parties prior to initiating a work stoppage request. After stoppage of work, if DOE believes that the work stoppage is inappropriate or may have potential significant adverse impacts, the Parties will meet to discuss the work stoppage. Following this meeting, and further consideration of the issues, the EPA Superfund Division Director will issue, in writing, a final decision with respect to the work stoppage, and the EPA Superfund Director may also consider and decide any request for additional time to conduct the work. The final written decision of the Superfund 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 DOE.

11.6 Within twenty-one (21) days of resolution of a dispute pursuant to the procedures of this Article, 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.

11.7 Resolution of a dispute pursuant to this Article constitutes a final administrative resolution of the dispute. The DOE shall abide by, and shall not contest in any administrative forum, the terms and conditions of any final

resolution of dispute obtained pursuant to this Article.

12. STIPULATED PENALTIES

12.1 Stipulated Penalties may be assessed for DOE's failure to comply with this Agreement, as specified in this Article.

12.2 In the event that DOE fails to submit a Primary Document to the EPA or TCEQ pursuant to the appropriate timetable or deadline developed pursuant to Article 7 (Schedule for Completion) of this Agreement or fails to comply with any other term or condition of this Agreement which relates to a requirement of the interim or final remedial action, EPA may assess a stipulated penalty against DOE. If TCEQ determines that DOE has failed in a manner as set forth above, TCEQ may identify stipulated penalties to EPA and the penalties shall be assessed in accordance with this Article. A stipulated penalty may be assessed in an amount up to $5,000 for the first week (or part thereof), and up to $10,000 for each additional week (or part thereof) for which a failure set forth in this Article occurs.

12.3 Upon determining that DOE has failed in a manner set forth in Paragraph 12.2 above, EPA shall so notify DOE in writing. If the failure in question is not or has not already been subject to Dispute Resolution at the time such notice is received, DOE shall have fifteen (15) days after receipt of the notice to invoke Dispute Resolution on the question of whether the failure did in fact occur. DOE shall not be liable for the stipulated penalty assessed by EPA if the failure is determined, through the Dispute Resolution process, not to have occurred.

12.4 No assessment of a stipulated penalty shall be final until DOE's time to invoke dispute resolution has passed, or until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.

12.5 The annual reports required by Section 120(e)(5) of CERCLA, 42 U.S.C. § 9620(e)(5), shall include, with respect to each final assessment of a stipulated penalty against DOE under this Agreement, the facility responsible for payment of the stipulated penalty; a detailed description of the enforcement status, including the amount of penalties paid and a statement of the facts and circumstances giving rise to the enforcement action; a statement of any administrative or other corrective action taken at the facility or why such measures were determined to be inappropriate; the total dollar amount of the stipulated penalty assessed; and a statement of any additional action taken by or at the facility to prevent recurrence of the same type of circumstances leading to the penalty assessment.

12.6 In the event that monetary stipulated penalties become payable by DOE pursuant to this Article, DOE will seek Congressional approval and authorization to pay such penalties in equal amounts to the Hazardous Substance Response Trust Fund and to the State of Texas. Any requirement for the payment of monetary stipulated penalties under this Agreement will be subject to the availability of funds approved and authorized by Congress to pay such penalties, and no provision of this Agreement shall be interpreted to require the obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. Any monetary penalty will be paid by two separate checks. One-half of any monetary stipulated penalty will be paid by check made out to the Hazardous Substance Superfund and mailed or delivered to EPA at the following address:

United States Environmental Protection Agency
Mellon Bank
U.S. EPA Cincinnati Accounting Operations - Region 6
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251

One-half of the penalty will be paid by check made out to the State of Texas and mailed or delivered to the State at the following address:

Texas Commission on Environmental Quality
Financial Administrative Division (MC-214)
P.O. Box 13087
Austin, Texas, 78711-3087
Attn: Financial Officer

Copies of the transmittal letter shall be sent to counsel for EPA and TCEQ.

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

12.8 This Article shall not affect DOE's ability to obtain an extension of a timetable, deadline or schedule pursuant to Article 23 (Extensions).

12.9 Nothing in this Agreement shall be construed to render an employee or Authorized Representative of DOE personally liable for the payment of any stipulated penalty assessed pursuant to this Article.

13. ENFORCEABILITY

13.1 Section 310 of CERCLA, 42 U.S.C. § 9659, provides that, except as specified in Section 310, any person may commence a civil action to enforce any provision of this Agreement. Such provisions include those established by the Parties pursuant to Article 11 (Resolution of Disputes). Although EPA is the designated lead regulatory agency for radionuclide releases and TCEQ is the designated lead regulatory agency for chemical releases at the Site per a 1994 Memorandum of Agreement ("MOA") between EPA and TCEQ, EPA is authorized by statute, to enforce CERCLA, the NCP and the ROD requirements related to radionuclide and chemical releases at the Site. Notwithstanding, because TCEQ is the lead regulatory agency for chemical releases at the Site, EPA intends to exercise its discretion to enforce CERCLA, NCP and ROD requirements for chemical releases at the Site upon consultation with the TCEQ. Both EPA and TCEQ intend to continue to implement the above-mentioned MOA, to the extent practicable. Notwithstanding, nothing in the MOA shall be construed to restrict EPA's delegated authority under Section 120 of CERCLA, Executive Order 12580 and the NCP. Nothing in this Agreement shall be construed to waive, nullify, or limit EPA's and DOE's authority under CERCLA. Nothing in this Article constitutes a change to DOE's or EPA status under CERCLA Section 120(e) or Executive Order 12580, nor any limitation on DOE's authority under the AEA. Nothing in this Agreement shall be construed to waive, nullify, or limit TCEQ's authority under applicable federal and state law. The Parties agree that all Parties shall have the right to enforce the terms of this Agreement.

13.2 Upon the effective date of this Agreement, any standard, regulation, condition, requirement or order which has become effective under CERCLA and is incorporated into this Agreement is enforceable by any person pursuant to Section 310 of CERCLA, 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.

13.3 All terms and conditions, and timetables or deadlines associated with the development, implementation and completion of the Work to be Performed (Article 8) shall be enforceable by any person pursuant to Section 310 of CERCLA, and any violation of such timetable or deadlines will be subject to civil penalties under Sections 310(c) and 109 of CERCLA.

13.4 Any final resolution of a dispute pursuant to Article 11 (Resolution of Disputes) of this Agreement which establishes a term, condition, timetable, deadline, or schedule shall be enforceable by any person pursuant to Section 310(c) of CERCLA, and any violation of such term, condition, timetable, deadline or schedule will be subject to civil penalties under Sections 310(c) and 109 of CERCLA.

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

14. ADDITIONAL WORK OR MODIFICATION TO WORK

14.1 In the event that EPA or TCEQ determines that additional work or modification to work, including remedial investigatory work and/or engineering evaluation, is necessary to accomplish the objectives of this Agreement, EPA or TCEQ shall provide notification and description of such additional work or modification to work to the other Parties. DOE will evaluate the request and notify EPA and TCEQ within twenty-one (21) days of the receipt of such request of its intent and ability to perform such work, including the impact such additional work will have on budgets and schedules. If DOE does not agree that such additional work is required by this Agreement or if DOE asserts such additional work is otherwise inappropriate, the matter shall be resolved by the dispute resolution procedures of Article 11 (Resolution of Disputes).

14.2 Any additional work or modification to work determined to be necessary by DOE shall be proposed to EPA and TCEQ by DOE. EPA and TCEQ shall have twenty-one (21) days to consider DOE's request and notify the other Parties whether it agrees or disagrees with the request. If EPA or TCEQ does not agree that such additional work or modification to work is appropriate, the matter shall be resolved in accordance with the Dispute Resolution procedures of Article 11 (Resolution of Disputes) of this Agreement.

14.3 In the event any additional work or modification to work is agreed to or required under this Agreement, the Parties agree to extend any affected schedules pursuant to Article 23 (Extensions). In addition, any modification to the remedy selected in the ROD shall comply with CERCLA Sections 113(k), 117, 120(e)(2), and 40 C.F.R. § 300.435(c).

15. QUALITY ASSURANCE

15.1 DOE shall use quality assurance, quality control, and chain of custody procedures throughout all field investigation, sample collection and laboratory analysis activities. DOE shall develop a Quality Assurance Project Plan ("QAPP") which shall be prepared in accordance with this Agreement, the "Uniform Federal Policy for Quality Assurance Project Plans" (March 2005), and EPA guidance, including, without limitation, "EPA Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-009), and "EPA Requirements for Quality Assurance Project Plans (QA/G-5)" (EPA 240B-01/003, March 2001 or subsequently issued guidance). Once approved by EPA and reviewed by TCEQ, the QAPPs shall be incorporated into and become enforceable under this Agreement. DOE shall submit QA/QC plans to EPA for approval and TCEQ for review and comment prior to use and in accordance with the RD and RA Workplans.

