FEDERAL FACILITY AGREEMENT

FOR THE

OAK RIDGE RESERVATION

TABLE OF CONTENTS

APPENDICES

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

AND

THE UNITED STATES DEPARTMENT OF ENERGY

AND

THE TENNESSEE DEPARTMENT OF HEALTH AND ENVIRONMENT

IN THE MATTER OF:	)	
	)	
The U. S. Department	)	FEDERAL FACILITY AGREEMENT
of Energy's	)	UNDER SECTION 120 OF CERCLA
	)	AND SECTIONS 3008(h) AND 6001
OAK RIDGE RESERVATION	)	OF RCRA
	)	
	)	Docket No. 89-04-FF

Based upon the information available to the Parties on the effective date of this FEDERAL FACILITY AGREEMENT (Agreement), and without trial or adjudication of any issues of fact or law, the Parties agree as follows:

I. JURISDICTION

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

1. The U. S. Environmental Protection Agency (EPA),

Region IV, 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 of 1980 (CERCLA), 42 U.S.C. § 9620(e)(1), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499 (hereinafter jointly referred to as CERCLA) and Sections 3008(h) and 6001 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6928(h) and 6961, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) (hereinafter jointly referred to as RCRA) and Executive Order 12580;

2. The EPA, Region IV, enters into those portions of this Agreement that relate to operable units and final remedial actions pursuant to Section 120(e)(2) of CERCLA, Sections 3008(h) and 6001 of RCRA and Executive Order 12580;

3. The U. S. Department of Energy (DOE) enters into those portions of this Agreement that relate to the RI/FS pursuant to Section 120(e)(1) of CERCLA, Sections 3008(h) and 6001 of RCRA, Executive Order 12580, the National Environmental Policy Act, 42 U.S.C. § 4321, and the Atomic Energy Act of 1954 (AEA), as amended, 42 U.S.C. § 2201;

4. The DOE enters into those portions of this Agreement that relate to operable units and final remedial actions pursuant to Section 120(e)(2) of CERCLA, Sections 3008(h) and 6001 of RCRA, Executive Order 12580, and the AEA;

5. The DOE will take all necessary actions in order

to fully effectuate the terms of this Agreement, including undertaking response actions at the Oak Ridge Site (including areas located off the Oak Ridge Reservation) in accordance with Federal and State applicable or relevant and appropriate laws, standards, limitations, criteria, and requirements to the extent consistent with CERCLA.

6. The Tennessee Department of Environment and Conservation (TDEC) enters into this Agreement pursuant to Sections 120(f) and 121(f) of CERCLA and the Tennessee Code Annotated Sections 68-46-101, et seq. and 68-46-201, et seq.

B. The Oak Ridge Site was included by EPA on the Federal Agency Hazardous Waste Compliance Docket established under Section 120 of CERCLA, 42 U.S.C. § 9620, 53 Federal Register 4280 (February 12, 1988). The EPA proposed the Oak Ridge Site for inclusion on the NPL in Update Nine to the NPL published on July 14, 1989 at 54 Federal Register 29820. The EPA finalized the Oak Ridge Site on the NPL on November 21, 1989 at 54 Federal Register 48184. The Parties intend that this Agreement shall satisfy the requirements for an interagency agreement under Section 120 of CERCLA, 42 U.S.C. § 9620, for the Oak Ridge Site.

II. DEFINITIONS

Except as provided below or otherwise explicitly stated herein, the definitions provided in CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 (hereinafter the National Contingency Plan or NCP), shall control the meaning of the terms used in this Agreement. This

Agreement references documents required by the DOE's RCRA permit. Appendix A to this Agreement identifies those documents and their CERCLA counterparts. Any references to the documents or terms identified in Appendix A shall also include the corresponding RCRA or CERCLA document.

In addition, the following definitions are used for purposes of this Agreement. If any of the following terms are amended by revisions to the NCP after the effective date of this Agreement, the revised NCP definition shall control the meaning of that term.

A. Additional Work shall mean any work agreed upon by the Parties under Section XX (Additional Work) to this Agreement.

B. Atomic Energy Act (AEA) shall mean the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2011, et seq.

C. Agreement shall mean this document and shall include all Appendices to this document referred to herein. All such Appendices shall be appended to and made an enforceable part of this Agreement.

D. Applicable State Laws shall include but not be limited to all laws determined to be applicable or relevant and appropriate requirements (ARARs). It is recognized that in some instances in which this phrase is used, there may be no applicable State laws.

E. ARAR(s) shall mean "legally applicable" or "relevant and appropriate" laws, standards, requirements, criteria, or limitations as those terms are used in Section 121(d) of CERCLA, 42 U.S.C. § 9621(d).

F. Authorized Representatives shall mean a Party's employees, agents, successors, assigns, and contractors acting in any capacity, including an advisory capacity, when so designated by that Party.

G. CERCLA shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499.

H. Corrective Action shall mean those actions necessary to correct releases to all media from all solid waste management units at RCRA facilities. Corrective action consists primarily of four steps: the RCRA Facility Assessment, the RCRA Facility Investigation, the Corrective Measures Study, and the Corrective Measures Implementation.

I. Corrective Measures Implementation (CMI) shall mean the design, construction, operation, maintenance, and monitoring of selected corrective measures.

J. Corrective Measures Study(s) (CMS) shall mean the study or report identifying and recommending, as appropriate, specific corrective measures that will correct the release(s) identified during the RCRA Facility Investigation. The CMS shall include a corrective action plan(s), as appropriate.

