

# **LONGHORN ARMY AMMUNITION PLANT**

**KARNACK, TEXAS**

## **ADMINISTRATIVE RECORD**

**VOLUME 1 of 1**

**1991**

**Bate Stamp Numbers  
004328 - 004405**

*Prepared for:*

**Department of the Army  
Longhorn Army Ammunition Plant  
Marshall, Texas 75671-1059**

**1995**

**LONGHORN ARMY AMMUNITION PLANT  
KARNACK, TEXAS  
ADMINISTRATIVE RECORD - CHRONOLOGICAL INDEX**

**VOLUME 1 of 1**

**1991**

- A.    **Title:**        Letter - Subject: LHAAP National Priority List (NPL) Superfund Site  
                  Notice of Negotiation Period for Federal Facility Agreement (FFA)  
      **Group(s):**   All  
      **Site(s):**     General  
      **Location:**  Marshall, Texas  
      **Agency:**   U.S. Environmental Protection Agency  
      **Author(s):**  Allyn M. Davis, Director, Hazardous Waste Management Division  
      **Recipient:**  Lieutenant Colonel Jeffery Russell  
      **Date:**        January 2, 1991  
      **Bate Stamp:** 004328
- B.    **Title:**        Letter - Subject: Confirmation of Willingness to Negotiate Federal Facility Agreement  
                  (FFA)  
      **Group(s):**   All  
      **Site(s):**     General  
      **Location:**  Dallas, Texas  
      **Agency:**   U.S. Navy  
      **Author(s):**  Jeffrey W. Russell, Lieutenant Colonel, U.S. Navy  
      **Recipient:**  Renee Holmes, U.S. Environmental Protection Agency  
      **Date:**        January 16, 1991  
      **Bate Stamp:** 004329 - 004330
- C.    **Title:**        Newspaper Article - Pentagon lists 938 toxic sites across Texas  
      **Group(s):**   All  
      **Site(s):**     General  
      **Location:**  Longhorn Army Ammunition Plant, Marshall, Texas  
      **Company:**   The Dallas Morning News  
      **Author(s):**  Associated Press  
      **Recipient:**  U.S. Public  
      **Date:**        April 3, 1991  
      **Bate Stamp:** 004331
- D.    **Title:**        Final Agreement - Federal Facility Agreement Under CERCLA Section 120, U.S.  
                  Department Of The Army, Longhorn Army Ammunition Plant, Marshall, Texas  
      **Group(s):**   All  
      **Site(s):**     General  
      **Location:**  Washington D.C.  
      **Agency:**   Environmental Protection Agency, Region 6 And The Department Of The Army  
      **Author(s):**  U.S. Army  
      **Recipient:**  U.S. Government  
      **Date:**        September, 1991

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July 12, 1995

**LONGHORN ARMY AMMUNITION PLANT  
KARNACK, TEXAS  
ADMINISTRATIVE RECORD - CHRONOLOGICAL INDEX**

**VOLUME 1 of 1 (Continued)**

**1991**

**Bate Stamp: 004332 - 004400**

- E. Title: Public Notice - Proof Of Publication From Marshall News Messenger Titled Public Notice Of Longhorn Army Ammunition Plant Interagency Agreement**  
**Group(s): Early Interim Action At Burning Ground No. 3**  
**Site(s): Longhorn Army Ammunition Plant**  
**Location: Longhorn Army Ammunition Plant, Marshall, Texas**  
**Agency: U.S. Army and Texas Water Commission**  
**Author(s): U.S. Army and Texas Water Commission**  
**Recipient: U.S. Public**  
**Date: October 23, 1991**  
**Bate Stamp: 004401**
- F. Title: Letter - LHAAP Proof of Publication -IAG**  
**Attach(s): Proof of Publication from Marshall News Messenger, Marshall, Texas**  
**Group(s): All**  
**Site(s): General**  
**Location: Longhorn Army Ammunition Plant, Marshall, Texas**  
**Agency: Department of the Army**  
**Author(s): Michael K. Cobb, Sr., Contract Operations Officer**  
**Recipient: U.S. Public**  
**Date: November 6, 1991**  
**Bate Stamp: 004402**
- G. Title: Letter - Subject: Public Announcement of Federal Facility Agreement for LHAAP - No Comments Were Received**  
**Group(s): All**  
**Site(s): General**  
**Location: Longhorn Army Ammunition Plant, Marshall, Texas**  
**Agency: Department of the Army, LHAAP**  
**Author(s): Lt. Colonel Robert W. Bringman, Commanding Officer, LHAAP**  
**Recipient: Lisa Marie Price, USEPA**  
**Date: December 16, 1991**  
**Bate Stamp: 004403**
- H. Title: Letter - Subject: Notice Of Effective Date Of Federal Agreement**  
**Group(s): All**  
**Site(s): General**  
**Location: Longhorn Army Ammunition Plant, Marshall, Texas**  
**Agency: U.S. Environmental Protection Agency**  
**Author(s): Robert E. Layton Jr. P.E., Regional Director**

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**July 12, 1995**

**LONGHORN ARMY AMMUNITION PLANT  
KARNACK, TEXAS  
ADMINISTRATIVE RECORD - CHRONOLOGICAL INDEX**

**VOLUME 1 of 1 (Continued)**

**1991**

**Recipient: Lt. Colonel Robert W. Bringman, Commanding Officer, LHAAP  
Date: December 18, 1991  
Bate Stamp: 004404 - 004405**

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**July 12, 1995**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY 004328

REGION 6

1445 ROSS AVENUE, SUITE 1200

DALLAS, TEXAS 75202-2733

JAN 2 1991

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Lieutenant Colonel Jeffery Russell  
Longhorn Army Ammunition Plant  
Marshall, Texas 75671-1059

Re: Longhorn Army Ammunition Plant  
National Priority List Superfund Site

Dear Colonel Russell:

The United States Environmental Protection Agency (EPA) has identified releases or threatened releases of hazardous substances, pollutants or contaminants at the Longhorn Army Ammunition Plant site. This site is a Federal Facility which is owned by the Department of the Army (DOA). Therefore, pursuant to Section 120 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. Section 9620 as amended, DOA is ultimately responsible for addressing releases or threatened releases of hazardous substances, pollutants or contaminants at or from the site.

EPA is prepared to negotiate a Federal Facility Agreement (FFA) to formalize how DOA will investigate and control the release or threatened releases of hazardous substances, pollutants or contaminants at or from the site. While the DOA is responsible for addressing the releases or threatened releases pursuant to CERCLA, EPA intends to oversee the Remedial Investigation and Feasibility Study (RI/FS) phases, as part of the CERCLA remedy selection process, and the Remedial Design and Remedial Action phases of the response action at the site. The enclosed draft FFA has been developed under Section 120 of CERCLA and upon execution will commit DOA to conduct the RI/FS and any remedial action needed at the site, as determined by the RI/FS, in accordance with CERCLA, as amended, the National Oil and Hazardous Substances and Pollution Contingency Plan (NCP), 40 CFR Part 300, and the appropriate EPA Guidance.

004329

JAN 16 1991

SMCLO-EN (200-1a)

SUBJECT: Federal Facility Agreement Confirmation

Renee Holmes (6C-WT)  
U.S. Environmental Protection Agency  
Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733

Dear Ms. Holmes:

This is to confirm that the United States Army is prepared to negotiate a Federal Facility Agreement. I plan to attend the meetings with EPA scheduled for February 4-5 1991, at EPA Region 6 offices in Dallas, Texas.

Point of contact for DOA:

Joseph Kang  
AMSMC-GCS  
Headquarters  
U.S. Army Armament  
Munitions and Chemical Command  
Rock Island, Illinois 61299-6000  
(309) 782-4051

Sincerely,

Jeffrey W. Russell  
Lieutenant Colonel, U.S. Army  
Commanding Officer

[FF] in consultation with EPA and the State. The provisions of this Section shall be carried out in a manner consistent with, and shall fulfill the intent of, Section 17 (Statutory Compliance-RCRA/CERCLA Integration).

B. The [FF] shall, based on community interviews, develop and implement a Community Relations Plan (CRP) addressing community concerns and involvement in environmental activities and elements of work undertaken by the [FF] pursuant to this Agreement. Implementation of the Community Relations Plan shall be done in consultation with EPA and is subject to review and approval by EPA. All informational materials produced by the [FF] in the implementation of the CRP are subject to review and comment by EPA and the State, where applicable.

C. The [FF] shall notify the community when disputes between the [FF], EPA and/or the State are taken to the SEC level for resolution. The [FF] shall also notify the public of the resolutions of such disputes.

D. The [FF] shall establish and maintain an administrative record at a place, at or near the federal facility, which is freely accessible to the public. The administrative record shall be established and maintained in accordance with relevant provisions in CERCLA/SARA, the NCP, and EPA policy and guidance. A copy of each document placed in the administrative record, not already provided, will be provided by the [FF] to the other Parties. The administrative record developed by the [FF] shall be updated and new documents supplied to the other Parties on at least a quarterly basis. An index of documents in the administrative record shall accompany each update of the administrative record. Public access to the administrative record shall not be contingent upon federal facility staff availability or limited access to the federal facility.

E. Except in case of an emergency, any Party issuing a press release with reference to any of the work required by this Agreement shall advise the other Parties of such press release at least two working days prior to issuance. Other documents prepared by the [FF] pursuant to the Community Relations Plan (and which are not primary or secondary documents pursuant to this Agreement), or documents prepared by the State for community involvement purposes related to the site, will be submitted by the [FF] and the State to the other Parties for review and comment at least seven working days prior to finalization and release.

Dallas Morning News  
April 3, 1991

# Pentagon lists 938 toxic sites across Texas

00433.

1/2/91 Dallas Morning News

Associated Press

WASHINGTON — Hundreds of military installations across Texas are contaminated with toxic wastes and scheduled for cleanup, said a Pentagon report that found tainted drinking water supplies at one of the most polluted locations near Fort Worth.

The Defense Department report said 938 sites at 104 installations in Texas were believed to be contaminated as of the end of September, an increase from 658 sites at 76 installations as of Sept. 30, 1989.

The pollution is the result of testing, maintaining and manufacturing military equipment and ammunition at installations across Texas, the report said.

The Pentagon's report for fiscal 1990 said no further action was needed at 411 of the 938 sites in Texas because either the pollution hazards had been removed or further studies showed no threat to human health or the environment.

Three installations, however, are on the Environmental Protection Agency's national priorities list of the most heavily polluted locations — Air Force Plant No. 4 operated by General Dynamics in Fort Worth; the Lone Star Army Ammunition Plant in Texarkana; and the Longhorn Army Ammunition Plant in Karnack.