15.2 In order to provide quality assurance and maintain quality control regarding all field work and samples collected pursuant to this Agreement, DOE shall include in each QA/QC Plan submitted to EPA all protocols to be used for sampling and analysis. DOE shall also ensure that any laboratory used for analysis is a participant in a quality assurance/quality control program that is consistent with the EPA Guidance provided herein. DOE shall ensure that laboratory audits are conducted as appropriate and are made available to EPA upon request. DOE shall ensure that EPA, TCEQ and their authorized representatives have access to all laboratories performing analysis pursuant to the work required under this Agreement.

PART THREE
GENERAL PROVISIONS

16. PROJECT MANAGERS

16.1 On or before the effective date of this Agreement, each Party shall designate a Project Manager. The Project Managers shall be responsible on a daily basis for assuring proper implementation of the RD/RA in accordance with the terms of this Agreement. In addition to the formal notice provisions set forth in Article 33 (Notification) hereof, communications among DOE, EPA, and TCEQ on all documents, including reports, comments, and other correspondence concerning the activities performed pursuant to this Agreement, shall be directed through the Project Managers.

16.2 DOE, EPA, and TCEQ may change their respective Project Managers. Such change shall be accomplished by notifying the other Parties in writing within five (5) days of the change.

16.3 The Project Managers shall meet or, by mutual agreement, confer by telephone conference call, approximately every fifteen (15) days, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the Site and the primary and secondary documents. Prior to preparing any draft document specified in Paragraphs 9.2 and 9.3 above, the Project Managers shall meet to discuss the document in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft document.

16.4 DOE agrees to prepare semi-annual written progress reports which describe the actions which DOE has taken during the previous quarter to implement the requirements of this Agreement, including all results of sampling or other monitoring results obtained during the previous quarter. The reports will also describe the activities scheduled to be taken during the upcoming quarter. Progress reports will be prepared by DOE and submitted to TCEQ and EPA by the thirtieth (30th) day of each sixth (6^{th}) month following the effective date of this Agreement. The progress reports will also include a detailed statement of how the requirements and time schedules set out in the attachments to this Agreement are being met, identify any anticipated delays in meeting time schedules, including the reason(s) for each delay and actions taken to prevent or mitigate the delay, and identify any potential problems that may result in a departure from the requirements and time schedules.

16.5 The authority of the EPA and TCEQ Project Managers shall include, but is not limited to:

16.5.1 Taking independent groundwater samples, directing groundwater monitoring network activity to detect changes or impacts to the Perched and Ogallala aquifers, and directing DOE regarding the type, quantity, and location of the groundwater monitoring and sampling points;

16.5.2 Observing, taking photographs, and making such other reports on the progress of the work as the EPA or TCEQ Project Manager deems appropriate, subject to the limitations set forth in Article 20 (Access) of this Agreement;

16.5.3 Reviewing records, files, and documents relevant to the work performed; and

16.5.4 Conducting technical and regulatory oversight of primary and secondary documents.

16.6 Each Party's Project Manager shall be responsible for assuring that all communications received from the other Parties' Project Managers are appropriately disseminated to and processed by the Party that such Project Manager represents.

17. EMERGENCIES AND REMOVAL

17.1 Work Stoppage

17.1.1 In the event EPA or TCEQ determines that activities conducted pursuant to this Agreement, or

any other circumstances or activities, are creating an emergency situation or an immediate threat to human health or welfare or to the environment, either EPA or TCEQ may require DOE to stop further implementation of this Agreement for twenty-four (24) hours or, upon agreement of the Parties, such period of time as needed to abate the danger.

17.2.1 In the event that DOE determines that activities undertaken in furtherance of this Agreement, or any other circumstances or activities, are creating an emergency situation or an immediate threat to human health or welfare or to the environment, DOE may stop implementation of this Agreement for such periods of time as are necessary for the Director of the Superfund Division, EPA Region 6, to evaluate the situation and determine whether DOE should proceed with implementation of the Agreement or whether the work stoppage should be continued until the emergency situation or immediate threat is abated. DOE shall notify the Project Managers for EPA and TCEQ as soon as possible, but not later than twenty-four (24) hours after such stoppage of work, and provide EPA and TCEQ with documentation of its analysis in reaching its determination. If the Director of the Superfund Division, EPA Region 6, disagrees with DOE's determination, DOE shall resume implementation of this Agreement.

17.2.2 In the event work is stopped pursuant to this Article, DOE's obligations shall be suspended and the schedules for performance of that work, as well as the schedules for any other work dependent upon the work which was stopped, shall be extended, pursuant to Article 23 (Extensions), for such period of time as EPA, DOE, and TCEQ determine is reasonable under the circumstances. Any disagreements pursuant to this Article shall be resolved through the dispute resolution procedures in Article 11 (Resolution of Disputes) by referral directly to the DRC.

17.3 Removal Actions - The provisions of this Paragraph 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 on-going removal actions, and all new removal actions proposed or commenced following the effective date of this Agreement.

17.3.1 Any removal actions conducted at the Site shall be conducted in a manner consistent with this Agreement, CERCLA, the NCP, and the Executive Orders.

17.3.2 Nothing in this Agreement shall alter DOE authority with respect to removal actions conducted pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604. This Interagency Agreement shall only address removal and remedial actions as specified by the terms and conditions provided herein, the NCP and CERCLA.

17.3.3 Nothing in this Agreement shall alter any authority the State or EPA may have with respect to removal actions at the Site.

17.4 Notice and Opportunity to Comment:

17.4.1 DOE shall provide the other Parties with timely notice and opportunity to review and comment upon any proposed removal actions for the Site. DOE agrees to provide the information described below pursuant to such obligation.

17.4.1.1 For proposed emergency response removal actions, DOE shall notify the EPA and TCEQ Project Managers as soon as possible, but not later than twenty-four (24) hours after its determination that an emergency response action is necessary, and provide EPA and TCEQ with documentation of its analysis in reaching its determination. Such notification shall, to the extent practicable given the exigencies of the situation, include adequate information concerning the Site background, threat to the public health, welfare, or the environment (including the need for response), proposed actions and costs (including a comparison of possible alternatives, means of transportation of any hazardous substances off-site, and proposed manner of disposal), expected change in the situation should no action be taken or should action be delayed (including associated environmental impacts), and important policy issues, and the DOE Project Manager's recommendations. Within forty-five (45) days after its completion of the emergency removal action, DOE will submit to EPA and TCEQ a draft action memorandum addressing the information provided in the oral notification, identifying how the actual emergency response action differed from the proposed emergency removal action,

and any other information required pursuant to CERCLA and the NCP and in accordance with pertinent EPA policy and guidance for such memoranda and actions. DOE, after review and comment from EPA and TCEQ, will be responsible for finalizing the action memorandum.

17.4.1.2 For removal actions other than emergency removal actions, DOE will provide EPA and TCEQ with any information required by CERCLA, the NCP, and pertinent EPA guidance, such as the action memorandum, the Engineering Evaluation/Cost Analysis (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 Subparagraph 17.3.1.1 above. Such information shall be furnished at least forty-five days (45) days before the response action is to begin.

17.5 All activities related to on-going removal actions shall be reported by DOE in the progress reports as defined in Paragraph 16.4.

17.5.1 As soon as practicable after the completion of the removal action, but in any event within thirty (30) days after the completion of the removal action, DOE will prepare and provide to EPA and TCEQ an After-Action report describing the removal action and assessing the efficacy of the removal action in accordance with the NCP and pertinent EPA guidance.

18. SAMPLING AND DATA/DOCUMENT AVAILABILITY

18.1 DOE will make available to EPA and TCEQ within ninety (90) days of the collection of field testing, all results of sampling, tests or other data generated on its behalf, with respect to the implementation of this Agreement. Preliminary data or results shall be made available upon request by EPA or TCEQ. Notwithstanding, DOE shall promptly notify EPA and TCEQ upon receipt of preliminary data or analysis exhibiting a threat of endangerment or actual endangerment to the Ogallala aquifer.

18.2 DOE will make oral and email notification to EPA and TCEQ with a written follow-up not less than fourteen (14) days in advance of any well drilling, well closure, sample collection, soil and groundwater sampling/monitoring or other monitoring activity conducted pursuant to this Agreement.

19. PRESERVATION OF RECORDS

19.1 Each Party shall preserve for a minimum of ten (10) years after termination of this Agreement all of the records in its or its contractors possession related to sampling, analysis, investigations, and monitoring conducted in accordance with this Agreement. After this ten (10) year period, DOE shall notify EPA and TCEQ at least forty-five (45) days prior to destruction or disposal of any such records. Upon request, DOE shall make such records or authentic copies available, to EPA and TCEQ, unless withholding is authorized and determined appropriate by law. The Party withholding such records shall identify any documents withheld and the legal basis for withholding such records. No records withheld shall be destroyed until forty-five (45) days after the final decision by the highest court or administrative body requested to review the matter.

19.2 All records and documents shall be preserved for a period of ten (10) years following the termination of any judicial action regarding work performed under this Agreement.