K. Days shall mean calendar days, unless business days are specified. Any submittal or written statement of dispute that under the terms of this Agreement would be due on a Saturday, Sunday, or holiday shall be due on the following business day.

L. DOE shall mean the United States Department of Energy and its authorized representatives.

M. D1 Primary Document shall mean the first report issued by the DOE of any primary document listed in Section XXI.C.1 (Review/Comment), numbered DOE/OR/nn-nnnn&D1, and transmitted to EPA and TDEC for review and comment under Section XXI (Review/Comment) of this Agreement.

N. D2 Primary Document shall mean the revised report issued by the DOE for any primary document listed in Section XXI.C.1 (Review/Comment), and numbered DOE/OR/nn-nnnn&D2, after receipt of comments from the EPA and TDEC and before it becomes an approved/finalized primary document under Section XXI (Review/Comment). A revised D2 primary document may be subject to the dispute resolution procedures of Section XXVI (Resolution of Disputes) of this Agreement and have subsequent documents numbering D3, D4,..prior to approval/finalization by the parties.

O. EPA shall mean the United States Environmental Protection Agency and its authorized representatives.

P. Feasibility Study(s) (FS) shall mean a study that fully evaluates and develops remedial action alternatives to prevent and/or mitigate the migration of the release of hazardous substances, pollutants, or contaminants at and from the Site.

Q. Hazardous Constituent(s) shall mean those substances listed in Appendix VIII to 40 C.F.R. Part 261 and includes hazardous constituents released from solid waste and hazardous constituents that are reaction by-products.

R. Hazardous Substances shall have the meaning set forth by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

S. Hazardous Waste(s) shall have the meaning set forth by § 1004(5) of RCRA, 42 U.S.C. § 6903(5) and in 40 C.F.R. Parts 260 and 261.

T. Interim Measures shall mean those measures conducted in accordance with the DOE's RCRA permit to contain, remove, or treat contamination resulting from the release of hazardous constituents from solid waste management units in order to protect human health and the environment. Such measures may be conducted concurrently with operable units under this Agreement.

U. National Contingency Plan (NCP) shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, and any amendments thereto.

V. National Priorities List (NPL) Site shall mean the Site as finally promulgated at 40 C.F.R. Part 300.

W. Oak Ridge Reservation (ORR) shall mean the lands owned by the United States and under the jurisdiction of the DOE (approximately 58,000 acres) that are located in Roane and Anderson counties in eastern Tennessee. The ORR is described in more detail in Section VIII and Appendix B of this Agreement.

X. On-site shall mean the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of the response action.

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

divided into a number of operable units, depending on the complexity of the problems associated with the site. Operable units may address geographic portions of a site, specific site problems, or initial phases of an action, or may consist of any set of actions performed over time or any actions that are concurrent but located in different parts of a site. Operable units will not impede implementation of subsequent actions, including final action at the Site.

Z. Parties shall mean all parties who are signatories to this Agreement.

AA. Project Manager(s) shall mean the officials designated by EPA, DOE, and TDEC to coordinate, monitor, or direct remedial response actions at the Site.

BB. Proposed Plan(s) or Proposed Remedial Action Plan(s) shall mean the report(s) describing the remedial action(s) recommended for the Site.

CC. Quality Assured Data shall mean data that have undergone quality assurance as set forth in the approved Quality Assurance Plan.

DD. RCRA shall mean the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq., as amended by the Hazardous and Solid Waste Amendments of 1984, Pub. L. 98-616.

EE. RCRA Facility Assessment(s) [RFA(s)] shall mean the assessment(s) performed under RCRA to identify actual and potential releases from solid waste management units located on the Oak Ridge Reservation.

FF. RCRA Facility Investigation(s) [RFI(s)] shall mean an investigation(s) performed in accordance with the RCRA permit to gather data sufficient to fully characterize the nature, extent and rate of migration of contaminant releases identified in the RFA(s).

GG. Record(s) of Decision [ROD(s)] shall mean the document issued by the lead agency as the final remedial action plan for the Site (or any operable unit) pursuant to Section 120 of CERCLA, 42 U.S.C. § 9620. The ROD shall contain a statement of the basis and purpose for the selected remedy at the Site. In addition, the ROD shall consist of (1) a Declaration stating the selected remedy and showing that the selection was made in accordance with the statutory and regulatory requirements of CERCLA and applicable Tennessee law, (2) a Decision Summary providing a summary of the problems posed by the Site, the alternatives evaluated and the analysis of those alternatives, and an explanation of how the statutory requirements were met, and (3) a Responsiveness Summary responding to public comments received on the Proposed Plan, RI/FS, and other information made available in the administrative record.

HH. Release shall have the meaning set forth by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

II. Remedial Action(s) [RA(s)] shall mean the implementation of the RAP and the RD consistent with the NCP and the Superfund Remedial Design and Remedial Action Guidance (EPA) including on-site construction, treatment processes, removals, and any other tasks necessary.

JJ. Remedial Action Plan(s) [RAP(s)] shall mean the report describing the remedy selected for cleanup of the Site.

KK. Remedial Design(s) [RD(s)] shall mean the technical analysis and procedures which follow the selection of remedy and result in a detailed set of plans and specifications for implementation of the remedial action.