The report said toxic contamination of the soil, surface and groundwater has been confirmed at Air Force Plant No. 4, which sits atop an aquifer that provides drinking water to about 13,000 people in White Settlement, a suburb of Fort Worth.

Wells for the city are sampled quarterly by the EPA and a groundwater treatment system will be installed in 1991 to extract contamination that resulted from two spills, the report said.

Funding for the cleanup efforts totaled \$12.63 million at the end of September.

In Texarkana, the report said studies have found heavy metal contamination in ground and surface waters and surface soils at the Lone Star ammunition plant. Surveys concluded that no contamination was seeping away from the plant premises.



004332



DEPARTMENT OF THE ARMY  
HEADQUARTERS, U.S. ARMY ARMAMENT, MUNITIONS AND CHEMICAL COMMAND  
ROCK ISLAND, ILLINOIS 61299-6000



REPLY TO  
ATTENTION OF

AMSMC-GCS (R) (27-1a)

11 September 1991

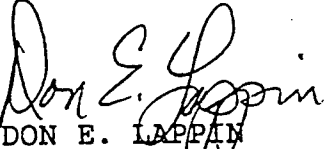
MEMORANDUM FOR Commander, Longhorn Army Ammunition Plant, ATTN:  
SMCLO-EM, Marshall, TX 75671-2462

SUBJECT: Final CERCLA 120 Agreement for Longhorn Army Ammunition Plant

1. Forwarded herewith is the Final CERCLA Section 120 Agreement which has been executed by Deputy Assistant Secretary Walker. Please proceed, as soon as possible, in obtaining the signatures of the remaining parties. Please note that the signature block for the Commander must be corrected.
2. After all parties have executed this Agreement, please return a completed copy to this office.
3. The points of contact are Fiper Fuhr and Joe Kang, AMSMC-GCS (R), DSN 793-4051.

FOR THE COMMANDER:

Encl

  
DON E. LAPPIN  
Chief, General Law/  
Congressional Affairs Division

0000001

004333

0000002

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
AND THE  
UNITED STATES DEPARTMENT OF THE ARMY  
AND THE  
STATE OF TEXAS

IN THE MATTER OF:

The U.S. Department  
of the Army

LONGHORN ARMY AMMUNITION PLANT

*Sept 11, 1991*

FEDERAL FACILITY AGREEMENT UNDER CERCLA SECTION 120

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
AND THE  
UNITED STATES DEPARTMENT OF THE ARMY  
AND THE  
STATE OF TEXAS

IN THE MATTER OF:	)	FEDERAL FACILITY AGREEMENT
	)	
The U.S. Department of the Army	)	PURSUANT TO CERCLA §120
	)	
LONGHORN ARMY AMMUNITION PLANT	)	ADMINISTRATIVE DOCKET
	)	NUMBER: CERCLA VI-
	)	

Based on the information available to the United States Environmental Protection Agency (EPA), the United States Department of the Army (the Army) and the State of Texas (by the Texas Water Commission [TWC]) (the Parties) on the effective date of this Federal Facility Agreement (Agreement), and without trial or adjudication of any issues of fact or law, the Parties agree as follows:

I. DETERMINATIONS

These Determinations are not admissions by any Party and they are not legally binding on any Party as to claims which are unrelated to this Agreement or claims of any persons not a party to this Agreement.

The Parties have determined that:

A. The Longhorn Army Ammunition Plant constitutes a "facility" as that term is defined in Section 101(9) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §9601 (9).

B. The Longhorn Army Ammunition Plant constitutes a "federal facility" within the meaning of CERCLA Section 120, 42 U.S.C. §9620 and is subject to the rules and regulations specified therein.

C. The Army constitutes a "person" as that term is defined in CERCLA Section 101(21), 42 U.S.C. §9601(21).

D. The Army is an "owner or operator" as that term is defined in CERCLA Section 101 (20), 42 U.S.C. §9601 (20), and the Army "owns or operates" the Longhorn Army Ammunition Plant within the meaning of CERCLA Section 107 (a)(2), 42 U.S.C. §9607 (a)(2).

E. The presence of "hazardous substances" as that term is defined in CERCLA Section 101 (14), 42 U.S.C. §9601 (14), in the groundwater at the Longhorn Army Ammunition Plant constitutes a "release" as that term is defined in CERCLA Section 101 (22), 42 U.S.C. §9601 (22).

F. The actions to be taken pursuant to this Agreement are reasonable and necessary to protect the public health, welfare and the environment.

## II. SCOPE OF AGREEMENT

A. This Agreement is intended to cover the investigation, development, selection, and implementation of response actions for all releases or threatened releases of hazardous substances, contaminants, hazardous wastes, hazardous constituents, or pollutants from the Longhorn Army Ammunition Plant. This Agreement covers all phases of remediation for these releases, bringing together into one agreement the requirements for remediation as

well as the process to be used to determine and accomplish remediation, ensuring the necessary and proper level of participation by each Party. To accommodate remediation of any undiscovered releases, the Parties will establish timetables and deadlines as necessary and as information becomes available and, if required, amend this Agreement as needed.

B. This Agreement is intended to address the corrective action obligations, that are required under The Resource Conservation and Recovery Act (RCRA), 42 U.S.C §§6901, et. seq., which relate to the release(s) of hazardous wastes, from the Longhorn Army Ammunition Plant. This Agreement is not intended to limit any requirements under RCRA or any other law or regulation pertaining to obtaining permits or performing corrective action for hazardous or solid waste management units not specifically addressed by this Agreement. This Agreement is not intended to encompass response to spills of hazardous substances from on-going operations unless those spills occur in conjunction with CERCLA response actions conducted pursuant to this Agreement.

C. The EPA and the State agree to provide the Army with guidance and to timely respond to requests for guidance in order to assist the Army in the performance of the requirements under this Agreement.

### III. PARTIES BOUND

A. This Agreement shall apply to and be binding upon the Army, all subsequent owners and operators of the Longhorn Army

Ammunition Plant, the EPA, the TWC, their successors and assigns.

Each Party will notify the other Parties of the identity of contractors performing work pursuant to this Agreement. Each Party shall provide copies of this Agreement to its contractors who are performing any work pursuant to this Agreement. The Army shall notify EPA and TWC of the identity and assigned tasks of the contractors and subcontractors performing work under this Agreement in advance of their involvement in such work. The Army shall require compliance with this Agreement in any contracts that it executes pertaining to work to be performed under this Agreement.

B. The Parties are each bound by the actions of their respective employees, officers, agents, and authorized representatives, and in the case of the Army, its contractors and its subcontractors, when any of those are acting within the scope of their official duties or authority, as the case may be.

C. This section shall not be construed as an agreement to indemnify any person.

#### IV. PURPOSE

A. The general purposes of this Agreement are to:

1. Ensure that the environmental impacts associated with past and present activities at the Longhorn Army Ammunition Plant are thoroughly investigated and appropriate remedial action taken as necessary to protect the public health, welfare and the environment;



2. Establish a procedural framework and schedule for developing, implementing and monitoring appropriate response actions at the Longhorn Army Ammunition Plant in accordance with CERCLA, as amended, 42 U.S.C. §§9601, et. seq.; the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300; CERCLA guidance and policy, RCRA, as amended, 42 U.S.C. §§6901, et. seq.; EPA guidance and policy; and applicable State law; and,

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

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

1. Identify the response action alternatives for the Operable Units (OUs), which are appropriate at Longhorn Army Ammunition Plant ("LHAAP" or "the Site"), prior to the implementation of final remedial action(s) for the Site. Response action alternatives for OUs shall be identified and proposed by the Army to the other Parties as early as possible prior to the formal proposal of OUs pursuant to CERCLA, and applicable State law. This process is designed to promote cooperation among the Parties in identifying response action alternatives for each OU prior to selection of final response action(s).

2. Establish requirements for the performance of a Remedial Investigation (RI) to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at the Site; and

to establish requirements for the performance of a Feasibility Study (FS) for the Site in order to identify, evaluate, and select alternatives for the appropriate remedial action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants or contaminants at the Site, in accordance with CERCLA and applicable State law.

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

4. Implement the selected OU and final remedial action(s) in accordance with CERCLA and applicable State law and meet the requirements of CERCLA §120(e)(2), 42 U.S.C. §9620(e)(2), for an interagency agreement among the Parties.

5. Ensure compliance, through this Agreement, with RCRA and other applicable federal and state laws and regulations for matters covered herein.

6. Coordinate response actions at the Site with the mission and support activities at Longhorn Army Ammunition Plant.

7. Expedite the cleanup process to the extent that it is consistent with protection of human health and the environment.

8. Provide State involvement in the initiation, development, selection and enforcement of remedial actions to be undertaken at Longhorn Army Ammunition Plant, including the review of all applicable data as it becomes available and the development

of studies, reports, and action plans; and to identify and integrate State ARARs into the remedial action process.

9. Provide for operation and maintenance of any remedial action selected and implemented pursuant to this Agreement.

#### V. JURISDICTION

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

A. The U.S. Environmental Protection Agency, Region 6 (EPA) enters into those portions of this Agreement that relate to the remedial investigation/feasibility study (RI/FS) pursuant to Section 120(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499 (hereinafter jointly referred to as CERCLA), 42 U.S.C. §9620(e) (1), and Sections 6001, 3008(h) and 3004(u) and (v) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§6961, 6928(h) and 6924 (u) and (v), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), (hereinafter jointly referred to as RCRA) and Executive Order (E.O.) 12580;

B. EPA enters into those portions of this Agreement that relate to operable units and final remedial actions pursuant to CERCLA §120(e)(2), 42 U.S.C. §9620(e)(2), RCRA §§6001, 3008(h) and 3004(u) & (v), 42 U.S.C. §§6961, 6928(h), 6924(u) & (v) and E.O. 12580;

C. The Army enters into those portions of this Agreement that relate to the RI/FS pursuant to CERCLA §120(e)(1), 42 U.S.C. §9620 (e)(1), RCRA §§6001, 3008(h) and 3004(u) & (v), 42 U.S.C. §§6961, 6928(h), 6924(u) & (v), the National Environmental Policy Act, 42 U.S.C. §4321, and the Defense Environmental Restoration Program (DERP), 10 U.S.C. §2701, et seq.;

D. The Army enters into those portions of this Agreement that relate to operable units and final remedial actions pursuant to CERCLA §120(e)(2), 42 U.S.C. §9620(e)(2), RCRA §§6001, 3004(u) and (v) & 3008(h), 42 U.S.C. §§6961, 6928(h), 6924(u) & (v), E.O. 12580 and the DERP, 10 U.S.C. §§2701, et seq.; and

E. The State of Texas, represented by the Texas Water Commission (TWC), enters into this Agreement pursuant to CERCLA §§120(f) and 121(f), 42 U.S.C. §§ 9620(f) and 9621(f), RCRA §3006, 42 U.S.C. § 6926, and the Texas Solid Waste Disposal Act, Chapter 361, Texas Health Safety Code Ann. Subchapter M, (Vernon Supp 1990). The TWC was designated the lead State agency on CERCLA matters for the State of Texas by Governor Clements by letter dated February 8, 1982 to Dick Whittington, Regional Administrator, U.S. Environmental Protection Agency, Region 6.