20. ACCESS

20.1 Without limitation on any authority conferred on either agency by law, EPA, TCEQ, and/or their authorized representatives, shall have authority to enter the Pantex Site at all reasonable times for purposes consistent with the provisions of this Agreement subject to any statutory and regulatory requirements under CERCLA and applicable, relevant and appropriate State environmental law, or regulations, or any requirements contained in DOE

Orders, health and safety plans applicable to the Pantex Plant, or official Pantex Plant requirements necessary to protect classified information, or national security information. Such authority shall include, among other things:

20.1.1 inspecting records, operating logs, contracts and other documents relevant to implementation of this Agreement, subject to Article 28 (Confidential Information);

20.1.2 reviewing the progress of DOE or its response action contractors in carrying out the activities required under this Agreement;

20.1.3 conducting such tests as the EPA and/or TCEQ Project Managers deem necessary; and

20.1.4 verifying the data submitted to EPA and TCEQ by DOE. Upon request by EPA or TCEQ, DOE shall submit copies of record, or other documents, including sampling and monitoring data relevant to the work performed under this Agreement.

20.2 The DOE shall provide briefing information, coordinate access and escort to restricted or controlled access areas, arrange for Pantex Plant facility access passes, and coordinate any other access requests consistent with the provisions for this Agreement. EPA and TCEQ shall provide reasonable notice to the DOE Project Manager to request any necessary escorts. EPA and TCEQ shall not use any camera, sound recording or other electronic recording device or other electronic recording device at the Pantex Plant without the permission of the DOE Project Manager. DOE shall not unreasonably withhold such permission and shall provide a written explanation including the reference to applicable law, regulation and/or DOE Orders within forty-eight (48) hours of withholding permission, and the reason for denial. If permission is reasonably withheld, DOE shall be responsible for making alternative suitable arrangements for any work utilizing a camera, sound recording, or other electronic device.

20.3 The right to access the Pantex Plant facility by EPA and TCEQ granted in Article 20.1 shall be subject to CERCLA Section 104, Executive Order 12580, the NCP and CERCLA guidelines under Section 120(a). EPA and TCEQ's right to access the Pantex Plant shall also be subject to the applicable requirements of CERCLA Section 120(j), 42 U.S.C. § 9620(j) and the Atomic Energy Act of 1954 ("AEA"), 42 U.S.C. § 2011 et. seq, protecting national security and classified information. Such requirements shall not be applied as to unreasonably hinder EPA, or TCEQ from carrying out the activities required under this Agreement. In the event access requested by EPA or TCEQ is denied by DOE, DOE shall provide a written explanation, including the reference to applicable law, regulation, and/or DOE Order within forty-eight (48) hours of the denial, and the reason for the denial. DOE shall expeditiously make alternative and suitable arrangements for accommodating the requested access. The parties agree that this Agreement is subject to CERCLA Sections 104 and 120(j), and the AEA of 1954.

20.4 All Parties with access to the Pantex Plant under this Article shall comply with applicable health and safety plans specifically required under the Occupational Safety and Health Act of 1970 ("OSHA"), 29 U.S.C. § 651 et. seq., and applicable OSHA and DOE safety regulations.

20.5 To the extent that response action at the Site requires access to property not owned and controlled by DOE, DOE as the lead agency shall seek to obtain signed voluntary access agreements providing access for itself, its contractors and agents, and EPA and TCEQ and their contractors and agents, from the present owners or lessees. If DOE is unable to obtain voluntary access agreements, DOE will use its authorities under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), to obtain access. DOE will provide EPA and TCEQ with copies of access agreements or other documents authorizing entry onto property.

21. FIVE-YEAR REVIEW

21.1 If a remedial action is selected that results in any hazardous substances, pollutants, or contaminants remaining at the Site, DOE will review the remedial action no less often than every five (5) years after initiation of the

remedial action to assure that human health and the environment are being protected by the remedial action being implemented. The Five-Year Review will include an evaluation of remedy effectiveness, the appropriateness of new technologies, changes in ARARs, recommendations to implement remedial contingencies, and will be consistent with EPA Five-Year guidelines per CERCLA Section 120(a)(2), 42 U.S.C. § 9620(a)(2). DOE will conduct the review consistent with the requirements of CERCLA, the NCP, and EPA guidance concerning the conduct of such reviews. DOE shall submit the draft Five-Year Review Report to EPA and TCEQ under Article 9 (Consultation) not later than five (5) years from the initiation of the remedial action. If upon completion of the final Five-Year Review Report it is the judgment of EPA that additional action or modification of the remedial action is appropriate in accordance with Sections 104 or 106 of CERCLA, 42 U.S.C. §§ 9604 or 9606. EPA may seek to have DOE implement such additional or modified work through amendment of this Agreement pursuant to Article 22 (Amendment or Subsequent Modification of Agreement). Nothing in this Agreement shall be construed to modify or change EPA's authority to determine whether the implemented remedy is protective of human health and the environment pursuant to CERCLA Sections 120(e) and 121(c), and Executive Order 12580.

22. AMENDMENT OR SUBSEQUENT MODIFICATION OF AGREEMENT

22.1 This Agreement may be amended only by unanimous agreement of DOE, TCEQ, and EPA. Any such amendment shall be in writing, shall have as the effective date, that date on which it is signed by all the Parties, and shall be incorporated into this Agreement by reference.

23. EXTENSIONS

23.1 A timetable, deadline or schedule shall be extended upon receipt of a timely request for extension and when the Parties agree that good cause exists for the requested extension. A Party proposing an extension of a timetable, deadline or schedule shall submit its proposal in writing to the other Parties and shall specify:

23.1.1 The timetable, deadline or schedule for which the extension is sought;

23.1.2 The length of the extension sought;

23.1.3 The good cause for the extension; and

23.1.4 Any related timetable, deadline or schedule that would be affected if the extension were granted.

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

23.2.1 An event of force majeure as defined in Article 29 (Force Majeure);

23.2.2 A delay caused by another Party's failure to meet any requirement, timetable, deadline or schedule established pursuant to this Agreement;

23.2.3 A delay caused by the good faith invocation of Dispute Resolution or the initiation of judicial action;

23.2.4 A delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable, deadline or schedule;

23.2.5 A delay caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence;

23.2.6 Insufficient availability of appropriated funds, if DOE shall have made timely request for such funds as part of the budgetary process as set forth in Article 30 (Funding); or

23.2.7 Any other event or series of events mutually agreed to by the Parties as constituting good cause.

23.3 Absent agreement of the Parties with respect to the existence of good cause, the Party proposing the extension may seek to obtain a determination through the Dispute Resolution process that good cause exists.

23.4 Within fourteen (14) days of receipt of a request for an extension of a timetable, deadline or schedule, each Party shall advise the other Parties in writing of its position on the request. Any failure of a Party to respond within the fourteen (14) day period shall be deemed to constitute concurrence by that Party in the request for extension. If any Party does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

23.5 If the Parties agree that the requested extension is warranted, the affected timetable, deadline or schedule shall be extended accordingly. If there is no consensus among the Parties as to whether all or part of the requested extension is warranted, the timetable, deadline or schedule shall not be extended except in accordance with the determination resulting from the Dispute Resolution process.

23.6 Within fourteen (14) days of receipt of one or more statements of nonconcurrence with the requested extension, the DOE may invoke the Dispute Resolution process.

23.7 A timely and good faith request for an extension shall toll any assessment of penalties pursuant to Article 12 (Stipulated Penalties) or any application for penalties or judicial enforcement of the affected timetable, 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, penalties may be sought pursuant to Article 12 (Stipulated Penalties) and may accrue from the date of the original timetable, deadline or schedule. Following the grant of an extension, an assessment of penalties pursuant to Article 12 (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.

24. TRANSFER OF PROPERTY

24.1 A transfer of Site property by DOE shall not terminate DOE's responsibility to continue to conduct response actions in accordance with this Agreement. Any such transfer shall be conducted in accordance with Section 120(h) of CERCLA, 42 U.S.C. § 9620(h). Each deed transferring Site property where it is known that hazardous substances were stored for one year or more shall include a CERCLA 120(h)(3) covenant, provide a description of the residual contamination on the property, enumerate environmental use restrictions, and expressly prohibit those activities inconsistent with the limited use and restricted exposure supported by Site property. Each deed transferring Site property where it is known that hazardous substances were stored for one year or more shall also contain a reservation of access to the property provision in favor of DOE. Although the Site property may be transferred, DOE will continue to provide access to EPA and TCEQ, and their respective officials, agents, employees, and contractors for purposes consistent with this Agreement. The deed shall contain appropriate provisions to ensure that DOE's, EPA's and TCEQ's right to access the Site property and environmental use restrictions both, run with the land and are enforceable by DOE, until the Site property supports unlimited use and unrestricted exposure.