LL. Remedial Investigation(s) [RI(s)] shall mean an investigation conducted to fully assess the nature and extent of the release or threat of release of hazardous substances, pollutants, or contaminants and to gather necessary data to support the corresponding feasibility study.

MM. Removal Action shall have the same meaning as "remove" or "removal" as defined by Section 101(23) of CERCLA, 42 U.S.C. § 9601(23).

NN. Respond or Response shall have the meaning set forth in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

OO. Site (Oak Ridge Site) shall mean "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

PP. Solid Waste(s) shall have the meaning set forth by Section 1004(27) of RCRA, 42 U.S.C. § 6903(27) and in 40 C.F.R. Part 261.

QQ. Solid Waste Management Units (SWMUs) shall mean those units subject to applicable RCRA corrective action requirements, identified by EPA and TDEC, either presently or in the future, as requiring further investigation, and specifically identified as SWMUs in Appendix C. This Appendix may be revised by agreement of the Parties.

RR. Tank System(s) shall mean those units listed or otherwise identified in Appendix F to this Agreement. This Appendix may be revised by mutual agreement of the Parties.

SS. TDEC shall mean the State of Tennessee's Department of Environment and Conservation and its authorized representatives.

TT. Timetables and Deadlines shall mean schedules as well as that work and those actions that are to be completed and performed in conjunction with such schedules, including performances of actions established pursuant to Section XIX (Timetables and Deadlines), Section XX (Additional Work), Section XXI (Review/Comment), and Section XXVI (Resolution of Disputes) of this Agreement.

UU. Waste Area Grouping(s) (WAG(s)) shall mean a group of solid waste management units and/or other areas of contamination that are geographically contiguous or are located within defined hydrologic units. The DOE may consolidate SWMUs, WAGs, and/or other areas into single groupings for purposes of conducting any work under this Agreement.

III. PURPOSES OF AGREEMENT

A. The general purposes of this Agreement are to:

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

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

3. Prevent, mitigate, or abate releases or threatened releases of hazardous substances from low-level radioactive waste tank systems under this Agreement prior to final remedial action at the Site;

4. Facilitate cooperation, exchange of information, and participation of the Parties;

5. Minimize the duplication of investigative and analytical work and documentation and ensure the quality of data management;

6. Ensure that remedial action(s) at the Site will be in compliance with ARARs;

7. Expedite response actions with a minimum of delay;

8. Establish a basis for a determination that the DOE has completed the RI/FS(s), remedial design(s), and remedial action(s) at the Site pursuant to CERCLA and applicable Tennessee State laws;

9. Coordinate response actions under CERCLA and this Agreement with RFI(s) and corrective measures now being conducted under RCRA and applicable State laws; and

10. Ensure that all releases of hazardous substances, pollutants or contaminants as defined by CERCLA and

all releases of hazardous wastes or hazardous constituents as defined by RCRA are addressed so as to achieve a comprehensive remediation of the Site.

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

1. Identify operable units which are appropriate at the Site prior to the implementation of final remedial action(s) for the Site. Operable units shall be identified and proposed by the Parties as early as possible prior to formal proposal of operable units to EPA by DOE pursuant to CERCLA. This process is designed to promote cooperation among the Parties in identifying potential operable units prior to selection of final operable units;

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

3. Establish requirements for the performance of an FS(s) for the Site to identify, evaluate, and select alternatives for the appropriate remedial action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants or contaminants at the Site in accordance with CERCLA;

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

5. Implement the selected operable unit(s) and final remedial action(s) in accordance with CERCLA;

6. Establish requirements for low-level radioactive waste tank systems under this Agreement to ensure structural integrity, containment and detection of releases, and source control pending final remedial action at the Site;

7. Meet the requirements of Section 120(e)(2) of CERCLA, 42 U.S.C. § 9620(e)(2), for an interagency agreement between the Parties;

8. Provide for continued operation and maintenance following completion of the selected remedial action(s);

9. Assure compliance with Federal and Tennessee State hazardous waste laws and regulations for matters covered by this Agreement;

10. Expedite the remediation process to the extent necessary to protect human health and welfare and the environment.

IV. RCRA/CERCLA COORDINATION

A. The Parties intend to coordinate the DOE's CERCLA response obligations with the corrective measures required and conducted by DOE under its current RCRA permit. The Parties intend that the response actions under this Agreement, together with the corrective measures under the RCRA permit, achieve comprehensive remediation of releases and threatened releases of hazardous substances, hazardous wastes (including hazardous constituents), pollutants or contaminants at or from the ORR. For that reason, this Agreement supplements corrective actions under

the RCRA permit with response actions under CERCLA for releases not presently addressed in the RCRA permit. Therefore, the Parties intend that activities covered by this Agreement will be deemed to achieve compliance with CERCLA, 42 U.S.C. §§ 9601, et seq.; to satisfy the corrective action requirements of Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), for interim status facilities; and to meet or exceed all applicable or relevant and appropriate Federal and State laws and regulations to the extent required by Section 121 of CERCLA, 42 U.S.C. § 9621.