## VI. DEFINITIONS AND ACRONYMS

### A. Definitions:

The terms used in this Agreement shall have the same definitions as in CERCLA §101, 42 U.S.C. §9601, RCRA §1004, 42 U.S.C. §6903, 40 C.F.R. Parts 260-302, and Section 361.003 of the

Texas Health and Safety Code (Vernon Supp. 1990). If there is a conflict among the statutory definitions, the definition in CERCLA shall control. Additionally, the following terms used in this Agreement are defined as follows:

1. "Administrative record" shall mean all documents which comprise the basis for the selection of the proposed remedial action(s) pursuant to CERCLA Section 113(k), 42 U.S.C. §9613(k), and the NCP.

2. "Administrator" shall mean the Administrator of the United States Environmental Protection Agency.

3. "Army" shall mean the United States Department of the Army, including its authorized representatives, agents, successors in interest and assigns.

4. "Authorized representative" shall mean a person designated to act on behalf of a Party to this Agreement for a specific purpose, including, if so designated, contractors retained by EPA or TWC to perform work at or relating to the Longhorn Army Ammunition Plant. No contractor shall be considered an authorized representative of the Army.

5. "Community Relations Plan" shall mean a plan prepared by Longhorn Army Ammunition Plant which shall be based on community interviews, and other relevant information, specifying the interactive community relations activities that Longhorn Army Ammunition Plant intends undertaking during response actions.

6. "Construction quality assurance plan" shall mean the plan which describes the quality assurance/quality control procedures

for all remedial activities and establishes the procedures that ensure the completed remedial action satisfies all remedial design criteria, plans and specifications.

7. "Days" shall mean calendar days, unless otherwise noted.

8. "Deadline" shall be the time limitation applicable to a discrete portion of the RI/FS and RD/RA specifically established under the terms of this Agreement. If a deadline falls on Saturday, Sunday or a federal holiday, the due date shall be the next day which is not a Saturday, Sunday or a federal holiday.

9. "Document(s)" shall mean any records, reports, correspondence, or retrievable information of any kind relating to the treatment, storage, disposal, investigation, analysis, and remediation of hazardous substances, contaminants, pollutants, or hazardous constituents at or migrating from the Facility. Such terms shall be construed broadly to reflect a clear preference to share and disclose information concerning this Agreement among all Parties hereto.

10. "EPA" shall mean the United States Environmental Protection Agency, its employees and authorized representatives.

11. "Facility" shall mean the property and fixtures known as the Longhorn Army Ammunition Plant.

12. "Federal Facility Agreement" or "Agreement" shall mean this document and shall include all attachments and amendments hereto, said attachments and amendments being incorporated herein as if fully set out.

13. "LHAAP" shall mean the Longhorn Army Ammunition Plant located in Karnack, Harrison County, Texas.

14. "Operable Unit" shall mean a discrete action that comprises an incremental step toward comprehensively addressing site problems. This discrete portion of a remedial response manages migration, or eliminates or mitigates a release, threat of a release, or pathway of exposure.

15. "Parties" shall mean the Army, EPA, and the State of Texas.

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

17. "Responsiveness Summary" shall mean the summary of oral and/or written public comments received during comment period(s) on key remedial documents, and the responses to such public comments.

18. "Schedule" shall mean the time limitations established for the completion of remedial action(s) at the Site.

19. "Site" shall mean LHAAP and all contiguous property affected by the migration of hazardous substances, pollutants, contaminants or hazardous constituents which may have been released from LHAAP.

20. "State" shall mean the State of Texas.

21. "TWC" shall mean the Texas Water Commission, its successor in interest and assigns.

22. "Timetable" shall be the collective term for all the "deadlines" established for the RI/FS and RD/RA.

B. Acronyms:

The acronyms used in this Agreement are as follows:

1. "ARAR" means a legally applicable, or relevant and appropriate requirement as that term is used in CERCLA §121(d)(2), 42 U.S.C. §9621(d)(2).

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

3. "DERP" - Defense Environmental Restoration Program, 10 U.S.C. §§2701, et seq.

4. "DRC" = Dispute Resolution Committee.

5. "NCP"

6. "OU" = Operable Unit

7. "RCRA" = Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§9601, et seq.

8. "RD/RA" = Remedial Design/Remedial Action.

9. "RI/FS" = Remedial Investigation/Feasibility Study.

10. "ROD" = Record of Decision.

11. "SEC" = Senior Executive Committee.

12. "TRC" = Technical Review Committee.

VII. FINDINGS OF FACT

For the purposes of this Agreement, the following summary presents facts upon which this Agreement is based. None of the



facts related herein shall be considered admissions by any Party, and they are not legally binding on any party as to claims which are unrelated to this Agreement or claims of any person not a party to this Agreement.

A. The Longhorn Army Ammunition Plant (LHAAP) located in Karnack, Harrison County, Texas is owned by the United States Department of the Army.

B. LHAAP was proposed for inclusion on the National Priorities List (NPL) on July 14, 1989, 54 Fed. Reg. 29824. LHAAP became final on the NPL on August 30, 1990, 55 Fed. Reg. 35509.

C. LHAAP is an 8,493-acre tract of land located between the southwest shore of Caddo Lake and the town of Karnack, Harrison County, Texas.

D. The following areas located at LHAAP have been identified as having threatened releases of hazardous substances or pollutants or contaminants:

Unit No.	
11	Suspected TNT Burial Site at Ave.s P&Q
13	Suspected TNT Burial Site between Old and Active Landfills/Acid Dump
14	Area 54 Burial Ground
16	Old Landfill
17	Burning Ground No. 2/Flashing Area (BG2)
18	Burning Ground No. 3
24	Unlined Evaporation Pond/Rocket Motor Washout Lagoon (BG3)
29	Former TNT Production Area
12	Active Landfill
32	Former TNT Waste Disposal Plant
1	Inert Burning Grounds
	Ground Signal Test Area
27	South Test Area

E. The following hazardous substances, pollutants, or contaminants have been identified as being released or potentially released from the areas identified in paragraph D, above:

- 1,3 dinitrobenzene
- 1,3,5 trinitrobenzene
- arsenic
- barium
- chromium
- lead
- methylene chloride
- 2,4,6 trinitrotoluene
- nitrobenzene
- 2,4 dinitrobenzene
- 2,6 dinitrotoluene
- zinc
- 1,1,1 trichloroethylene

These are hazardous substances as that term is defined in CERCLA; 40 CFR Part 302.4; pollutants as defined in 40 CFR Part 401.15 and/or 40 CFR Part 261.33; or pollutants or contaminants, as those terms are defined in CERCLA.

#### VIII. CONSULTATION WITH EPA AND TWC

##### A. Review and Comment Process for Draft and Final Documents

1. Applicability: The provisions of this Section establish the procedures that shall be used by the Army, EPA and TWC, to provide the Parties with appropriate notice, review, comment, and response to comments regarding RI/FS and RD/RA documents, specified herein as either primary or secondary documents. In accordance with CERCLA §120, 42 U.S.C. §9620, and DERP 10 U.S.C. §2705, the Army will normally be responsible for issuing primary and secondary documents to EPA and TWC. As of the effective date of this Agreement, all draft and final reports for

any deliverable document identified herein shall be prepared, distributed and subject to dispute in accordance with paragraphs B. through J. below.

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

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

1. Primary documents include those reports that are major, discrete portions of RI/FS or RD/RA activities. Primary documents are initially issued by the Army in draft, subject to review and comment by EPA and TWC. Following receipt of comments on a particular draft primary document, the Army shall respond to comments received and issue a draft final primary document, subject to dispute resolution. The draft final primary document shall become the final primary document thirty (30) days after issuance, if dispute resolution is not invoked or thirty (30) days after issuance of the result of the dispute resolution process that modifies the draft final primary document.

2. Secondary documents include those reports that are discrete portions of the primary documents and are typically input or feeder documents. Secondary documents are issued by the Army in draft subject to review and comment by EPA and TWC. Although the Army shall respond to comments received, the draft secondary

documents may be finalized in the context of the corresponding primary documents. A secondary document may be disputed at the time the corresponding draft final primary document is issued.

C. Primary Reports:

1. The Army shall complete and transmit draft reports for the following primary documents to EPA and TWC for review and comment in accordance with the provisions of this Part:

- (a) RI/FS Work Plan
- (b) Risk Assessment
- (c) RI Report
- (d) Initial Screening of Alternatives
- (e) FS Report
- (f) Proposed Plan
- (g) Record of Decision (ROD)
- (h) ROD Responsiveness Summary
- (i) RD Work Plan
- (j) Remedial Design
- (k) Remedial Action Work Plan
- (l) Community Relations Plan

2. Only the draft final reports for the primary documents identified above shall be subject to dispute resolution.

3. The Army shall complete and transmit draft primary documents in accordance with the timetable and deadlines established in Section XVI (Deadlines) of this Agreement.

D. Secondary Documents:

1. The Army shall complete and transmit draft reports for the secondary documents to EPA and TWC for review and comment in accordance with the provisions of this Section. These documents specifically include the following reports and may also include such other reports as the Parties may subsequently agree to or as may be required by the ROD:

- (a) Initial Remedial Action/Data Quality Objectives
- (b) Site Characterization Summary
- (c) Detailed Analysis of Alternatives discussion
- (d) Post-Screening Investigation Work Plan
- (e) Treatability Studies
- (f) Sampling and Data Results
- (g) 30%, 60%, 90% Draft Remedial Designs

2. Although EPA and TWC may comment on the draft reports for the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by paragraph B of this Section. The Parties shall agree to target dates for the completion and transmission of draft secondary documents.

E. Meetings of the Project Managers on Development of Reports: The Project Managers shall meet approximately every thirty (30) days, except as otherwise agreed by the Parties in writing, to review and discuss the progress of work being performed at the Site on the primary and secondary documents. Upon written agreement by all of the Project Managers and preparation of a written record by the LHAAP Project Manager, a teleconference may

constitute the monthly meeting of Project Managers. Prior to preparing any draft report specified in paragraphs C and D above, the Project Managers shall meet to discuss the report results in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft report.