25. PUBLIC PARTICIPATION

25.1 Any plan(s) for response action at the Site arising out of this Agreement shall comply with the administrative record and public participation requirements of CERCLA, including Sections 117 and 113(k) of CERCLA, 42 U.S.C. §§ 9617 and 9613(k), the NCP, and EPA guidance on public participation and administrative records, to the extent they are applicable.

25.2 DOE shall develop and implement a Community Relations Plan ("CRP") that is consistent with Section

117 of CERCLA, 42 U.S.C. § 9617, the NCP, EPA guidelines set forth in EPA's Community Relation Guidance.

25.3 The EPA, TCEQ and DOE will coordinate any statements to the press with respect to the work required by this Agreement, other than statements regarding civil or criminal enforcement actions, to the extent practicable. Except in case of an emergency requiring the release of necessary information or in cases of civil or criminal enforcement actions, if either EPA, TCEQ or DOE plans to issue a press release with reference to any of the work required by this Agreement it will advise the other Party (DOE, TCEQ or EPA) of such press release and the contents thereof at least forty-eight (48) hours before the issuance of such press release, to the extent practicable.

26. ADMINISTRATIVE RECORD

26.1 DOE will establish and maintain an Administrative Record at or near the Site in accordance with Section 113(k) of CERCLA, 42 U.S.C. § 9613(k) and Subpart I of the NCP, 40 C.F.R. §§ 300.800, *et seq.* DOE will maintain the record in a manner consistent with relevant current and future EPA policy and guidelines. Upon request, DOE will provide a copy of each document placed in the Administrative Record to EPA and TCEQ. DOE will provide a copy of the index for the Administrative Record to EPA and TCEQ. The Administrative Record developed by DOE shall be periodically updated by DOE, but not less than quarterly. DOE shall promptly provide EPA and TCEQ a copy of the Administrative Record Index of any documents added to the Administrative Record for any response action taken pursuant to this Agreement. Notwithstanding, DOE shall provide EPA and TCEQ a copy of the Administrative Record Index not less than semi-annually. Upon request by EPA or TCEQ, DOE shall provide EPA and TCEQ a copy of any document requested as well as any supporting document identified in the document requested, if EPA or TCEQ requests a copy of the supporting document.

27. DURATION/TERMINATION

27.1 Once the remedial action and remedial goals have been completed and satisfied, DOE in consultation with EPA and TCEQ, will request that a Notice of Completion of the remedial action be issued by EPA and concurred in by TCEQ. Any decision by EPA or TCEQ in response to such a request from DOE shall be subject to dispute resolution in accordance with Article 11 (Resolution of Disputes).

27.2 This Agreement shall terminate when all work provided for in this Agreement has been completed or when the Parties unanimously agree in writing to termination. However, TCEQ may, in its discretion, terminate this Agreement upon providing a sixty (60) day written notice of termination to both EPA and DOE. Termination of TCEQ's participation in this Agreement shall be effective sixty (60) days after EPA and DOE's receipt of the written notice of termination. Upon termination of TCEQ's participation, this Agreement and its requirements, terms and conditions shall no longer apply to or bind TCEQ. All TCEQ rights and responsibilities expressly provided in this Agreement shall be terminated and severed from the rights and responsibilities expressly provided to EPA and DOE per this Agreement. Notwithstanding any termination of TCEQ's participation in this Agreement, all rights, responsibilities, requirements, terms and conditions provided in this Agreement and CERCLA Section 120, shall remain intact and enforceable between DOE and EPA. Nothing in this Article constitutes a change to DOE's or EPA status under CERCLA Section 120(e) or Executive Order 12580, nor any limitation on DOE's authority under the AEA.

27.3 Due to the long-term commitments contained in this Agreement, this Agreement will be reviewed by the Parties five (5) years from the effective date of this Agreement, and at the conclusion of every five (5) year period thereafter. The purposes of this review will be to determine:

27.3.1 Whether each Party has performed its commitments under this Agreement; and whether there has been substantial compliance with the terms of the Agreement, and

27.3.2 Whether there is need to modify the Agreement.

27.4 This review will be made by a committee composed of representatives from each Party. Amendments to the Agreement will be made in accordance with Article 22 (Amendment or Subsequent Modification of Agreement).

27.5 Issuance of any Notice of Completion shall not relieve DOE of its obligation to continue operation and maintenance pursuant to Article 8 (Work to be Performed) and conduct five-year reviews pursuant to Article 21 (Five-Year Review), unless such Notice explicitly states that all required operation and maintenance has been completed, and all required five-year reviews have been conducted.

28. CONFIDENTIAL INFORMATION

28.1 DOE may assert on its own behalf or on behalf of a contractor, subcontractor or consultant, a business confidentiality claim covering all or any part of the document or information submitted to EPA under this Agreement, to the extent authorized by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of business confidentiality accompanies the documents or information when they are submitted to EPA, or if EPA has notified DOE that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the documents or information may be made available to the public without further notice.

28.1.1 Likewise, any release of Pantex Plant facility documents to EPA or TCEQ is subject to the requirements of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Texas Public Information Act ("PIA"), Tex Gov't Code Ch. 552, respectively. Records or documents identified by the originating Party as confidential pursuant to the non-disclosure provisions of FOIA or PIA shall be released to the requesting Party. Any EPA or TCEQ request for disclosure to the public must be referred to the Party/originator of the records or documents. A preliminary public disclosure determination will be made either by the Texas Attorney General (for PIA claims) or EPA (for FOIA claims) before any disclosure to the public. The EPA and TCEQ shall follow applicable PIA or FOIA regulations when making public disclosure determinations. DOE shall include the following language on all documents issued by the Pantex Plant facility that may require evaluation under FOIA or the PIA prior to release:

> "CONFIDENTIAL"
> DOE Designation - OFFICIAL USE ONLY
> Contains information that may be exempt from public disclosure under the Texas Public Information Act ("PIA"), Tex Gov't Code Ch. 552, or the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552.

28.2 DOE may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If DOE asserts such a privilege in lieu of providing documents, DOE shall provide EPA with the following: (1) the title of the document; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by DOE. However, no documents, reports or other information created or generated pursuant to the requirements of this Agreement shall be withheld on the grounds that they are privileged.

28.3 No claim of confidentiality shall be made with respect to any data, including, but not limited to all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or

information evidencing conditions at or around the Pantex Plant Site. Notwithstanding any provision in this Agreement, the Parties agree that this Agreement is subject to the applicable requirements of CERCLA Section 120(j), 42 U.S.C. § 9620(j) and the Atomic Energy Act of 1954 ("AEA"), 42 U.S.C. § 2011 et. seq., applicable DOE Executive Orders governing classified and national security information, and applicable regulations protecting national security information, restricted information, unclassified controlled information and classified information.

29. FORCE MAJEURE

29.1 Force Majeure shall mean any event arising from causes beyond the control of a Party that causes a delay in or prevents the performance of any obligation under this Agreement, including but not limited to:

29.1.1 Acts of God; fire; war; insurrection; civil disturbance; or explosion;

29.1.2 Unanticipated breakage or accident to machinery, equipment, or lines of pipe, despite reasonably diligent maintenance;

29.1.3 Adverse weather conditions that could not be reasonably anticipated, or unusual delay in transportation;

29.1.4 Restraint by court order or order of public authority;

29.1.5 Inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority other than DOE; and

29.1.6 Any strike or other labor dispute.

29.2 Force Majeure shall not include increased cost or expenses of response actions, whether or not anticipated at the time such response actions were initiated.

30. FUNDING

30.1 It is the expectation of the Parties that all obligations of DOE arising under this Agreement will be fully funded. DOE agrees to use its best efforts to seek sufficient funding through the budgetary process to fulfill its obligations under this Agreement. In accordance with Section 120(e)(5)(B) of CERCLA, 42 U.S.C. § 9620(e)(5)(B), DOE shall include in its annual report to Congress the specific cost estimates and budgetary proposals associated with the implementation of this Agreement. Any requirement of DOE for the payment or obligation of funds, including but not limited to civil penalties, or as required under other terms of this Agreement, shall be subject to the availability of appropriated funds. No provision of this Agreement shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. §1341, *et seq.* In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, or would exceed the available appropriated funds, the Parties agree that the deadlines, schedules, or other commitments 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 TCEQ reserve the right to initiate an action against any other person, or to take any response action, which would be appropriate absent this Agreement.

30.2 If requested, EPA and TCEQ agree to assist DOE in determining the funding level estimates needed to support the corresponding negotiated work schedule for each fiscal year. This assistance will be provided at the Project Manager levels. Nothing herein shall affect DOE's authority over its budgets and funding level submissions. Nothing herein shall affect EPA's or TCEQ's enforcement authority if DOE does not request sufficient funding.

30.3 Funds authorized and appropriated annually by Congress to the DOE Office of Environmental Restoration (or other relevant DOE Office responsible for implementing this Agreement) will be the source of funds for

activities required by this Agreement. However, should the environmental restoration appropriation be inadequate in any year to meet the total implementation requirements under this Agreement, DOE will, after consulting with the other Parties and discussing the inadequacy with the members of the public interested in the action in accordance with Article 31, Amending SMP and Budget Development, prioritize and allocate that year's allocation.