B. This Agreement expands the RCRA Facility Assessments and Investigations presently under way at the ORR with requirements to investigate (1) releases at or from units not included in the RCRA permit and (2) releases of hazardous and/or radioactive substances not regulated by DOE's RCRA permit. The Parties intend to coordinate and combine these assessments, investigations, and other response actions at the Site. The Parties intend to combine the administrative records developed for activities under the RCRA permit and response actions under this Agreement in order to facilitate public participation in the selection of RCRA/CERCLA response actions and to ensure comprehensive remediation of the Site. The Parties intend to coordinate the procedures for the selection of response action(s) under this Agreement with the administrative procedures for issuance of any additional RCRA permits and/or any future modifications of RCRA permits. The Parties intend to modify the DOE's RCRA permit, as appropriate, to incorporate the remedial

action(s) selected under this Agreement as corrective measures to satisfy Sections 3004(u) and (v) of RCRA. The Parties agree that with respect to releases of hazardous constituents from facilities that are or were authorized to operate under Section 3005(e) of RCRA, 42 U.S.C. § 6925(e) and are covered by this Agreement, that RCRA shall be considered an applicable or relevant and appropriate requirement pursuant to Section 121 of CERCLA, 42 U.S.C. § 9621.

C. The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties further recognize that ongoing hazardous waste management activities at the ORR may be subject to or require the issuance of additional permits under Federal and State laws. This Agreement does not relieve the DOE of its obligations, if any, to obtain such permits. This Agreement does not supersede, modify, or otherwise change the requirements of the DOE's existing RCRA permits.

D. Notwithstanding any provision of this Agreement, any challenges to response actions selected or implemented under Sections 104, 106, or 120 of CERCLA, 42 U.S.C. §§ 9604, 9606, or 9620, may be brought only as provided in Section 113 of CERCLA, 42 U.S.C. § 9613.

V. STIPULATED FACTS

For purposes of this Agreement only, the stipulated facts presented in Appendix D (Stipulated Facts) to this Agreement constitute a summary of facts upon which this Agreement is based.

VI. STIPULATED DETERMINATIONS

For the purposes of this Agreement only, the following constitute the determinations upon which this Agreement is based.

A. The Oak Ridge Reservation (ORR) is located in Roane and Anderson Counties in eastern Tennessee and constitutes a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) and Tennessee Code Annotated Sections 68-46-202(5) and 68-46-104(5) and includes certain facilities authorized to operate under Sections 3005(c) and 3005(e) of RCRA, 42 U.S.C. §§ 6925(c) and 6925(e);

B. The ORR, for the purposes of this Agreement, is a federal facility which is subject to, and shall comply with, CERCLA in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under Section 107 of CERCLA, 42 U.S.C. § 9607, and applicable Tennessee State law.

C. On September 25, 1986, the EPA issued a permit under Section 3005(c) of RCRA, 42 U.S.C. § 9625(c), to DOE to require it to determine whether there have been any releases of hazardous waste or hazardous constituents from solid waste management units on the ORR and to take appropriate corrective action for any such releases. This permit, in conjunction with the Hazardous Waste Permit issued by the State of Tennessee, constitutes the RCRA permit for DOE's Oak Ridge facility.

D. Hazardous substances and pollutants or contaminants and solid wastes and hazardous wastes (including hazardous

constituents) within the meaning of Sections 101(14), 101(33) and 104(a)(2) of CERCLA, 42 U.S.C. §§ 9601(14), 9601(33), and 9604(a)(2), and Sections 1004(27) and 1004(5) of RCRA, 42 U.S.C. §§ 6903(27) and 6903(5) and 40 C.F.R. Part 261, and Tennessee Code Annotated Sections 68-46-107, 68-46-206, 68-46-104(7), and 68-46-202(2) and Tennessee Compilation of Rules and Regulations, Chapter 1200-1-11-.01(2)(a), have been released or disposed of at the Site.

E. There have been releases and there continue to be releases and threatened releases of hazardous substances and pollutants or contaminants and solid and hazardous wastes (including hazardous constituents) from the Site into the environment within the meaning of Sections 101(22), 104, 106, and 107 of CERCLA, 42 U.S.C. §§ 9601(22), 9604, 9606, and 9607, and Sections 1004(27), 1004(5), and 3008(h) of RCRA, 42 U.S.C. §§ 6903(27), 6903(5), and 6928(h), and Tennessee Code Annotated Sections 68-46-104(12) and 68-46-202(4) and Tennessee Compilation of Rules and Regulations, Chapter 1200-1-11-.01(2)(a).

F. With respect to those releases and threatened releases, the DOE is a person and an owner or operator within the meaning of Sections 101(21), 101(20), and 107 of CERCLA, 42 U.S.C. §§ 9601(21), 9601(20), and 9607 and Tennessee Code Annotated Sections 68-46-104(7) and 68-46-202(4). The ORR is also a facility that is and was authorized to operate under Section 3005(e) of RCRA, 42 U.S.C. § 6925(e).

G. The actions to be taken pursuant to this Agreement are reasonable and necessary to protect public health or welfare or the environment; and

H. A reasonable time for completing the actions required by this Agreement will be provided.

VII. PARTIES

The Parties to this Agreement are the EPA, the TDEC, and the DOE. The terms of this Agreement shall apply to and be binding upon the EPA, TDEC, and DOE, their respective agents, employees, and response action contractors and upon all subsequent owners, operators, and lessees of the DOE for the Site. The DOE shall notify the EPA and the TDEC, in its annual report, of the identity and assigned tasks of each of its contractors performing work under this Agreement upon their selection. The DOE shall take all necessary measures to assure that its contractors, subcontractors, and consultants performing work under this Agreement act in a manner consistent with the terms of this Agreement. This Section shall not be construed as an agreement by the Parties to indemnify each other or any third party. The DOE shall notify its agents, employees, response action contractors, and all subsequent owners, operators, and lessees of the ORR of the existence of this Agreement.