F. Identification and Determination of Potential ARARs:

1. For those primary reports 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. TWC shall identify all potential state ARARs as early in the remedial process as possible consistent with the requirements of CERCLA §121 and the NCP. The Army shall consider any written interpretation of ARARs provided by the State. Draft ARAR determinations shall be prepared by the Army in accordance with CERCLA §121(d)(2), 42 U.S.C. §9621(d)(2), the NCP, and pertinent guidance issued by EPA and TWC, that is consistent with CERCLA and the NCP.

2. In identifying potential ARARs, the Parties recognize that actual ARARs can be identified only on a site-specific basis and that ARARs depend on the specific hazardous substances, pollutants and contaminants at a site, the particular actions proposed as a remedy and the characteristics of the 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.

G. Review and Comment on Draft Reports:

1. The Army shall complete and transmit each draft primary report to EPA and TWC on or before the corresponding deadline established for the issuance of such reports established pursuant to Section XVI (Deadlines) of this Agreement.

2. Unless the Parties mutually agree to another time period in writing, all draft reports shall be subject to a thirty (30) day period for review and comment. Review of any document by EPA and TWC may concern all aspects of the report, including completeness, and include, but not be limited to, technical evaluation of any aspect of the document, and its consistency with CERCLA, the NCP and any pertinent guidance or policy issued by EPA and with applicable State law. Comments by EPA and TWC shall be provided with adequate specificity so that the Army may respond to the comment and, if appropriate, make changes to the draft report. Comments will refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of the Army, EPA and/or TWC will provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy reports, EPA and/or TWC may extend the thirty (30) day comment period for an additional twenty (20) days by written notice to the Army prior to the end of the thirty (30) day comment period. In appropriate circumstances, this time period may be extended an additional twenty (20) days by giving the Army, EPA and/or TWC

written notification prior to the end of the first extension period. On or before the close of the comment period, EPA and/or TWC will transmit their written comments to the Army.

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

4. In commenting on a draft report which contains a proposed ARAR determination, EPA and/or TWC will include a reasoned statement of whether it objects to any portion of the proposed ARAR determination. To the extent that EPA and/or TWC objects, it will explain the basis for its objection in detail and will identify any ARARs which it believes were not properly addressed in the proposed ARAR determination.

5. Following the close of the comment period for a draft report, the Army shall give full consideration to all written comments on the draft report submitted during the comment period. Within thirty (30) days of the close of the comment period on a draft secondary document, the Army shall transmit to EPA and TWC its written response to comments received within the comment period. Within thirty (30) days of the close of the comment period on a draft primary report, the Army shall transmit to EPA and TWC a draft final primary report, which shall include the Army's response to all written comments received within the comment



period. While the resulting draft final report shall be the responsibility of the Army, it shall be the product of consensus to the maximum extent possible.

6. The Army may extend the thirty (30) day period for either responding to comments on a draft report or for issuing the draft final primary report for an additional twenty (20) days by providing written notice to EPA and TWC. In appropriate circumstances, this time period may be further extended in accordance with Section XVII (Extensions).

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

1. Dispute resolution shall be available to the Parties for draft final primary reports as set forth in Section XV (Dispute Resolution).

2. When dispute resolution is invoked on a draft primary report, work may be stopped in accordance with the procedures set forth in Section XV (Dispute Resolution).

I. Finalization of Reports:

The draft final primary report shall serve as the final primary report if no Party invokes dispute resolution regarding the document or, if invoked, at completion of the dispute resolution process should the Army's position be sustained. If the Army's determination is not sustained in the dispute resolution process, the Army shall prepare, within not more than twenty-one (21) days, a revision of the draft final report which conforms to the results of dispute resolution. In appropriate circumstances, the time

period for this revision period may be extended in accordance with Section XVII (Extensions).

J. Subsequent Modification of Final Reports:

1. Following finalization of any primary report pursuant to paragraph I. above, EPA, TWC or the Army may seek to modify the report, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in subparagraphs 2. and 3. below.

2. Any party may seek to modify a report after finalization if it determines, based on new information (i.e., information that became available, or conditions that became known, after the report was finalized) that the requested modification is necessary. A party 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.

3. In the event that a consensus is not reached by the Project Managers on the need for a modification, any party may invoke dispute resolution to determine if such modification shall be conducted. Modification of a report shall be required only upon a showing that:

(a) The requested modification is based on significant new information; and

(b) The requested modification could be of significant assistance in evaluating impacts on the public health

or the environment; in evaluating the selection of remedial alternatives; or in protecting human health and the environment.

4. Nothing in this section shall alter EPA's or TWC's ability to request the performance of additional work at the Site which was not contemplated by this Agreement. The Army's obligation to perform such work must be established by either a modification of a report or document or by amendment to this Agreement.

#### IX. PROJECT MANAGERS AND COMMITTEES

##### A. Project Managers

1. On or before the effective date of this Agreement, the Army, EPA, and TWC shall each designate a Project Manager. The Project Managers shall be responsible on a daily basis for assuring proper implementation of the terms of this Agreement. In addition to the formal notice provisions set forth in Section XIV (Notification) hereof, communications among the Army, EPA and TWC on all documents, including reports, comments, and other correspondence concerning the activities performed pursuant to this Agreement, shall be directed through the Project Managers.

2. The Army, EPA, and TWC may change their respective Project Managers. Such change shall be accomplished by notifying the other Parties in writing no later than ten (10) days prior to the effective date of the change.

3. The Project Managers may meet or confer informally as often as necessary, consistent with their duties. Although the

Army has ultimate responsibility for meeting its respective deadlines or schedule, the Project Managers shall endeavor to assist in this effort by scheduling meetings to address documents, reviewing reports, overseeing the performance of all environmental monitoring at the Site, reviewing RI/FS or RD/RA progress, attempting to resolve disputes informally, and making necessary and appropriate adjustments to deadlines or schedules.

4. The Army Project Manager shall submit to the EPA and the TWC on the twentieth (20th day) of every month, for the preceding month, a monthly progress report. At a minimum, the reports shall: (1) include a summary of all results of sampling, tests, and other data received and verified by the Army during the reporting period; (2) provide a summary of all activities completed pursuant to this Agreement during the previous month as well as such actions and plans which are scheduled for the next month; and (3) describe any delays or problems that arose in the execution of the work plan during the reporting period and any steps that were or will be taken to alleviate the problems or delays. Upon mutual written agreement, the Parties may change the due date for these monthly progress reports.

5. The authority of the Project Managers shall include, but is not limited to:

(a) Taking samples and ensuring that the type, quantity and location of the samples taken by the Army are done in accordance with the terms of any final work plan;

by EPA and TWC Quality Assurance Office personnel may entail, upon request by EPA or TWC, the analysis of performance evaluation samples to demonstrate the quality of each laboratory's analytical data.

C. The Army shall also ensure that appropriate EPA and TWC personnel or their authorized representatives will be allowed access to any laboratory used by the Army in implementing this Agreement. Such access shall be for the purpose of validating sample analyses, protocols and procedures required by the RI and QAPP.

#### XI. ACCESS

A. Without limitation on any authority conferred on EPA and TWC by statute or regulation, EPA, TWC, or their authorized representatives, shall have the authority to enter LHAAP at all reasonable times for purposes consistent with the provisions of this Agreement, CERCLA, RCRA, and applicable State environmental law, subject to any statutory and regulatory requirements as may be necessary to protect national security. Such authority shall include, but is not limited to: inspecting records, operating logs or contracts related to the investigative and remedial work at LHAAP; reviewing the progress of the Army in carrying out the terms of this Agreement; conducting such tests as the Project Managers deem necessary; and verifying the data submitted to EPA and TWC by the Army. The Parties agree that to facilitate access to LHAAP, the Army shall provide an escort whenever EPA or TWC require access

to restricted areas of LHAAP for purposes consistent with the provisions of this Agreement. EPA and TWC shall provide reasonable notice to the Army Project Manager to request any necessary escorts. EPA and TWC shall not use any camera, sound recording or other electronic recording device at LHAAP without the permission of the Army Project Manager. The Army shall not unreasonably withhold such permission. When permission is reasonably withheld, the Army shall be responsible for making alternate arrangements for any work utilizing a camera, sound recording, or other electronic device, if practicable.

B. The right to access by EPA and TWC granted in paragraph A. of this section shall be subject to those regulations as may be necessary to protect national security. Upon denying any aspect of access, the Army shall provide a written explanation, including reference to the applicable statute, within forty-eight (48) hours of the reason for the denial and, to the extent possible, provide a recommendation for accommodating the requested access in an alternate manner. The Parties agree that this Agreement is subject to CERCLA §120(j), 42 U.S.C. §9620(j), regarding the issuance of Site Specific Presidential Orders as may be necessary to protect national security.

C. All Parties with access to LHAAP pursuant to this section shall comply with the most stringent provisions of any health and safety plan developed for and applied to the Site. This specifically includes Occupational Safety and Health Administration (OSHA) and Army safety regulations. Any Party may dispute the application

of any safety and health plan to the Site, pursuant to Section XV (Dispute Resolution).

D. To the extent that activities pursuant to this Agreement must be carried out on property not owned, leased, or controlled by the Army, the Army shall use its best efforts to obtain access agreements from the owners which shall provide reasonable access for the Army, EPA, and TWC and their representatives. In the event that the Army is unable to obtain such access agreement, the Army shall promptly notify EPA and TWC regarding both the lack of agreements and the Army's efforts to obtain access agreements.

## XII. DATA AND DOCUMENT AVAILABILITY

A. Each Party will make all sampling results, test results or data and documents that it generates through the implementation of this Agreement available, upon request, to the other Parties, unless withholding is authorized or determined appropriate by law. If a Party withholds requested data or documents, the Party will identify the data or documents and the basis for withholding them. Sampling data will not be withheld under any circumstances.

B. At the request of EPA or TWC, the Army shall allow, to the extent practicable, split or duplicate samples to be taken by EPA or TWC or their authorized representatives of any samples collected by the Army pursuant to the implementation of this Agreement. The Army shall notify the EPA and TWC Project Managers not less than ten (10) days in advance of any scheduled sample collection activity conducted pursuant to this Agreement.

### XIII. EMERGENCY ACTIONS

A. Notwithstanding any other provision of this Agreement, the Army retains the right, consistent with E.O. 12580, to conduct such emergency actions as may be necessary to alleviate immediate threats to health or welfare or the environment from the release or threat of release of hazardous substances, pollutants or contaminants at or from the Facility. Such actions may be conducted at any time, either before or after the issuance of the ROD.