31. AMENDING SMP AND BUDGET DEVELOPMENT

31.1 This Agreement establishes a process for creating and amending the SMP. DOE shall submit the SMP within seven (7) days of the issuance of the ROD, and such SMP shall be incorporated into this Agreement as Appendix 3. The SMP and each annual Amendment to the SMP shall be Primary Documents. Milestones established in the SMP or established in a final Amendment to the SMP remain unchanged unless otherwise agreed to by the Parties or unless directed to be changed pursuant to the agreed dispute resolution process. In addition, if an activity is fully funded in the current fiscal year ("FY"), milestones associated with the performance of work and submittal of Primary Documents associated with such activity (even if they extend beyond the current FY) shall be enforceable.

31.2 The SMP includes proposed actions for both CERCLA responses and actions which would otherwise be handled pursuant to RCRA corrective actions per Article 32, Compliance with Applicable Laws/RCRA-CERCLA Integration, and outlines all response activities and associated documentation to be undertaken at the facility. The SMP incorporates all existing milestones contained in approved Work Plans, and all milestones approved in future Work Plans immediately become incorporated into the final SMP.

31.3 Milestones in the SMP reflect the priorities agreed to by the Parties through a process of "Risk Plus Other Factors" Priority Setting. Site activities have been prioritized by weighing and balancing a variety of factors including, but not limited to: (i) the DOE ranking for the site; (ii) current, planned, or potential uses of the facility; (iii) ecological impacts; (iv) impacts on human health; (v) intrinsic and future value of affected resources; (vi) cost effectiveness of the proposed activities; (vii) environmental justice considerations; (viii) regulatory requirements; and, (ix) actual and anticipated funding levels. While Milestones should not be driven by budget targets, such targets should be considered when setting Milestones. Furthermore, in setting and modifying Milestones, the Parties agree to make good faith efforts to accommodate federal fiscal constraints, which include budget targets established by DOE.

31.4 The SMP and its annual Amendments include:

31.4.1 A description of actions necessary to mitigate any immediate threat to human health or the environment;

31.4.2 A listing of all currently identified Site Screening Areas, Operable Units, Interim Remedial Actions, Supplemental Response Actions, and Critical and Non-Time Critical Removal Actions covered or identified pursuant to this Agreement;

31.4.3 Activities and schedules for response actions covered by the SMP, including at a minimum:

- Identification of any Primary Actions;
- All Deadlines;
- All Near Term Milestones;
- All Out Year Milestones;
- All Target dates;
- Schedule for initiation of Remedial Designs, Interim Response Actions, Non-Time Critical Removal Actions, and any other initiation of planned response action covered by this Agreement; and,
- All Project End Dates.

31.5 The DOE shall submit an Amendment to the SMP on an annual basis as provided in the Budget

Development and Amendment of Plan language provided in this Agreement. All Amendments to the SMP shall conform to all of the requirements set forth in Article 31.

31.6 The milestones established in accordance with this Article and the Budget Development and Amendment of Plans language provided in this Agreement remain the same unless otherwise agreed by the Parties, or unless changed in accordance with the dispute resolution procedures set out in this Agreement. The Parties recognize that possible bases for requests for changes or extensions of the Milestones include but are not limited to: (i) the identification of significant new site conditions at this installation; (ii) reprioritization of activities under this Agreement caused by changing priorities or new site conditions elsewhere in DOE; (iii) reprioritization of activities under this Agreement caused by budget adjustments (e.g., rescissions, inflation adjustments, and reduced Congressional appropriations); (iv) an event of force majeure; (v) a delay caused by another party's failure to meet any requirement of this Agreement; (vi) a delay caused by the good faith invocation of dispute resolution or the initiation of judicial action; (vii) 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 (viii) any other event or series of events mutually agreed to by the Parties as constituting good cause.

31.7 The deadlines established in the SMP and each annual Amendment shall be published by EPA.

31.8 Budget Development and Amendment of the SMP. The DOE, as a federal agency, is subject to fiscal controls, and Executive Order 12088 specifying the obligation to seek sufficient funding to comply with applicable pollution control standards. The planning, programming, and budgeting process ("DOE PPB process"), hereinafter referred to as the DOE PPB process, is used to review total requirements for DOE programs and make appropriate adjustments within the fiscal controls for each program while adhering to the overall fiscal controls. The Parties recognize that the DOE PPB process is a multi-year process. The Parties also agree that all Parties should be involved in the full cycle of the DOE PPB process activities as specified in this Agreement. Further, the Parties agree that each Party should consider the factors listed in Paragraph 31.3, including federal fiscal constraints as well as each of the other factors, in their priority-setting decisions. Initial efforts to close any gap between cleanup needs and funding availability shall be focused on the identification and implementation of cost savings.

31.9 Facility-Specific Budget Building. In order to promote effective involvement by the Parties in the DOE PPB process, the Parties will meet at the Project Manager level for the purpose of (1) reviewing any budget controls; (2) developing a list of requirements/work to be performed at the site for inclusion in the DOE PPB process; and, (3) participating in development of the DOE submission to the proposed President's budget, based on the DOE PPB process decisions for the year currently under consideration. Unless the Parties agree to a different time frame, the DOE agrees to notify the other Parties within ten (10) days of receipt, at the Project Manager level, that budget controls have been received. Unless the Parties agree to a different time frame or agree that a meeting is not necessary, the Parties will meet, at the Project Manager level, within five (5) days of receiving such notification to discuss the budget controls. However, this consultation must occur at least ten (10) days prior to the DOE's initial budget submission to the appropriate DOE Office. In the event that the Project Managers cannot agree on funding levels required to perform all work outlined in the SMP, the Parties agree to make reasonable efforts to informally resolve these disagreements, either at the immediate or secondary supervisor level; this would also include discussions, as necessary, with the appropriate DOE Office. If agreement cannot be reached informally within a reasonable period of time, the DOE shall resolve the disagreement, if possible with the concurrence of all Parties, and notify each Party. If all Parties do not concur in the resolution, the DOE will forward through the appropriate DOE Office, to the DOE Headquarters its budget request with the views of the Parties not in agreement and also inform DOE Headquarters of the possibility of future enforcement action should the money requested not be sufficient to perform the work subject to disagreement. In addition, if the

DOE's budget submission to the appropriate DOE Office relating to the terms and conditions of this Agreement does not include sufficient funds to complete all work in the existing SMP, such budget submission shall include supplemental reports that fully disclose the work required by the existing SMP, but not included in the budget request due to fiscal controls (e.g., a projected budget shortfall). These supplemental reports shall accompany the cleanup budget that the DOE submits through its higher Headquarters levels until the budget shortfall has been satisfied. If the budget shortfall is not satisfied, the supplemental reports shall be included in the budget submission to the DOE Chief Financial Officer.

31.10 Budget for Clean Up Activities. The DOE shall forward to the other Parties documentation of the budget requests (and any supplemental reports) for the site, as submitted by the DOE to the appropriate environmental restoration DOE Office, and by the appropriate environmental restoration DOE Office to the DOE Headquarters, within fourteen (14) days after the submittal of such documentation to the DOE Headquarters by the appropriate environmental restoration DOE Office. If the DOE proposes a budget request relating to the terms and conditions of this Agreement that impacts other installations, discussions with other affected EPA Regions and states regarding the proposed budget request need to take place.

31.11 Amended Plan. No later than June 15 of each year after the initial adoption of the SMP, the DOE shall submit to the other Parties a draft Amendment to the SMP. When formulating the draft Amendment to the SMP, the DOE shall consider funding circumstances (including OMB targets/guidance) and "risk plus other factors" outlined in Paragraph 31.3 to evaluate whether the previously agreed upon milestones should change. Prior to proposing changes to Milestones in its annual Amendment to the SMP, the DOE will first offer to meet with the other Parties to discuss the proposed changes. The Parties will attempt to agree on milestones before the DOE submits its annual Amendment by June 15, but failure to agree on such proposed changes does not modify the June 15 date, unless agreed by all the Parties. Any proposed extensions or other changes to milestones must be explained in a cover letter to the draft Amendment to the SMP. The draft Amendment to the SMP should reflect any agreements made by the Parties during the DOE PPB process outlined in this Article. Resolution of any disagreement over adjustment of milestones pursuant to this Paragraph shall be resolved pursuant to Paragraph 31.6.