VIII. SITE DESCRIPTION

The Oak Ridge Reservation (ORR) consists of about 37,000 acres of federally-owned land in the City of Oak Ridge, which is located in both Anderson and Roane Counties, Tennessee. The ORR

is bounded on the north and east by the City of Oak Ridge (population 28,000) and on the south and west by the Clinch River. The area surrounding the ORR is predominately rural, used largely for residences, small farms, and pasture land. Fishing, boating, water skiing, and swimming are favorite recreational activities in the area. Towns that are located in the vicinity of the ORR, together with their approximate populations (1980 Census data) and distances from the ORR include:

Town	Population	Distance	Direction
Oliver Springs	3,600	7 miles	NW
Clinton	5,300	10 miles	NE
Lenoir City	5,400	7 miles	SE
Kingston	4,400	7 miles	SW
Harriman	8,300	8 miles	W

The City of Knoxville (population 183,000), the nearest major metropolitan area, is located approximately 25 miles to the east.

The ORR consists of three major operating facilities: the Oak Ridge National Laboratory (ORNL), the Oak Ridge Gaseous Diffusion Plant (ORGDP or K-25), and the Y-12 Plant. The ORNL, located 10 miles southwest of the City, is an energy research laboratory that includes nuclear reactors, chemical pilot plants, and radioisotope production laboratories constructed in the early 1940's. The ORGDP, located 13 miles west of the City and constructed in 1943, was a production and development facility for uranium enrichment for both nuclear weapons and power productions. Production operations at the ORGDP have been shut-down since 1985. The Y-12 Plant, built in 1943, is located

immediately adjacent to the City of Oak Ridge. Its primary activities are the production of nuclear weapons components, manufacturing support for DOE weapon design laboratories, processing of source and special nuclear materials and support for DOE facilities and other government agencies.

The ORR generates a variety of hazardous substances, including radioactive, nonradioactive, and mixed wastes, some of which have been released into the environment at the ORR. Metals, organics, and radionuclides have been detected in the air, soils, groundwater, and surface water at the ORR. Releases of hazardous substances and environmental contamination associated with the ORR are described in greater detail in Appendix B (Detailed Site Description) to this Agreement. Under its RCRA permit, the DOE has begun the remedial investigation process at over 500 solid waste management units at the ORR. This Agreement expands the scope of investigatory and remedial activities presently under way at the Site to include releases not covered by the RCRA permit (e.g., releases or potential releases of radionuclides).

IX. LOW-LEVEL RADIOACTIVE WASTE TANK SYSTEM(S)

A. Applicability:

The provisions of this Section apply to the DOE's low-level radioactive waste tank system(s) that are listed and identified in Appendix F to this Agreement. Appendix F contains four categories of tank system(s) associated with the Oak Ridge National Laboratories (ORNL): (a) new or replacement tank system(s) with secondary containment; (b) existing tank system(s)

with secondary containment; (c) existing tank system(s) without secondary containment; and (d) existing tank system(s) without secondary containment that are removed from service. Subsections B through D, below apply to existing tank system(s) that have secondary containment and to new or replacement tank system(s) installed after the effective date of this Agreement. Subsections E and F, below apply to existing tank system(s) that do not have secondary containment. Subsection G, below applies to all tank system(s) that are permanently removed from service. The DOE agrees to remediate all low-level radioactive waste tank system(s) that are permanently removed from service under this Agreement. The requirements of this Section are illustrated in the "ORNL Tank Logic Diagram" contained in Appendix F to this Agreement.

B. Design/Installation Assessments for New or Replacement Tank(s):

1. For each new or replacement tank system(s) the DOE shall submit to EPA and TDEC for review and approval, a written assessment(s), certified by a qualified, registered professional engineer licensed in the State of Tennessee and knowledgeable of tank systems, that the tank system(s) has sufficient structural integrity and is acceptable for the storing or treating of hazardous and/or radioactive substances. This assessment shall be submitted to EPA and TDEC for approval at least ninety (90) days prior to installation of a new or replacement tank system(s).

2. The design/installation assessment(s) shall demonstrate that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system(s) has sufficient structural strength, compatibility with the hazardous/radioactive substances to be stored or treated, and corrosion protection to ensure that the tank system(s) will not collapse, rupture, or fail. At a minimum, the design/installation assessment(s) shall include the information described in Section B.1. of Appendix F herein.

3. New or replacement tank system(s) shall be constructed and installed in accordance with the specifications in the approved design/installation assessment(s) and all other requirements specified in Section B of Appendix F herein, entitled "Standards for Design/Installation of New or Replacement Tank System(s)."

C. Containment/Detection of Releases and Operational Standards for Secondary Containment Tank System(s):

1. For new or replacement tank system(s), the DOE shall submit design demonstration(s) to the EPA and TDEC for review and approval that show that all new or replacement tank system(s) meet the containment/release detection standards contained in Section C of Appendix F herein, entitled "Standards for Containment/Release Detection." This design demonstration(s) shall be incorporated into the Design/Installation Assessment(s) submitted under the provisions of Subsection B herein.

2. For new or replacement tank system(s), the DOE shall install secondary containment system(s) that are (a) designed, installed, and operated to prevent any migration of hazardous or radioactive constituent, hazardous substances, or accumulated liquid out of the system(s) to the air, soil, groundwater, or surface water at any time during the use of the tank system(s) or component(s), and (b) capable of detecting and collecting releases and accumulated liquids until the collected material is removed under the provisions of this Agreement.