B. The Army shall provide the other Parties with oral notice as soon as possible after the Army determines that an emergency action is necessary. Within seven (7) days of initiating such an action, the Army shall provide written notice to the other Parties explaining why such action is or was necessary. The notice shall contain the written bases (factual, technical, and scientific) for such action and any available documents supporting such action. Upon completion of an emergency action, the Army shall furnish written notification to EPA and TWC that the emergency action is completed. Such notice shall state to what extent, the emergency action varied from the emergency action described in the initial written notification of emergency action.

### XIV. NOTIFICATION

A. All Parties shall transmit primary and secondary documents, and all notices required herein by any of the following methods: certified mail, return receipt requested; next day mail;



hand delivery; or facsimile or any other method that provides proof of delivery. If facsimile is used, the original shall be mailed within twenty-four (24) hours by any other prescribed method of sending notice. Any relevant time limitations for the receiving Party shall commence upon receipt of the document or notice by the receiving Party.

B. Notice to the individual Parties shall be provided under this Agreement at the following addresses:

1. For the Army: Project Manager *Lynn Muckelrath*  
Longhorn Army Ammunition Plant  
Attn: SMCLO-EN  
Marshall, Texas 75671-1059
2. For the EPA: Project Manager *Lisa Price*  
Longhorn Army Ammunition Plant  
U. S. Environmental Protection Agency  
1445 Ross Avenue  
Dallas, Texas 75202
3. For the TWC: Texas Water Commission  
Longhorn Army Ammunition Plant-  
Project Manager *Mike Moore*  
Hazardous and Solid Waste Division  
P. O. Box 13087  
Capital Station  
1700 N. Congress Avenue  
Austin, Texas 78711-3087

C. Any Party may change the address for notification by giving all other parties ten (10) days prior written notification.

#### XV. DISPUTE RESOLUTION

A. Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Section shall apply. All Parties to this Agreement shall make reasonable efforts to informally resolve disputes at the

Project Manager or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this Section shall be implemented to resolve a dispute.

B. Within thirty (30) days after: (1) issuance of a draft final primary document pursuant to Section VIII (Consultation), or (2) any action which leads to or generates a dispute, the disputing Party shall submit to the Dispute Resolution Committee (DRC) a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute and the technical, legal or factual information the disputing Party is relying upon to support its position.

C. Prior to any Party's issuance of a written statement of dispute, the disputing Party shall engage the other Parties 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.

D. The DRC will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one (1) individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (Senior Executive Service (SES) or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The EPA representative on the

DRC is the Hazardous Waste Management Division Director of EPA Region 6. The Army's designated member is the Commander of LHAAP. The State representative on the DRC is the Director of the Hazardous and Solid Waste Division of the TWC. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Section XIV (Notification).

E. 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 all parties. If the DRC is unable to resolve unanimously the dispute within this twenty-one (21) day period, the written statement of dispute shall be forwarded to the Senior Executive Committee (SEC) for resolution, within seven (7) days after the close of the twenty-one (21) day resolution period.

F. 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. The Army's representative on the SEC is the Deputy Assistant Secretary of the Army, Environment, Safety and Occupational Health. The State's representative on the SEC is the Executive Director of the TWC. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision signed by all parties. 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 Army or TWC may, within fourteen (14) days of the Regional Administrator's issuance of EPA's position, issue a written notice elevating the dispute to the Administrator of EPA for resolution in accordance with all applicable laws and procedures. In the event that neither the Army nor the TWC elects to elevate the dispute to the Administrator within the designated fourteen (14) day escalation period, both the Army and TWC shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.

G. Upon escalation of a dispute to the Administrator of EPA pursuant to paragraph F. above, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the EPA Administrator shall meet and confer with the Army's Secretariat Representative and TWC's representative to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the Army and TWC with a written final decision setting forth resolution of the dispute. The duties of the Administrator set forth in this Section shall not be delegated.

H. The pendency of any dispute under this Section shall not affect the Army's responsibility for timely performance of the work required by this Agreement, except that the time period for completion of work affected by such dispute shall be extended for a period of time usually not to exceed the actual time taken to resolve any good faith dispute in accordance with the procedures specified herein. All elements of the work required by this Agree-

ment which are not affected by the dispute shall continue and be completed in accordance with the applicable schedule.

I. When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Hazardous Waste Management Division Director, EPA Region 6 (Division Director) requests, in writing, that work related to the dispute be stopped because, in EPA's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse affect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. To the extent possible, EPA will consult with the other Parties prior to initiating a work stoppage request. After stoppage of work, if a Party believes that the work stoppage is inappropriate or may have potential significant adverse impacts, the Party may meet with the Division Director to discuss the work stoppage. Following this meeting, and further consideration of the issues, the Division Director will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the Division Director may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the Party requesting dispute resolution.

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

this Agreement according to the amended plan, schedule or procedures.

K. Resolution of a dispute pursuant to this Section of the Agreement constitutes a final resolution of any dispute arising under this Agreement. All Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Section of this Agreement.

#### XVI. DEADLINES

A. Within twenty-one (21) days of the effective date of this Agreement, the Army shall propose deadlines for completion of the following draft primary documents:

- (1) RI/FS Work Plan
- (2) Risk Assessment
- (3) RI Report
- (4) Initial Screening of Alternatives
- (5) FS Report
- (6) Proposed Plan
- (7) Record of Decision
- (8) Remedial Design Workplan
- (9) Remedial Design
- (10) Remedial Action Work Plan
- (11) Community Relations Plan

B. Within fifteen (15) days of receipt, EPA, in conjunction with TWC, shall review and provide comments to the Army regarding the proposed deadlines. Within fifteen (15) days following receipt

of the comments the Army shall, as appropriate, make revisions and reissue the proposal. The Parties shall meet as necessary to discuss and finalize the proposed deadlines. If the Parties agree on proposed deadlines, the finalized deadlines shall be incorporated into the appropriate Work Plans. If the Parties fail to agree within thirty (30) days on the proposed deadlines, the matter shall immediately be submitted for dispute resolution pursuant to Section XV of this Agreement. The final deadlines established pursuant to this paragraph shall be published by EPA, in conjunction with TWC.

C. Within twenty-one (21) days of issuance of the Record of Decision, the Army shall propose target dates for completion of draft secondary comments and deadlines for completion of the following draft primary documents:

- (1) R/D Work Plan
- (2) Remedial Design
- (3) Remedial Action Work Plan

These target dates and deadlines shall be proposed, finalized and published utilizing the same procedures set forth in paragraph B above.

D. The deadlines set forth in this section, or to be established as set forth in this section, may be extended pursuant to Section XVII (Extensions) of this Agreement. The Parties recognize that one possible basis for extension of the deadlines for completion of the RI/FS Reports is the identification of

~~significant new Site conditions during the performance of the remedial investigation.~~

#### XVII. EXTENSIONS

A. Either a timetable and deadline or a schedule shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension. Any request for extension by the Army shall be submitted in writing and shall specify:

1. The timetable and deadline or the schedule that is sought to be extended;
2. The length of the extension sought;
3. The cause(s) for the extension; and
4. Any related timetable and deadline or schedule that would be affected if the extension were granted.

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

1. an event of force majeure;
2. a delay caused by another Party's failure to meet any requirement of this Agreement;
3. a delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;
4. a delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and deadline or schedule; and



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

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

D. Within seven (7) days of receipt of a request for an extension of a timetable and deadline or a schedule, EPA and TWC shall advise the Army in writing of their respective positions on the request. Any failure by EPA or TWC to respond within the seven (7) day period shall be deemed to constitute concurrence in the request for extension. If EPA or TWC does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

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

F. Within seven (7) days of receipt of a statement of nonconcurrence with the requested extension, the Army may invoke dispute resolution.

G. A timely and good faith request for an extension shall toll any assessment of stipulated penalties or application for

judicial enforcement of the affected timetable and deadline or schedule until a decision is reached on whether the requested extension will be approved. If dispute resolution is invoked and the requested extension is denied, stipulated penalties may be assessed and may accrue from the date of the original timetable, deadline or schedule. Following the grant of an extension, an assessment of stipulated penalties or an application for judicial enforcement may be sought only to compel compliance with the timetable and deadline or schedule as most recently extended.

#### XVIII. FORCE MAJEURE

A 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, acts of God; fire; war; insurrection; civil disturbance; explosion; unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance; adverse weather conditions that could not be reasonably anticipated; unusual delay in transportation; restraint by court order or order of public authority; inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority other than the Army; delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; and

insufficient availability of appropriated funds, if the Army shall have made timely request for such funds as part of the budgetary process as set forth in Section XXVIII (Funding). A force majeure shall also include any strike or other labor dispute, whether or not within the control of the Parties affected thereby. A force majeure shall not include increased costs or expenses of Response Actions, whether or not anticipated at the time such Response Actions were initiated.

XIX. SELECTION, DESIGN AND IMPLEMENTATION OF REMEDIAL ACTIONS

A. The Parties agree to perform the tasks, obligations and responsibilities described in this Section in accordance with CERCLA and CERCLA guidance and policy; the NCP; pertinent provisions of RCRA and RCRA guidance (consistent with Section XX, "Statutory Compliance/RCRA-CERCLA Integration"); Executive Order 12580; applicable State laws and regulations; and all terms and conditions of this Agreement including documents prepared and incorporated in accordance with Section VIII, (Consultation).

B. Following finalization of the RI/FS, the Army shall submit to EPA and the TWC a Proposed Plan, which describes the preferred remedial action and reviews the screening of alternatives. Following consultation with EPA and TWC, the Proposed Plan is subject to public comment in accordance with Section XXX (Public Comment).

C. Within thirty (30) days of the close of public comment, the Army shall submit to EPA and TWC a Responsiveness Summary and

a draft Record of Decision (ROD). Following consideration of any comments by TWC, the ROD will be finalized jointly by the Army and EPA, or if they are unable to reach agreement about the selection of the remedial action, by the EPA Administrator.

D. Upon finalization of the ROD, the Army shall submit the remedial design schedule to EPA and TWC in accordance with Section XVI (Deadlines). The remedial design schedule shall propose timeframes for completion of the Remedial Design Work Plan and the final Remedial Design Documents.

E. The Army shall submit the Remedial Design Work Plan to EPA and the TWC for review and comment in accordance with Section XVI (Deadlines). The Remedial Design Workplan shall include, but not be limited to:

1. Health and Safety Plan
2. Spill/Release Contingency Plan
3. Quality Assurance Project Plan
4. Sampling and Analysis Plan
5. Preliminary Inspection, Maintenance and Monitoring Plan

F. After consultation with EPA and TWC about the Remedial Design Work Plan, the Army shall submit 30%, 60%, and 90% Draft Remedial Designs and a Final Draft Remedial Design to EPA and TWC for review and comment in accordance with Section XVI (Deadlines).