31.11.1 The Parties shall meet as necessary to discuss the draft Amendment to the SMP. The Parties shall use the consultation process contained in Article 9, Consultation, except that none of the Parties will have the right to use the extension provisions provided therein. Accordingly, comments on the draft Amendment will be due to DOE no later than thirty (30) days after receipt by EPA and the TCEQ of the draft Amendment. If either EPA or TCEQ provide comments and are not satisfied with the draft Amendment during this comment period, the Parties shall meet to discuss the comments within fifteen (15) days of DOE's receipt of comments on the draft Amendment. The draft final Amendment to the SMP will be due from DOE no later than thirty (30) days after the end of the EPA and TCEQ's comment period. During this second, thirty (30) day time period, DOE will, as appropriate, make revisions and re-issue a revised draft herein referred to as the draft final Amendment. To the extent that Article 9, Consultation, contains time periods differing from these thirty (30) day periods, this provision will control for consultation on the Amendment to the Plan.

31.11.2 If DOE proposes, in the draft final Amendment to the SMP, modifications of Milestones to which either EPA or TCEQ have not agreed to, those proposed modifications shall be treated as a request by the DOE for an extension. Milestones may be extended during the SMP review process by following Paragraphs 31.11 through 31.14. All other extensions will be governed by Article 23, Extensions. The time period for EPA to respond to the request for extension will begin on the date EPA receives the draft final Amendment to the SMP Work Plans, and EPA and TCEQ shall advise DOE in writing of their respective positions on the request within thirty (30) days. If EPA approves and TCEQ reviews and comments on DOE's draft final Amendment, the document shall then await finalization in accordance

with Paragraphs 31.12 and 31.14. If EPA denies the request for extension, then DOE may amend the SMP in conformance with EPA and TCEQ comments or seek and obtain a determination through the dispute resolution process established in Article 11, Dispute Resolution, within twenty-one (21) days of receipt of notice of denial. Within twenty-one (21) days of the conclusion of the dispute resolution process, the DOE shall revise and reissue, as necessary, the draft final Amendment to the SMP. If EPA or TCEQ initiates a formal request for a modification to the SMP to which DOE does not agree, EPA or TCEQ may initiate dispute resolution as provided in Article 11, Dispute Resolution with respect to such proposed modification. In resolving a dispute, the persons or person resolving the dispute shall give full consideration to the bases for changes or extensions of the milestones referred to in Paragraph 31.6 asserted to be present, and the facts and arguments of each of the Parties.

31.11.3 Notwithstanding Paragraph 31.11.2, if DOE proposes, in the draft final Amendment to the SMP, modifications of project end dates which are intended to reflect the time needed for implementing the remedy selected in the Record of Decision but to which either EPA has not approved or TCEQ has not reviewed and commented on, those proposed modifications shall not be treated as a request by DOE for an extension, but consistent with Article 11, Dispute Resolution, EPA or TCEQ may initiate dispute resolution with respect to such project end date.

31.11.4 In any dispute under this Article, the time periods for the standard dispute resolution process contained in Paragraphs 11.3, 11.4, 11.5, and 11.6 of Article 11, Dispute Resolution, shall be reduced by half in regard to such dispute, unless the Parties agree to dispute directly to the SEC level.

31.12 The DOE shall finalize the draft final Amendment as a final Amendment to the SMP consistent with the mutual consent of the Parties, or in the absence of mutual consent, in accordance with the final decision of the dispute resolution process. The draft final Amendment to the SMP shall not become final until twenty-one (21) days after DOE receives official notification of Congress' authorization and appropriation of funds if funding is sufficient to complete work in the draft final Plan or, in the event of a funding shortfall, following the procedures in Paragraph 31.13. However, upon approval of the draft final Amendment or conclusion of the dispute resolution process, the parties shall implement the SMP while awaiting official notification of Congress' authorization and appropriation.

31.13 Resolving Appropriations Shortfalls. After authorization and appropriation of funds by Congress and within twenty-one (21) days after DOE has received official notification of DOE's allocation for environmental restoration, the DOE shall determine if planned work (as outlined in the draft final Amendment to the SMP) can be accomplished with the allocated funds. (1) If the allocated funds are sufficient to complete all planned work for that fiscal year and there are no changes required to the draft final Amendment to the SMP, the DOE shall immediately forward a letter to the other Parties indicating that the draft final Amendment to the Plans has become the final Amendment to the Plans. (2) If the DOE determines within the twenty-one (21) day period specified above that the allocated funds are not sufficient to accomplish the planned work for the site (an appropriations shortfall), the DOE shall immediately notify the Parties. The Project Managers shall meet within thirty (30) days to determine if planned work (as outlined in the draft final Amendment to the SMP) can be accomplished through: 1) re-scoping or rescheduling activities in a manner that does not cause previously agreed upon near term milestones and out year milestones to be missed; or 2) developing and implementing new cost-saving measures. If, during this thirty (30) day discussion period, the Parties determine that re-scoping or implementing cost-saving measures are not sufficient to offset the appropriations shortfall such that near term milestones (deadlines within 1 - 2 years), out year milestones (deadlines set for 3 years or longer), and project end dates (deadlines set by the Parties for discrete portions of the RD/RA) should be modified, the Parties shall discuss these changes and develop modified milestones. Such modifications shall be based on the "Risk Plus Other Factors" prioritization process discussed in Paragraph 31.6, and shall be specifically identified by DOE. DOE shall submit a new draft final Amendment to the SMP to the other Parties within thirty (30) days of the end of the thirty (30)

day discussion period. In preparing the revised draft final Amendment to the SMP, DOE shall give full consideration to EPA and TCEQ input during the thirty (30) day discussion period. If the EPA approves and TCEQ reviews and comments on the modifications made to the draft final Amendment to the SMP, EPA shall notify DOE and the revised draft final Amendment shall become the final Amendment. In the case of modifications of milestones due to appropriations shortfalls, those proposed modifications shall, for purposes of dispute resolution, be treated as a request by DOE for an extension, which request is treated as having been made on the date that EPA receives the new draft final Plan or draft final Amendment to the SMP. EPA and the TCEQ shall advise DOE in writing of their respective positions on the request within twenty-one (21) days. DOE may seek and obtain a determination through the dispute resolution process established in Article 11, Dispute Resolution. DOE may invoke dispute resolution within fourteen (14) days of receipt of a statement of nonconcurrence with the requested extension. In any dispute concerning modifications under this Article, the Parties will submit the dispute directly to the SEC level, unless the Parties agree to utilize the standard dispute resolution process, in which case the time periods for the dispute resolution process contained in Paragraphs 11.3, 11.4, 11.5, and 11.6 of Article 11, Dispute Resolution, shall be reduced by half in regard to such dispute. Within twenty-one (21) days after the conclusion of the dispute resolution process, DOE shall revise and reissue, as necessary, the final Amendment to the Plans.

31.14 It is understood by all Parties that DOE will work with representatives of the other Parties to reach consensus on the reprioritization of work made necessary by any annual appropriations shortfalls or other circumstances as described in Paragraph 31.13. This may also include discussions with other EPA Regions and states with installations affected by the reprioritization; the Parties may participate in any such discussions with other states.

31.15 Public Participation. In addition to any other provision for public participation contained in this Agreement, the development of the SMP, including its annual Amendments, shall include participation by members of the public interested in this action, as specified in 40 C.F.R. § 300.435(c). DOE must ensure that the opportunity for such public participation is timely; but this Paragraph 31.15 shall not be subject to Article 12, Stipulated Penalties.

31.15.1 Consistent with 40 C.F.R § 300.435(c), the Parties will meet, after seeking the views of the general public, and determine the most effective means to provide for participation by members of the public interested in this RD/RA action in the DOE PPB process and the development of the SMP and its annual Amendments. The "members of the public interested in this action" may be represented by inclusion of a restoration advisory board or technical review committee, if they exist for the DOE Pantex facility, or by other appropriate means.

31.15.2 DOE shall provide timely notification under Paragraph 31.13, regarding RD/RA allocation of the DOE environmental restoration account to the members of the public interested in this action.

31.15.3 DOE shall provide opportunity for discussion under Paragraphs 31.9, 31.11, 31.13, and 31.14 to the members of the public interested in this RD/RA action.

31.15.4 The DOE shall ensure that public participation provided for in this Paragraph 31.15 complies with Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

31.15.5 Except for requirements, terms, provisions and conditions related to the SMP and SMP annual amendments provided in Article 31, and applicable Executive Orders 12088 and 12898, the remaining budget requirements in this Article may be tolled with EPA approval and TCEQ concurrence until the end of the federal government's first quarter of fiscal year 2009. Provided EPA decides and TCEQ concurs, in their discretion, tolling is appropriate, and DOE does not achieve construction completion of the response action selected in the ROD pursuant to this Agreement within the provided tolling period (i.e., from the effective date of this Agreement through the end of first quarter of fiscal year 2009), then all provisions of this Article shall be effective upon the expiration of first quarter of

fiscal year 2009. Notwithstanding, the requirements, terms, provisions and conditions related to the SMP, SMP annual amendments, and Executive Orders 12088 and 12898 shall be effective on the effective date of this Agreement, and are not subject to tolling.