3. Within sixty (60) days of the effective date of this Agreement, the DOE shall submit to EPA and TDEC for approval a schedule for the submittal of written design demonstration(s) for existing tank system(s) that have secondary containment. This design demonstration(s) shall show that the tank systems meet, or can be retrofitted to meet, the standards contained in Section C of Appendix F herein, entitled "Standards for Containment/Release Detection". The design demonstration(s) shall include plans and schedules for any such retrofitting necessary to meet these standards.

4. The DOE shall monitor and maintain the secondary containment tank system(s) (including new or replacement tank system(s)) throughout the active life of the tank system(s) and until the tank system(s) is removed from service in accordance with Subsection G, below.

D. Disposition of Leaking Secondary Containment Tank(s):

1. For a secondary containment tank system(s) or component(s) from which there may be or has been a leak or spill,

the DOE shall satisfy the requirements contained in Section D of Appendix F herein, entitled "Disposition of Leaking Tank System(s)." For the purposes of Section IX and Appendix F to this Agreement, a leak shall mean the escape of a hazardous substance from primary or secondary containment. Leak detection methods may include installed leak detection equipment and procedures, photographic or visual inspection that show liquid or accumulating dried wastes, or sampling and analysis.

2. The DOE may return to service a secondary containment tank system(s) or component(s) from which there has been a leak or spill provided that the DOE demonstrates, subject to the review and approval of EPA and TDEC, that it meets the requirements contained in Subsections D6(a) through D6(d) of Appendix F, entitled "Disposition of Leaking Tank System(s)."

3. If the EPA and TDEC determines that a secondary containment tank system(s) or component(s) shall not be returned to service, then the DOE shall, within thirty (30) days of receipt of such a determination, submit a plan and schedule for removal from service to EPA and TDEC for approval. In the event the DOE determines to remove a secondary containment tank system(s) or component(s) from service, it shall submit a plan and schedule for removal from service to EPA and TDEC for approval.

4. Upon receipt of approval of any plan and schedule submitted under Subsection D.3. above, the DOE shall remove the tank system(s) or component(s) from service in

accordance with the approved plan and schedule. Upon removal from service, the DOE shall implement the requirements in Subsection G, below.

E. Schedules for Removal of Tank System(s) from Service:

1. Within sixty (60) days of the effective date of this Agreement, the DOE shall submit to EPA and TDEC for review and approval, a plan and schedule for the removal from service all tank system(s) that do not meet the secondary containment standards of Subsection B, above. For specific tank system(s), the DOE may request a sixty (60) day extension to submit its plan and schedule for removal from service. The DOE shall give priority in its plan and schedule to tank system(s) that do not have secondary containment and that fail to demonstrate structural integrity under Subsection F, below. If the DOE determines that immediate removal of an existing tank system(s) from service will pose either unacceptable risks to worker health or safety, or an immediate risk to human health or the environment, then the DOE shall include an assessment of those risks in its plan and schedule. Tank system(s) shall be removed from service in accordance with the requirements of the approved plan and schedule.

2. Subject to the approval of EPA and TDEC, the DOE may continue operation of non-secondary containment tank system(s) that demonstrate structural integrity under Subsection F, below. The DOE shall immediately cease operation of these tank system(s) in the event that a new or replacement tank system(s) is placed in operation. At that time, the tank system(s) shall be removed from

service in accordance with Subsection G, below. For tank system(s) that develop leaks, the DOE shall comply with the requirements in Section D of Appendix F herein, entitled "Disposition of Leaking Tank System(s)."

3. Tank system(s) removed from service prior to the effective date of this Agreement shall be considered removed from service under this Agreement and no schedule shall be submitted for those tank system(s) under this Subsection. Tank system(s) removed from service prior to the effective date of this Agreement may not be returned to service and shall be evaluated and remediated under Subsection G, below.

F. Structural Integrity Assessment(s) for Non-Secondary Containment Tank System(s):

1. Within ninety (90) days of the effective date of this Agreement, or within ninety (90) days of the date on which EPA or TDEC disapprove of a design demonstration under Subsection C.3. above, whichever is later, the DOE shall submit a schedule for approval by EPA and TDEC for providing all available information concerning the structural integrity of tank system(s) that do not meet the secondary containment standards of Subsection B, above. For these tank system(s), the DOE shall submit the information described in Subsection A in Appendix F, entitled "Standards for Integrity Assessment for Tank System(s)." The DOE shall submit its structural integrity information under this Subsection in accordance with the approved schedule.

2. For each non-secondary containment tank system(s), the DOE shall demonstrate, subject to the review and approval of EPA and TDEC, that the tank system(s) is not (or may be) leaking. This demonstration shall include: (a) volume balancing data for transfer lines and tank liquids level trend data, together with all supporting data or information, or (b) data/information from alternate method(s) that accurately evaluates tank integrity.

3. For each non-secondary containment tank system(s), the written assessment(s) submitted under this Subsection shall demonstrate that the tank system(s) is adequately designed and, at the time of assessment, has sufficient structural strength and compatibility with the hazardous and/or radioactive substances to be stored or treated, to ensure that the tank system(s) will not collapse, rupture, or fail prior to removal from service or re-assessment. This requirement shall also apply to tank system(s) that have been removed from service prior to the effective date of this Agreement.