G. The final design document shall include the implementation schedule for the remedial action. The Army must implement substantial, continuous, physical onsite remedial action

within fifteen (15) months of finalization of the ROD. The Final Draft Remedial Design will become the Final Remedial Design (final design document).

H. The Army shall submit the Remedial Action Work Plan to EPA and TWC for review and comment in accordance with Section XVI (Deadlines). The Remedial Action Work Plan shall provide for construction of the remedy, as set forth in the design plans and specifications in the final design submittal. The Remedial Action Work Plan shall include, but shall not be limited to:

1. Health and Safety Plan
2. Spill/Release Contingency Plan
3. Construction Quality Assurance Project Plan
4. Operation and Maintenance Plan

The Remedial Action Work Plan shall also include a schedule for implementation of all Remedial Action tasks identified in the final design submittal.

I. During the Remedial Action, monthly meetings shall be held between the Project Managers regarding the progress and details of the design. The Project Managers may make schedule changes for the performance of the Remedial Action in accordance with the provisions of Section XVII (Extensions).

J. When the Army determines that the Remedial Action has been completed in accordance with the requirements of the Agreement, it shall submit to the EPA and TWC a Construction Report. The Construction Report shall include: all data collected during the site remediation; a narrative description summarizing

major activities conducted and problems addressed during the remediation; as-built plans and modifications from the specifications of the Remedial Design; documentation of compliance with the QA/ QC plan; and certification by a Professional Engineer that the work has been completed in compliance with the terms of this Agreement. Within one hundred-eighty (180) days of the receipt of the report, the EPA after consideration of TWC's comments shall provide the Army written notice approving or rejecting the Report. If the Report is approved, the EPA shall issue to the Army a Certification of Completion. If EPA rejects the Report, a basis for the rejection will be provided, and the Army may invoke dispute resolution concerning the EPA determination.

K. The Army shall perform the long-term operation and maintenance for the selected remedial action(s).

## XX. ASSESSMENT AND SELECTION OF SUPPLEMENTAL RESPONSE ACTIONS

A. The Parties recognize that subsequent to finalization of the ROD, a need may arise for one or more supplemental response actions to remedy continuing or additional releases or threats of releases of hazardous substances, pollutants or contaminants at or from the Site. If such a release or threat of release presents an immediate threat to human health or the environment, it shall be addressed pursuant to Section XIII, (Emergency Actions). If such release or threat of release does not present an immediate threat to human health or the environment, it shall be addressed pursuant

to paragraphs A through F of this Section, regardless of whether the determination of the need for such supplemental response action is based on a periodic review conducted pursuant to Section XXII (Periodic Review), hereof or on some other source of information.

B. A supplemental response action shall be undertaken only when:

1. A determination is made that as a result of the release or threat of release of a hazardous substance, pollutant or contaminant at or from the Site an additional response action is necessary and appropriate to ensure the protection of human health and the environment; and

2. Either of the following conditions is met for any determination made pursuant to subparagraph XX.B.1. :

- (a) For supplemental response actions proposed after finalization of the ROD, but prior to EPA Certification, the determination must be based upon information received in whole or in part by EPA following finalization of the ROD; or

- (b) For supplemental response actions proposed after EPA Certification, the determination must be based upon conditions that were unknown at the time of EPA Certification.

C. If, after finalization of the ROD, any Party concludes that a supplemental response action is necessary, based on the criteria set forth in subparagraph XX.B.2, such Party may promptly notify the others of its conclusion in writing. The Project Managers shall confer and attempt to reach consensus on the need for such an action within forty-five (45) days of the receipt of such

notice. If at the end of the forty-five (45) day period, the Project Managers have failed to reach consensus, any Party may notify the other Parties in writing that it intends to invoke dispute resolution. If the Project Managers are still unable to reach consensus within fourteen (14) days of the issuance of such notice, the question of the need for the supplemental response action shall be resolved through dispute resolution.

D. If the Project Managers agree or if it is determined through dispute resolution that a supplemental response action is needed based on the criteria set forth in paragraph B above, the Army shall prepare a draft supplemental response action plan that shall include supplemental RI/FS deadlines. Supplemental RI/FS deadlines may be extended pursuant to Section XVII (Extensions). The Army shall provide the draft supplemental response action plan to the other Parties. The other Parties will have thirty (30) days in which to comment. The Army shall respond to those comments within thirty (30) days after close of the comment period. Any Party may then invoke dispute resolution pursuant to Section XV (Dispute Resolution) to resolve a dispute with respect to the supplemental response action plan. After any disagreements with respect to the supplemental response action plan have been resolved, the Army shall supplement the administrative record with the supplemental RI/FS deadlines.

E. Following resolution of any disputes concerning a supplemental response action, the Army shall conduct a supplemental RI/FS and issue a supplemental ROD in accordance with the



supplemental response action plan. The provisions in Section VIII (Consultation) and Section XIX (Design and Implementation of Remedial Actions) shall govern the planning and selection of supplemental response actions to the same extent they govern the planning and selection of final response actions, unless it is the written consensus of all of the Parties that a particular provision does not apply. The supplemental ROD shall include the design schedule that shall govern completion of the design work for the supplemental response action.

F. Following issuance of the supplemental response action ROD, the supplemental response action shall be implemented pursuant to that ROD and this Section.

#### XXI. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

A. The Parties intend to integrate the Army's CERCLA response obligations and RCRA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes, pollutants or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will achieve compliance with CERCLA, 42 U.S.C. §§9601, et seq.; satisfy the corrective action requirements of RCRA §§3004(u) & (v), 42 U.S.C. §§6924(u) & (v), for a RCRA permit, and RCRA §3008(h), 42 U.S.C. §6928(h), for interim status facilities; and meet or exceed all ARAR's and comply with all Federal and State laws and regulations, to the extent

required by CERCLA §121, 42 U.S.C. §9621, and any other applicable State law.

B. Based upon the foregoing, the Parties intend that any remedial action selected, implemented and completed under this Agreement will be protective of human health and the environment such that remediation of releases covered by this Agreement shall obviate the need for further corrective action under RCRA (i.e., no further corrective action shall be required). The Parties agree that with respect to releases of hazardous wastes covered by this Agreement, RCRA shall be considered an applicable or relevant and appropriate requirement pursuant to CERCLA §121, 42 U.S.C. §9621. Releases or other hazardous waste activities not covered by the Agreement remain subject to all applicable State and Federal requirements.

C. The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties further recognize that on-going hazardous waste management activities at LHAAP may require the issuance of permits under Federal and State laws. This Agreement does not affect the requirements, if any, to obtain such permits. However, if a permit or TWC Compliance Plan is issued to the Army for on-going hazardous waste management activities at the Site, EPA and TWC will incorporate by reference any appropriate provisions, including appropriate schedules (and the provision for extension of such schedules), of this Agreement into such permit and in the case of

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

D. Nothing in this Agreement shall alter the Army's authority with respect to removal actions conducted pursuant to CERCLA §104, 42 U.S.C. §9604.

## XXII. PERIODIC REVIEW

A. Subject to paragraph B. of this Section, the Army shall conduct a periodic review of any final and supplemental response action taken at the Site to determine whether and to what extent any additional remedial action is necessary. The periodic review shall be conducted in accordance with CERCLA §121 (c), 42 U.S.C. §9621(c), and any pertinent regulation or guidance issued by EPA that is not inconsistent with CERCLA and the NCP. Upon completion, the Army shall provide the assessment report to the Parties for review and comment.

B. The periodic review for each operable unit shall be conducted at a minimum every five (5) years after initiation of the final response action for that operable unit, as long as hazardous substances, pollutants or contaminants remain within the area covered by that operable unit.

C. The assessment and selection of any additional response action determined to be necessary by EPA in the course of a periodic review shall be in accordance with Section XX (Assessment

and Selection of Supplemental Response Actions). Except for emergency actions, which shall be governed by Section XIII (Emergency Actions) hereof, such response action(s) shall be implemented by the Army as a supplemental response action in accordance with Section XX (Assessment and Selection of Supplemental Response Actions) hereof.

### XXIII. ENFORCEABILITY

#### A. The Parties agree that:

1. 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 CERCLA §310(a), and any violation of such standard, regulation, condition, requirement or order will be subject to civil penalties under CERCLA §§109 and 310(c), 42 U.S.C. 9609 and 9659(c); and

2. All timetables or deadlines associated with the RI/FS shall be enforceable by any person pursuant to CERCLA §310(a), and any violation of such timetables or deadlines will be subject to civil penalties under CERCLA §§109 and 310(c), 42 U.S.C. 9609 and 9659(c);

3. All terms and conditions of this Agreement which relate to operable units or final remedial actions, including corresponding timetables, deadlines or schedules, and all work associated with the operable units or final remedial actions, shall be enforceable by any person pursuant to CERCLA §310(c), and any

violation of such terms or conditions will be subject to civil penalties under CERCLA §§310(c) and 109; and

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

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

C. The Parties agree to exhaust their rights under Section XV (Dispute Resolution) prior to exercising any rights to judicial review that they may have.

D. The Parties agree that all Parties shall have the right to enforce the terms of this Agreement.

#### XXIV. STIPULATED PENALTIES

A. In the event that the Army fails to submit a primary document (i.e., RI/FS Work Plan, Risk Assessment, RI Report, Initial Screening of Alternatives, FS Report, Proposed Plan, Record of Decision, Remedial Design, Remedial Action Work Plan) to EPA and TWC pursuant to the appropriate timetable or deadline in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement which relates to an operable

unit' or final remedial action, EPA may assess a stipulated penalty against the Army. A stipulated penalty may be assessed in an amount not to exceed \$5,000 for the first week (or part thereof), and \$10,000 for each additional week (or part thereof) for which a failure set forth in this paragraph occurs.

B. Upon determining that the Army has failed in a manner set forth in paragraph A., EPA shall so notify the Army in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the Army 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. The Army 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. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.

C. The annual reports required by CERCLA §120(e)(5), 42 U.S.C. §9620 (e)(5), shall include, with respect to each final assessment of a stipulated penalty against the Army under this Agreement, each of the following:

1. The facility responsible for the failure;
2. A statement of the facts and circumstances giving rise to the failure;

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

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

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

D. Stipulated penalties assessed pursuant to this Section shall be payable to the Hazardous Substance Superfund only in the manner and to the extent expressly provided for in Acts authorizing funds for, and appropriations to, the DOD.

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

F. This Section shall not affect the Army's ability to obtain an extension of a timetable, deadline or schedule pursuant to Section XVII (Extensions).