32. COMPLIANCE WITH APPLICABLE LAWS/RCRA-CERCLA INTEGRATION

32.1 All actions required to be taken pursuant to this Agreement shall be taken in accordance with the requirements of all applicable Federal and State laws and regulations per Section 121(d) of CERCLA, 43 U.S.C. § 9621(d). Each Party acknowledges that such compliance may impact schedules to be performed under this Agreement. Extensions of schedules shall be provided in accordance with Article 23 (Extensions).

32.2 Where the law governing this Agreement has been amended or clarified, any provision of this Agreement that is inconsistent with such amendment or clarification will be modified to conform with such change or clarification.

32.3 The Parties intend to integrate the DOE's CERCLA response obligations and RCRA corrective action obligations which relate to the releases 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 et seq; 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.

32.4 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 remediation of releases covered by this Agreement shall also satisfy corrective action requirements under RCRA. The Parties agree that with respect to releases of hazardous waste covered by this Agreement, the requirements of RCRA shall be considered an applicable or relevant and appropriate requirement pursuant to Section 121 of CERCLA.

32.5 The Parties intend to utilize this Agreement to coordinate DOE's CERCLA response obligations with the corrective measures addressed in DOE's existing RCRA permit issued by the TCEQ pursuant to the Texas Solid Waste Disposal Act ("TSWDA").

32.5.1 DOE intends to submit an application to modify the corrective action provisions in the existing RCRA permit to incorporate the remedial action selected pursuant to this Agreement (including appropriate schedules), as appropriate under Sections 3004(u) and (v) of RCRA, 42 U.S. C. §§ 6924(u) and (v), and the corrective action requirements under the TSWDA.

32.5.2 TCEQ will process the DOE RCRA permit modification application under the TSWDA and applicable regulations, and will prepare a draft RCRA permit based upon the application DOE submits to modify its RCRA permit.

32.5.3 DOE may include in its RCRA permit modification application, the administrative record under this Agreement, including the remedial action selected, and supporting information. DOE may also submit additional data information under applicable regulations.

32.5.4 TCEQ will provide an opportunity for public comment on the draft RCRA permit, and will review and consider hearing requests on the draft RCRA permit. TCEQ will also review and consider the evidentiary hearing record that may result from any evidentiary hearing conducted on the draft RCRA permit.

32.5.5 EPA will review any new information obtained as a result of the TCEQ RCRA permitting process described above. After review and consideration of the new information obtained, EPA will determine the

appropriate course of action pursuant to CERCLA and the NCP's remedy selection and modification authority.

32.5.6 DOE reserves the right to appeal or challenge any RCRA permit or permit modification specifying corrective measures different from the remedial action selected under this Agreement.

32.5.7 Notwithstanding any provision of this Agreement, the Parties intend that any challenge to the remedial action selected pursuant to this Agreement, or challenge to the implementation of such remedial action, shall to the extent authorized by law, only be reviewed under the judicial review provisions of CERCLA. The Parties intend that the judicial review of any RCRA permit or permit modification conditions which reference the remedial action selected under this Agreement shall to the extent authorized by law, only be reviewed under the provisions of CERCLA.

32.6 Nothing in this Agreement shall alter the DOE's authority with respect to removal actions conducted pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, except as provided in Article 17 of this Agreement.

33. RESERVATION OF RIGHTS

33.1 The Parties have determined that the activities to be performed under this Agreement are in the public interest. EPA and TCEQ agree that compliance with this Agreement shall stand in lieu of any administrative and civil judicial remedies against DOE and its contractors, which may be available to EPA and TCEQ under CERCLA regarding the currently known release or threat of release of hazardous substances, pollutants or contaminants at the Pantex Plant Site which are the subject of the activities being performed by DOE under Article 8 (Work to be Performed). Notwithstanding anything in this Agreement, EPA and TCEQ may initiate any administrative, legal or equitable remedies available to them, including requiring additional response actions by the DOE, in the event that: (a) information about or conditions at the Site previously unknown or undetected by EPA or TCEQ arise or are discovered, and EPA or TCEQ determines that these previously unknown conditions or information, together with any other relevant information, indicate that the response actions implemented at the Site are not protective of human health or the environment; or (b) the implementation of the requirements of this Agreement is no longer protective of human health and the environment; or (c) EPA or TCEQ discovers the presence of conditions on the Site which may constitute an imminent and substantial endangerment to the public health, welfare, or the environment and which are not the subject of the activities being performed by DOE under Article 8 (Work to be Performed); or (d) the DOE fails to meet any of its obligations under this Agreement, as determined by the final resolution of a dispute under Article 11 (Resolution of Disputes); or (e) the DOE fails or refuses to comply with any applicable requirement of CERCLA or the Solid Waste Disposal Act, 42 U.S.C. §§ 6901, *et seq.*, or State laws or related regulations.

33.2 The Parties agree to exhaust their rights under Article 11 (Resolution of Disputes) prior to exercising any rights to judicial review that they may have.

33.3 In the event of any action by EPA or TCEQ under Paragraph 33.1, DOE reserves all rights and defenses available under law.

34. NOTIFICATION

34.1 Each Party shall transmit primary and secondary documents, and all notices required herein by certified mail, return receipt requested; next day mail; hand delivery; or within twenty-four (24) hours by any other method of sending notice which provides proof of delivery. Any relevant time limitations for the sending Party shall be met upon dispatch of the document or notice in accordance with this Article. Any relevant time limitations for the receiving Party shall commence upon receipt of the document or notice by the receiving Party.

34.2 Notice to the individual Parties shall be provided to the following addresses:

For DOE: Pantex Plant Federal Project Director
U.S. Department of Energy
Pantex Site Office
P.O. Box 30030
Amarillo, Texas 79120-0030

For TCEQ: Pantex Plant Project Manager
Texas Commission on Environmental Quality
Remediation Division
P.O. Box 13087
Austin, Texas 78711-3087

For EPA: Pantex Plant Remedial Project Manager (6SF-RA)
U.S. Environmental Protection Agency
Superfund Division
1445 Ross Avenue
Dallas, Texas 75202-2733

Any Party may change its address by providing written notice to the other Parties.

35. PUBLIC COMMENT ON THIS AGREEMENT/EFFECTIVE DATE

35.1 Consistent with CERCLA Section 120(e)(5), within forty-five (45) days after the Parties approve this Interagency Agreement, DOE shall provide the public with notice of the availability of this Agreement for review and comment, including publication of the notice in at least two (2) major local newspapers of general circulation. Such public notices shall include information advising the public as to the availability and location of the administrative record. DOE shall accept comments from the public for thirty (30) days after such announcement. Within seven (7) days of completion of the public comment period, DOE shall transmit copies of all comments received within the comment period to the other Parties. Within fifteen (15) days after the transmittal, the Parties shall review the comments and shall decide either that the Agreement shall be made effective without any modifications or that the Agreement shall be modified prior to being made effective.

35.2 If the Parties agree that the Agreement shall be made effective without any modifications, EPA shall transmit a copy of the signed Agreement to the other Parties and shall notify the other Parties in writing that the Agreement is effective. The Effective Date of the Agreement shall be the date of notification from EPA.

35.3 If the Parties agree that modifications are needed and agree upon the modifications and modify the Agreement by mutual consent within thirty (30) days after the expiration of the public comment period, EPA, in consultation with DOE and TCEQ, will determine whether the modified Agreement requires additional public notice and comment pursuant to any provision of CERCLA. If EPA determines that no additional notice and comment is required, EPA shall transmit a copy of the modified Agreement to DOE and TCEQ and shall notify them in writing that the modified Agreement is effective on the date of notification. If the Parties amend the Agreement within thirty (30) days and EPA determines that additional public notice and comment is required, such additional notice and comment shall be provided consistent with the provisions stated in Paragraph 35.1 above. If the Parties agree, after such additional notice and comment has been provided, that the modified Agreement does not require any further modification, EPA shall send a copy of the mutually agreed upon modified Agreement to DOE and TCEQ and shall notify them that the modified Agreement is effective. In either case, the Effective Date of the modified Agreement shall be the date of notification from EPA.

35.4 In the event that the Parties cannot agree on the modifications within fifteen (15) days after DOE's transmittal of the public comments, the Parties agree to have at least one conference or meeting during that fifteen (15) day period to attempt to reach agreement.

35.5 If, after expiration of the times provided in Paragraph 35.4, the Parties have not reached agreement on whether modifications to the Agreement are needed; what modifications to the Agreement should be made; any language, any provisions, any Deadlines, any Work to be performed, any content of the Agreement or any Appendices or Attachments to the Agreement; or whether additional public notice and comments are required, then the matters which are in dispute shall be resolved upon EPA's final determination. EPA shall send a copy of the final Agreement to each Party and shall notify each Party that the Agreement is effective. The Effective Date of the Agreement shall be the date of such notice from EPA.

35.6 At the start of the public comment period, DOE will transmit copies of this Agreement to the appropriate federal and State Natural Resource Trustees for review and comment within the time limits set forth in this Article.

35.7 Existing records in the administrative record such as reports, plans, and schedules, shall be made available by DOE for public review during the public comment period.