4. Within sixty (60) days of the effective date of this Agreement, the DOE shall submit a schedule for providing the results of leak detection tests together with a schedule for the periodic review and revision of the structural integrity assessment(s) required by this Subsection until the tank system(s) is removed from service and any necessary response action(s) is completed under Subsection G, below. The demonstration required by this Subsection shall be in writing and shall be certified by a

qualified, registered professional engineer licensed in the State of Tennessee and knowledgeable of tank systems.

5. If at any time DOE determines that liquids from an uncontrolled source (e.g., infiltration of groundwater) are entering a Category C tank listed in Appendix F, intentional waste additions to the tank shall be stopped immediately. In addition, the liquid within the tank shall be reduced to and/or maintained at a level to prevent a release of hazardous substances to the environment until the tank is removed from service.

G. Removal of Tank System(s) From Service:

1. This Subsection shall apply to all low-level radioactive waste tank system(s) listed in Appendix F to this Agreement that are removed from service. Within ninety (90) days of the effective date of this Agreement, or within ninety (90) days of the date a tank is declared inactive, whichever is later, the DOE shall provide to EPA and TDEC a schedule for conducting the waste characterization(s) of tank contents for hazardous and/or radiological constituents in tank system(s) removed from service. The DOE's waste characterization(s) shall include the results of the sampling and analysis of the contents (including wastes, liquids, and sludges) of all tank system(s) removed from service.

2. Within ninety (90) days of the effective date of this Agreement, or within ninety (90) days of the date a tank is declared inactive, whichever is later, the DOE shall submit to EPA and TDEC for approval risk characterization plan(s) and schedule(s) for characterizing the risk(s) associated with all tank system(s)

removed from service. The DOE's risk assessment plan(s) shall characterize and define categories of risks associated with the tank system(s) pending final remediation. The DOE shall conduct risk characterization(s) for tank system(s) removed from service in accordance with the approved schedules.

3. Based upon the results of the waste and risk characterization(s) required above, the DOE shall propose a schedule(s) to EPA and TDEC for approval for operable units/ interim measures or final remedial action as described below. This schedule shall be proposed and updated as part of the annual timetables and deadlines submitted under Section XIX (Timetables and Deadlines) of this Agreement.

4. The DOE shall remediate all tank system(s) removed from service. To the extent practicable, the DOE shall remove or decontaminate, or otherwise remediate all residues, contaminated containment system components (liners, etc.), contaminated soils and structures and equipment associated with the tank system(s).

5. The DOE shall address the following phases of tank system(s) remediation as both corrective measures or remedial actions under the applicable waste area grouping or operable unit:

a. Remediation of the tank(s) contents;

b. Remediation of the tank(s) and related piping and appurtenances; and

c. Remediation of any surrounding releases or contamination.

6. The provisions described herein shall become effective six months after the effective date of this change.

Prior to the scheduled remediation of tank system(s) as required in Sections IX.G.3 through IX.G.5, the DOE may conduct routine transfers of the liquid contents of the tank system(s) to the active portions of the LLLW system for the treatment and/or storage, upon receiving written approval from TDEC prior to such transfer operations. The DOE shall submit a written request to TDEC, for approval, and EPA, for information, of such transfers at least 14 days prior to the transfer operation. The DOE may combine requests for recurring routine transfers into a single document which may be submitted annually to TDEC, for approval, and to EPA, for information, for recurring routine (Appendix I-7) transfer operations rather than submit individual routine transfer requests. Transfers that TDEC determine are not routine (Appendix I-8) shall be conducted in accordance with the provisions of Section IX.G.5 or Section XIII. of the FFA. The declaration of whether a transfer is routine shall be within the discretion of TDEC, and subject to resolution of disputes as set forth in Section XXVI.

7. The DOE shall conduct all necessary response actions under Sections X through XV of this Agreement for all tank system(s) identified in Appendix F.

X. SITE EVALUATION(S)

For newly discovered areas with potential or known releases of hazardous substances, the DOE agree to: (a) provide notice to EPA and TDEC in accordance with Section 300.405 of the NCP; and (b) conduct removal site evaluations (SEs)in accordance with Section 300.410 of the NCP. The DOE shall submit to EPA and TDEC Removal Site Evaluation Reports based on such evaluations. If the removal SE indicates that removal action under Section 300.415 of the NCP is necessary, the DOE will satisfy the requirements of Section XIII (Removal Actions) of this Agreement. If upon completion of a Removal Site Evaluation and/or a removal action, the resulting report indicates that remedial action under Section 300.430 of the NCP may be necessary for an area, DOE will amend the ORR Remedial Site Evaluation list of Appendix C to this Agreement to

include such area. For those areas in the Remedial Site Evaluation list of Appendix C to this Agreement, the DOE agrees to conduct remedial SEs in accordance with Section 300.420 of the NCP. The DOE shall submit to EPA and TDEC, Remedial Site Evaluation Reports based on such evaluations, and recommend the need for further response actions. If DOE's recommendation is accepted, then EPA and TDEC will concur by written response. If the EPA and TDEC determine that further remedial response action is necessary for an area, then the DOE agrees, subject to the dispute resolution procedures in Section XXVI (Resolution of Disputes), to amend the Characterization Areas list of Appendix C to this Agreement to include such area and to conduct additional work at such area under the terms of this Agreement.