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

#### XXV. OTHER CLAIMS

A. Subject to Section XXI (Statutory Compliance), nothing in this Agreement shall restrict EPA or TWC from taking any action

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under CERCLA, RCRA, state law, or other environmental statutes for any matter not specifically addressed by this Agreement.

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

#### XXVI. TRANSFER OF PROPERTY

A. No change in ownership or conveyance of any property interest in LHAAP shall in any way alter the status of the Parties under this Agreement. The Army agrees to include notice of this Agreement in any document transferring ownership of any portion of the Site in accordance with CERCLA Section 120(h), 42 U.S.C. 8620(h) and shall furnish EPA and TWC with notice of any such change or transfer at least ninety (90) days prior to such sale or transfer. Notice pursuant to CERCLA Section 120(h)(3)(B), 42 U.S.C. 9620(h)(3)(B), of any transfer of ownership or property interest shall not relieve the Army of its obligation to perform under this Agreement.



## XXVII. RESERVATION OF RIGHTS

A. The Army reserves the right to raise or assert any defense, whether procedural or substantive, in law or equity, or to raise any issue as to jurisdiction, or standing of any Party, or any other matter in a proceeding related to this Agreement, which the Army might otherwise be entitled to raise or assert.

B. Notwithstanding compliance with the terms of this Agreement, including the completion of a RI/FS and the remedial action(s) selected and approved by EPA, the Army and LHAAP are not released from any liability which they may have pursuant to any provisions of Federal or State laws and regulations, and the EPA expressly reserves the right to pursue the Army and LHAAP for violations not covered in this Agreement.

C. The State of Texas reserves the right to take any action to the extent provided by law and after exhausting its remedies under this Agreement, pursuant to RCRA and/or any other available legal authority, including, but not limited to, the right to challenge the selection of a remedial action that does not attain an ARAR standard, requirement, criteria or limitation; the right to implement remedial action it deems appropriate; and to seek injunctive relief, monetary penalties, punitive damages, natural resource damages, and other damage claims for any violation of law. Nothing in this Agreement shall limit the State's rights as described in CERCLA §121(f)(3), 42 U.S.C. §9621(f)(3).

D. Nothing in this Agreement shall be construed as a restriction or waiver of any rights EPA or TWC may have under

CERCLA, including but not limited to any rights under Sections 113 and 310, 42 U.S.C. §§9613 and 9659. The Army does not waive any rights it may have under CERCLA §§120, 211, 42 U.S.C. §§9620, and Executive Order 12580.

E. Nothing in this Agreement should be deemed to constitute a waiver on the part of the TWC of its authority to require, issue, modify, revoke or enforce a RCRA permit or enforce its authority pursuant to applicable Federal and State law to regulate interim status RCRA units which may be located at the facility or solid waste management units which may be located at the LHAAP and which are not subject to this Agreement.

#### XXVIII. FUNDING

A. It is the expectation of the Parties to this Agreement that all obligations of the Army arising under this Agreement will be fully funded. The Army agrees to seek sufficient funding through the DOD budgetary process to fulfill its obligations under this Agreement.

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

C. Any requirement for the payment or obligation of funds, including stipulated penalties, by the Army established by the terms of this Agreement shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted

to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. §1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted.

D. If appropriated funds are not available to fulfill the Army's obligations under this Agreement, EPA and TWC reserve the right to initiate an action against any other person, or to take any response action, which would be appropriate absent this Agreement.

E. Funds authorized and appropriated annually by Congress under the "Environmental Restoration Defense" appropriation in the Department of Defense Appropriation Act and allocated by the Deputy Assistant Secretary of Defense (Environment) (DASD(E)) to the Army will be the source of funds for activities required by this Agreement consistent with Section 211 of SARA, 10 U.S.C. Chapter 160. However, should the Environmental Restoration Defense appropriation be inadequate in any year to meet the total Army CERCLA implementation requirements, the DOD shall employ and the Army shall follow a standardized DOD prioritization process which allocates that year's appropriations in a manner which maximizes the protection of human health and the environment. A standardized DOD prioritization model shall be developed and utilized with the assistance of EPA and the states.

## XXIX. COMMUNITY RELATIONS

A. The parties agree that response actions at the Site arising from this Agreement shall comply with the Administrative Record and public participation requirements of CERCLA Sections 113(k) and 117, 42 U.S.C. Section 9313(k) and 9617, relevant community relations provisions in the NCP, national and regional EPA policy and guidance (including, but not limited to EPA OSWER Directive 9203.0-3B, Community Relations in Superfund: A Handbook, dated June 1988 and any modifications thereto), and, to the extent they may apply, State statutes, regulations and guidance. The State agrees to inform LHAAP and EPA of all State requirements which it believes pertain to public participation. Community involvement must be conducted by the Army in consultation with EPA and TWC. The provisions of this Section shall be carried out in a manner consistent with, and shall fulfill the intent of, Section XVII (Statutory Compliance-RCRA/CERCLA Integration).

B. The Army shall, based on community interviews, develop and implement a Community Relations Plan (CRP) addressing community concerns and involvement in environmental activities and elements of work undertaken by the Army pursuant to this Agreement. Implementation of the CRP shall be done in consultation with EPA and is subject to review and approval by EPA. All informational materials produced by the Army in the implementation of the CRP are subject to review and comment by EPA and the State, where applicable.

C. The Army shall notify the community when disputes between Army, the EPA and/or the State are taken to the SEC level for resolution. The Army shall also notify the public of the resolutions of such disputes.

D. The Army shall establish and maintain an administrative record at a place, at or near the Site which is freely accessible to the public, in accordance with CERCLA §113(k), 42 U.S.C. §9613(k). The administrative record shall be established and maintained in accordance with relevant provisions in CERCLA, the NCP, and EPA policy and guidance. A copy of each document placed in the administrative record, not already provided, will be provided by the Army to the other Parties. The administrative record developed by the Army shall be updated and new documents supplied to the other Parties on at least a quarterly basis. An index of documents in the administrative record shall accompany each update of the administrative record. Public access to the administrative record shall not be contingent upon facility staff availability or limited access to the facility.

E. Except in case of an emergency, any Party issuing a press release with reference to any of the work required by this Agreement shall advise the other Parties of such press release at least two (2) working days prior to issuance. Other documents prepared by the Army pursuant to the Community Relations Plan (and which are not primary or secondary documents pursuant to this Agreement), or documents prepared by TWC for community involvement purposes related to the site, will be submitted by the Army and TWC

to the other Parties for review and comment at least seven (7) working days prior to finalization and release.

### XXX. PUBLIC COMMENT

A. This Agreement shall be subject to public comment as follows:

1. On or about ten (10) calendar days after executing this Agreement the Army shall publish a notice in at least one (1) major newspaper of general circulation within Harrison County that this Agreement is available for a forty-five (45) day period of public review and comment. 9 Dec 91

2. Promptly upon completion of the public comment period, the Army shall transmit to the other Parties copies of all comments received within the comment period.

3. Within thirty (30) days after the close of the public comment period, any Party may seek to have this Agreement amended, in accordance with Section XXXV (Amendment or Modification of Agreement) hereof, in response to the comments received.

B. The Parties agree that this Agreement and any subsequent proposed plan or alternative proposals considered for remedial action at the Site arising out of this Agreement shall comply with public participation requirements of CERCLA §117, 42 U.S.C. §9617.

C. The Army agrees it shall establish and maintain an Administrative Record at or near LHAAP in accordance with CERCLA §113(k), 42 U.S.C. §9613(k). The Administrative Record must be

compiled before the proposed plan is issued for public comment.

#### XXXI. PRESERVATION OF RECORDS

A. Despite any document retention policy to the contrary, the Parties shall preserve, during the pendency of this Agreement and for a minimum of seven (7) years after its termination, all records and documents in their possession which relate to the actions carried out pursuant to this Agreement. After this seven (7) year period, each Party shall notify the other Parties at least thirty (30) days prior to destruction of any such documents. Upon request by any Party, the requested Party shall make available such records or copies of any such records, unless withholding is authorized and determined appropriate by law.

#### XXXII. EPA COST REIMBURSEMENT

The Parties agree to amend this Agreement at a later date in accordance with any subsequent national resolution of the issue of cost reimbursement.

#### XXXIII. STATE COST REIMBURSEMENT

State cost reimbursement shall be governed by the terms and conditions of the Department of Defense-State (of Texas) Memorandum of Agreement dated \_\_\_\_\_, 1991.

**XXXIV. TERMINATION AND SATISFACTION**

The provisions of this Agreement shall be deemed satisfied upon a consensus of the Parties that the Army has completed its obligations under the terms of this Agreement. Following EPA Certification of the remedial actions at the Site pursuant to Paragraph J. of Section XIX (Selection, Design and Implementation of Remedial Actions), any Party may propose in writing the termination of this Agreement upon a showing that the objectives of this Agreement have been satisfied. A Party opposing termination of this Agreement shall serve its objection upon the proposing Party within thirty (30) days of receipt of the proposal. Without prejudice to the Army's obligation for periodic review under Section XXII (Periodic Review), no Party shall unreasonably withhold or delay termination of this Agreement.

**XXXV. AMENDMENT OR MODIFICATION OF AGREEMENT**

This Agreement can be amended or modified solely upon written consent of all Parties. Such amendments or modifications shall have as the effective date that date on which they are signed by all Parties and notice thereof is provided to each signatory pursuant to Section XIV (Notification).

**XXXVI. EFFECTIVE DATE**

The effective date of this Agreement shall be the date on which EPA issues its notice of effective date to the Parties. Such notice shall be issued after the implementation of Section XXX



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(Public Comment). All provisions of this Agreement shall be in full force and effect as of the effective date.

THIS AGREEMENT CAN BE EXECUTED IN COUNTERPART.

IT IS SO AGREED:

United States Department of the Army

By: Lewis D. Walker, Deputy Assistant Secretary of the Army for the Environment, Safety and Occupational Health Date: \_\_\_\_\_

By: Lieutenant Col. Jeffrey Russell Commander, Longhorn Army Ammunition Plant Date: \_\_\_\_\_

Texas Water Commission

By: Allen P. Beinke Executive Director Date: \_\_\_\_\_

U.S. Environmental Protection Agency

By: Robert E. Layton Jr., P.E. Regional Administrator, Region 6 Date: 10/16/91

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(Public Comment). All provisions of this Agreement shall be in full force and effect as of the effective date.