IT IS SO AGREED

Each undersigned representative of all Parties certify that he or she is fully authorized to enter into this Agreement and to legally bind such Party to this Agreement.

FOR THE UNITED STATES DEPARTMENT OF ENERGY

Daniel E. Glenn

Daniel E. Glenn, Manager
Pantex Site Office
U.S. Department of Energy
National Nuclear Security Administration

11/2/07
Date

FOR THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Glenn Shankle
Executive Director
Texas Commission on Environmental Quality

November 2, 2007
Date

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Richard E. Greene
Regional Administrator
U.S. Environmental Protection Agency Region 6

12-10-07
Date

APPENDIX 1

- MAP OF THE SITE

APPENDIX 2

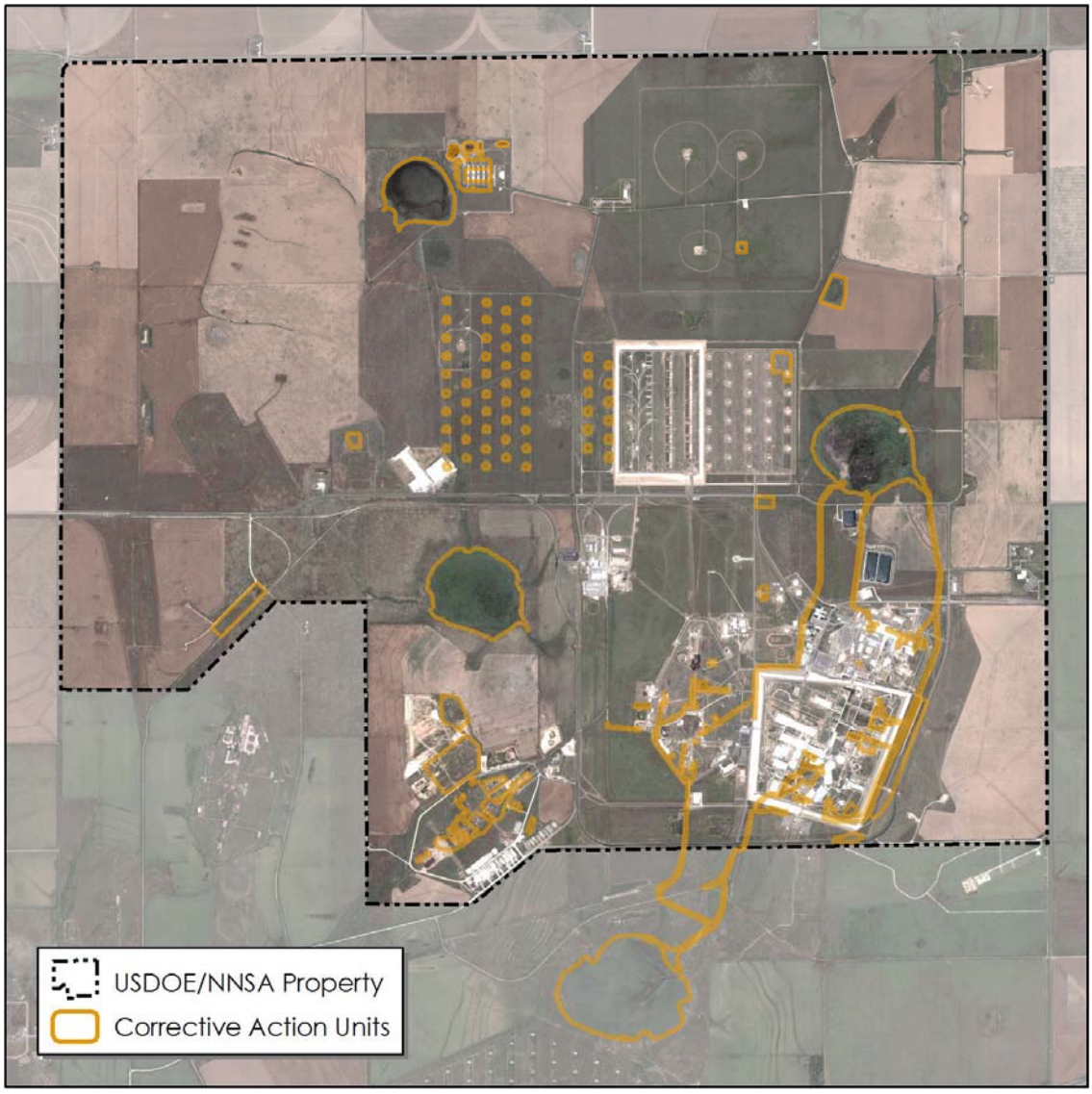
-LIST OF RCRA/CERCLA INVESTIGATIVE WORK REPORTS

APPENDIX 3

- SITE MANAGEMENT PLAN SCHEDULE

(reserved)

Appendix 1: Department of Energy Pantex Plant Site Aerial View and Highlighted Areas of Environmental Investigation



Appendix 2: Remedial Documents Supporting the Record of Decision

BWXT Pantex, 2007. *Firing Site 5 Human Health Risk Assessment for the U.S. Department of Energy/National Nuclear Security Administration, Pantex Plant, Amarillo, Texas*, BWXT Pantex, L.L.C., Texas, May 2007.

BWXT Pantex, 2007. *Corrective Measures Study/Feasibility Study (CMS/FS) Modeling Report for the U.S. Department of Energy/National Nuclear Security Administration, Pantex Plant, Amarillo, Texas*, BWXT Pantex, L.L.C., Texas, April 2007.

BWXT Pantex, 2006. *Corrective Measures Study/Feasibility Study (CMS/FS) for the U.S. Department of Energy/National Nuclear Security Administration, Pantex Plant, Amarillo, Texas*, BWXT Pantex, L.L.C., Texas, June 2006 (Revision: September 2007).

BWXT Pantex/SAIC, 2006. *Baseline Human Health Risk Assessment Report for Zones 10, 11, and 12, Fire Training Area, Ditches and Playas, Independent Sites, and Groundwater for the U. S. Department of Energy/National Nuclear Security Administration, Pantex Plant, Amarillo, Texas*, BWXT Pantex L.L.C., Texas, March 2006 (Revision: December 2006).

BWXT Pantex, 2005b. *Nuclear Weapon Accident Residue Storage Unit Human Health Risk Assessment for the U.S. Department of Energy/National Nuclear Security Administration, Pantex Plant, Amarillo, Texas*, BWXT Pantex, L.L.C., Texas, August 2005 (Revision: August 2006).

BWXT Pantex, 2005a. *Burning Ground Human Health Risk Assessment for the U.S. Department of Energy/National Nuclear Security Administration, Pantex Plant, Amarillo, Texas*, BWXT Pantex, L.L.C., Texas, April 2005.

BWXT Pantex/SAIC, 2005. *Site-Wide Ecological Risk Assessment (ERA) Report for the U.S. Department of Energy/National Nuclear Security Administration, Pantex Plant, Amarillo, Texas*, BWXT Pantex, L.L.C., Texas, and Science Applications International Corporation, Ohio, February 2005.

BWXT Pantex/SAIC 2004. *Subsurface Modeling Report for the U. S. Department of Energy/National Nuclear Security Administration, Pantex Plant, Amarillo, Texas*, BWXT Pantex, L.L.C., Texas, September 2004.

Stoller, 2004b. *Pantex Plant Final RCRA Facility Investigation Report, Groundwater, USDOE Pantex Plant,* S.M. Stoller Corporation, Colorado, March 2004.

BWXT Pantex, 2004a. *Final Pantex Plant Radiological Investigation Report for the U. S. Department of Energy/National Nuclear Security Administration, Pantex Plant, Amarillo, Texas,* BWXT Pantex, L.L.C., Texas, January 2004.

Stoller, 2004a. *Final RCRA Facility Investigation Report for Independent Sites at USDOE Pantex Plant,* S.M. Stoller Corporation, Colorado, January 2004.

Stoller, 2003d. *Final RCRA Facility Investigation Report, Zone 12 at DOE Pantex Plant,* S.M. Stoller Corporation, Colorado, September 2003.

Stoller, 2003a. *Final RCRA Facility Investigation Report, Ditches and Playas at USDOE Pantex Plant,* S.M. Stoller Corporation, Colorado, September 2003.

(Appendix 2, continued)

Stoller, 2003b. *Final RCRA Facility Investigation Report, Zone 10 at DOE Pantex Plant,* S.M. Stoller Corporation, Colorado, March 2003.

Stoller, 2003c. *Final RCRA Facility Investigation Report for Zone 11 at DOE Pantex Plant,* S.M. Stoller Corporation, Colorado, January 2003.

Stoller, 2002a. *Burning Grounds Waste Management Group, Final RCRA Facility Investigation Report,* S.M. Stoller Corporation, Colorado, March 2002.

Stoller, 2002b. *Final RCRA Facility Investigation Report for the Fire Training Area,* S.M. Stoller Corporation, Colorado, March 2002.