THIS AGREEMENT CAN BE EXECUTED IN COUNTERPART.  
IT IS SO AGREED:

United States Department of the Army

By: Lewis D. Walker, Deputy Assistant Date: \_\_\_\_\_  
Secretary of the Army for the  
Environment, Safety and Occupational Health

By: Lieutenant Col. Jeffrey Russell Date: \_\_\_\_\_  
Commander, Longhorn Army Ammunition Plant

Texas Water Commission

By: Allen P. Beinke Date: 9-2-91  
*Allen P. Beinke*  
Executive Director

U.S. Environmental Protection Agency

By: Robert E. Layton Jr., P.E. Date: \_\_\_\_\_  
Regional Administrator, Region 6

(Public Comment). All provisions of this Agreement shall be in full force and effect as of the effective date.

THIS AGREEMENT CAN BE EXECUTED IN COUNTERPART.

IT IS SO AGREED:

United States Department of the Army

By: Lewis D. Walker Date: 9/6/91  
Lewis D. Walker, Deputy Assistant  
Secretary of the Army for the  
Environment, Safety and Occupational Health

By: Robert W. Bringman Date: 9/19/91  
Lieutenant Col. ROBERT W. BRINGMAN  
Commander, Longhorn Army Ammunition Plant

Texas Water Commission

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Allen P. Beinke  
Executive Director

U.S. Environmental Protection Agency

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Robert E. Layton Jr., P.E.  
Regional Administrator, Region 6

LONGHORN ARMY AMMUNITION PLANT  
MEETING SIGN IN  
FEBRUARY 4, 1991

Lisa Marie Price

EPA

(214) 655-6735

Billie Lee Limer

EPA-GRC

655-2120

Dennis Lizzadro

CES-OF-ED-GH

(817) 334-3221

CYRIL ONEWOKAE

HQ, AMCCOM, AMSMC-ISE-E

309-782-1350

JOE KANG

HQ AMCCOM, AMSMC-6CS(R) (309) 782-4051

LTC JEFFREY W. RUSSELL

CDR, LONGHORN AAP  
SMCLO-CO

(309) 679-2100

Randall Juhlin

Tulsa District Corps of Engr 918-581-6115

LYNN MUCKELRATH

SMCLO-EN

LONGHORN AAP

(309) (679-2980)

Michael A. Moore

TWC - H&SW, Superfund (512) 463-7797

Stephen C Dickman

TWC - Legal Div. (512) 463-8069

Alan P. Church

TWC RCRA Permits (512) 463-EC20

Jim Costello

EPA ORC

(214) 655 2120

Monica Chapa

EPA

(214) 655-6730

Larry Brinckley

EPA - RCRA Permits

(214) 655-6785

R. C. LEANDER

LONGHORN /THIOKOL

(703) 679-2704



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
LONGHORN ARMY AMMUNITION PLANT  
MARSHALL, TEXAS 75671-1059

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September 19, 1991

SMCLO-CO

Subject: Final CERCLA 120 Agreement for Longhorn Army Ammunition Plant

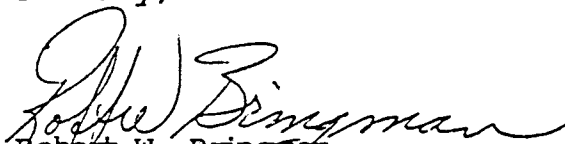
U. S. Environmental Protection Agency Region 6  
ATTN: Office of Regional Counsel (Renee Holmes)  
1445 Ross Ave, Suite 1200  
Dallas, Texas 75202-2733

Dear Sir:

Forwarded herewith is the Final CERCLA Section 120 Agreement which has been executed by the Deputy Assistant Secretary of the Army for the Environmental, Safety and Occupational Health, and the Commander, Longhorn Army Ammunition Plant.

After signature please return a completed copy to this office. Point of contact are the undersigned at (903) 679-2100 or Mr. Lyn Muckelrath (903) 679-2980.

Sincerely,

  
Robert W. Bringman  
Lieutenant Colonel, U. S. Army  
Commanding Officer



# Proof of Publication

004401

from

## MARSHALL NEWS MESSENGER

P.O. BOX 730

MARSHALL, TX. 75670

(903) 935-7914

### PUBLIC NOTICE OF LONGHORN ARMY AMMUNITION PLANT INTERAGENCY AGREEMENT

#### Public Notice

The U.S. Department of the Army, the State of Texas (by the Texas Water Commission) and the U.S. Environmental Protection Agency (EPA) invite public comment on the Federal Facility Agreement Under CERCLA Section 120 for the Longhorn Army Ammunition Plant, located about 5 miles north east of Marshall, Texas, in Karnack, Harrison County, Texas.

The Longhorn Army Ammunition Plant was included on EPA's Superfund National Priorities List (NPL) on August 30, 1990, (55 Federal Register No. 35509). The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as Superfund, requires that all Federal facilities included on the NPL enter into an interagency agreement (IAG) with EPA for necessary response action at such facilities. The IAG for the Longhorn Army Ammunition Plant is a three party agreement between EPA, the Texas Water Commission and the Department of Army. The IAG provides the mechanism by which regulatory agency oversight and coordination among the three agencies will take place. The IAG covers the remedial investigation and cleanup actions proposed for 13 contaminated or potentially contaminated sites on the facility. The IAG will be available for public review at the Marshall Public Library. A copy of the IAG may be obtained by written request from the address below. Comments on the IAG

should be sent to Mr. Lynn Muckelrath, Environmental Coordinator, Longhorn Army Ammunition Plant, ATTN: SMCLO-EN, Marshall, Texas 75671-1059. Comments must be received by December 9, 1991. A decision on whether the Interagency Agreement will become effective, will be made after consideration of comments from the public.  
10-22-91

### STATE OF TEXAS COUNTY OF HARRISON

On this 23rd day of October, 19 91

personally appeared before me the undersigned, a Notary Public in and for said county and state.

Jeff Powers -- Advertising Manager

of the MARSHALL NEWS MESSENGER, a daily newspaper published at MARSHALL, County of HARRISON, State of TEXAS, who being by me duly sworn, states that the attached advertisement a true copy of which is hereto annexed, was published in said newspaper in its issues thereof on the following dates:

<u>22nd</u>	day of <u>October</u>	19 <u>91</u>
<u>          </u>	day of <u>          </u>	19 <u>          </u>
<u>          </u>	day of <u>          </u>	19 <u>          </u>
<u>          </u>	day of <u>          </u>	19 <u>          </u>
<u>          </u>	day of <u>          </u>	19 <u>          </u>
<u>          </u>	day of <u>          </u>	19 <u>          </u>

\$61.41

Subscribed and sworn to before me this 23rdday of October 19 91.

Dana Morton

Dana Morton

Notary Public, Harrison County, Texas

My Commission  
expires

03/21/93

DANA MORTON  
NOTARY PUBLIC  
STATE OF TEXAS  
Commission Expires 3-21-93



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY

LONGHORN ARMY AMMUNITION PLANT  
MARSHALL, TEXAS 75670-1059

44-38861-10

NOV 6 1991 11:57

SUBJECT: IAG

004402



SMCLO-EN

SUBJECT: Proof of Publication - IAG


United States Environmental Protection Agency  
Region 6  
ATTN: Lisa Marie Price M.C. 6H-ET  
1445 Ross Ave  
Dallas, TX 75202

Dear Mr. Price:

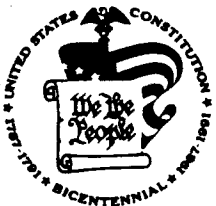
Enclosed is the proof of publication form for public announcement regarding the IAG, for Longhorn Army Ammunition Plant. Public comment period will end December 9, 1991.

If you need any additional information contact Mr. Lynn Muckelrath, (903)679-2980.

Sincerely,

  
Michael K. Cobb, Sr.  
Contract Operations Officer

Enclosure





DEPARTMENT OF THE ARMY  
LONGHORN ARMY AMMUNITION PLANT  
MARSHALL, TEXAS 75671-1059

REPLY TO  
ATTENTION OF

December 16, 1991

004403

RECEIVED  
SEA PERIODIC  
1001 DEC 19 PM 4:56  
SUPERINTENDENT



SMCLO-EV

SUBJECT: Public Announcement of Federal Facility Agreement for Longhorn  
Army Ammunition Plant

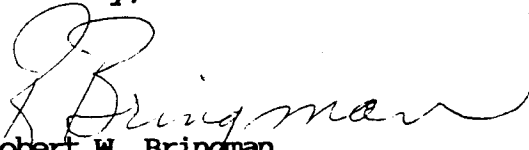
United States Environmental Protection Agency  
Region 6  
ATTN: Lisa Marie Price M. C. 6H-ET  
1445 Ross Ave  
Dallas, TX 75202

Dear Ms. Price:

The public announcement period for subject agreement began on October 23, 1991, and ended on December 9, 1991, with no response. Per your request we allowed an extra week and have received no response to date.

If there are any questions regarding this matter contact,  
Mr. Lynn Muckelrath, (903) 679-2980.

Sincerely,

  
Robert W. Bringman  
Lieutenant Colonel, U. S. Army  
Commanding Officer

Copy Furnished:

TWC - Michael A. Moore  
AMSMC-GCS(R) - Joe Kang  
AMSMC-EQ - Cyril Onewokae  
CESWT-EC-GP - Randy Juhlin







UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200

DALLAS, TEXAS 75202-2733

004404

DEC 18 1991

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Lt. Colonel Robert W. Bringman  
Commander, Longhorn Army Ammunition Plant  
Marshall, Texas

Re: Notice of effective date of Federal Facility Agreement

Dear Lt. Colonel Bringman:

This letter is notice of the effective date of December 30, 1991, of the Federal Facility Agreement entered into by the United States Department of the Army, the Longhorn Army Ammunition Plant, the Texas Water Commission, and the United States Environmental Protection Agency.

Pursuant to Section XXX. (Public Comment) of the Federal Facility Agreement, public notice was published in the Marshall News Messenger on October 22, 1991, and the comment period ran through December 9, 1991. Comments were to be sent to the environmental coordinator at the Longhorn Army Ammunition Plant. No comments were received as of December 16, 1991. Therefore, pursuant to Section XXXVI. (Effective Date) of the Federal Facility Agreement, this Federal Facility Agreement is in full force and effect as of December 30, 1991.

Sincerely yours,

A handwritten signature in cursive script, reading "Robert E. Layton Jr.".

Robert E. Layton Jr., P.E.  
Regional Administrator

cc: Allen Beinke  
Executive Director  
Texas Water Commission

004405

DEC 18 1991

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

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Commander, Longhorn Army Ammunition Plant  
Marshall, Texas

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Sincerely yours,

/s/ Robert E. Layton, Jr.

Robert E. Layton Jr., P.E.  
Regional Administrator

cc: Allen Beinke  
Executive Director  
Texas Water Commission

*LM*  
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