XI. REMEDIAL INVESTIGATION(S)/FEASIBILITY STUDY(S)

The DOE agrees that it shall conduct an RI(s) for the site (including any operable unit(s) at the Site) which is in accordance with the timetables and deadlines set forth in Appendix E to this Agreement. Prior to initiating operable unit RI Work Plan development, representatives of the three parties will prepare for, in accordance with Appendix I-5 (Document Information Assessment Operating Instructions), and conduct a RI/FS scoping workshop according to the operating instruction in Appendix I-4. Operable units at the Oak Ridge Reservation, which must address classification issues during the performance of the RI/FS phase, will follow the Appendix I-3 (Referencing Classified Documents Operating Instructions) and Appendix I-5 (Document Information Assessment Operating Instructions) in regard to the classified information. The RI(s) shall meet the purposes set forth in Section III of this Agreement. For SWMUs for which the DOE is required to conduct an RFI pursuant to its RCRA permit, the Parties agree that the RFI and RI shall be combined into a single investigation designed to meet the requirement of both the RCRA permit and the purposes of this Agreement.

The DOE agrees it shall conduct an FS(s) for the Site (including any operable unit(s) at the Site) and report upon a FS(s) for the Site which is in accordance with the timetables and

deadlines set forth in Appendix E of this Agreement. The FS(s) shall be based on the RI(s) and shall meet the purposes set forth in Section III of this Agreement. For SWMUs for which the DOE is required to conduct a CMS pursuant to its RCRA permit, the Parties agree that the CMS and FS shall be combined into a single study designed to meet the requirements of both the RCRA permit and the purposes of this Agreement.

XII. OPERABLE UNIT(S)

Pursuant to the published schedules and timetables, the DOE agrees that it shall develop alternatives for operable units, together with monitoring plans. After consultation with EPA and TDEC, the DOE shall submit its proposed operable units and its analysis of the proposals to EPA and TDEC. The Parties shall make a final selection of the operable units for the Site. If the Parties are unable to agree upon the selection of operable units, the final selection of the operable units shall be made by the Administrator and shall not be subject to dispute by the DOE. The designation of operable unit(s) shall be reviewed and revised annually in conjunction with the establishment of timetables and deadlines under Section XIX (Timetables and Deadlines) of this Agreement.

All submittals and elements of work undertaken pursuant to this Section shall be performed in accordance with the requirements and time schedules set forth in Section XIX (Timetables and Deadlines) of this Agreement. Operable units shall meet the purposes set forth in Section III (Purposes of Agreement) of this Agreement.

XIII. REMOVAL ACTIONS

A. The DOE shall designate an On-Scene Coordinator (OSC) as required by Section 300.120 of the NCP. The ORR OSC shall be the point of contact between DOE, EPA and the TDEC for all removal actions for hazardous substances.

B. Removal Actions conducted by the DOE on the ORR shall be consistent with CERCLA and the NCP. The DOE shall notify the EPA and TDEC in writing of any such proposed removal actions, including

proposed technical specifications. The EPA and TDEC shall respond with any comments and/or objections within thirty (30) days of receipt of such notification. The EPA and TDEC may request additional time not to exceed twenty (20) days in which to respond to the notification. The Removal Action activities will be included in the FFA annual report specified in Section XXIV(Reporting).

C. In cases in which a release at the Site could cause imminent and substantial endangerment to the public health or welfare or the environment, the DOE shall proceed as soon as possible with a Removal Action and notify EPA and TDEC within forty-eight (48) hours of such release. A description of the emergency and the technical specifications for the Removal Action, including any further action needed to complete the Removal Action, shall be submitted in writing to EPA and TDEC within five (5) days of the release.

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

XIV. REMEDIAL ACTION PLAN(S)/RECORD(S) OF DECISION

Following completion and a review in accordance with Section XXI (Review/Comment) by EPA and TDEC of an RI(s) (including any RI for an operable unit) and the corresponding FS(s) (including any FS for an operable unit) for all or part of the Site, the DOE shall submit a Proposed Plan(s) for remedial action(s), including appropriate timetables and deadlines, to EPA and TDEC for review in accordance with Appendix E and Section XXI (Review/Comment) of this Agreement. The Proposed Plan(s) shall meet the purposes set forth in Section III (Purposes of Agreement) of this Agreement. Following approval by the EPA and TDEC pursuant to Section XXI (Review/Comment) of this Agreement, the DOE shall publish its proposed Remedial Action Plan (RAP) for public review and comment in accordance with Section 117(a) of CERCLA, 42 U.S.C. § 9617(a), and applicable State law. Upon completion of the public comment period,

all Parties shall confer about the need for modification of the Proposed Remedial Action Plan and additional public comment based on the public response. When public comment has been properly considered, the DOE shall submit its initial D1 Record(s) of Decision, including the responsiveness summary, in accordance with applicable guidance. The DOE shall also submit the proposed Administrative Record (AR) Index with transmittal of the D1 ROD for review, in accordance with Appendix I-10, AR Index Transmittal Operating Instructions. The D1 ROD(s) shall meet the purposes set forth in Section III (Purposes of Agreement) of this Agreement. A review in accordance with Section XXI (Review/Comment) shall be conducted on the D1 Record(s) of Decision. If the Parties agree on the D1 Record(s) of Decision, the D1 Record(s) of Decision shall be adopted by EPA and TDEC, and the DOE shall issue the Record(s) of Decision for signature by the Parties. If the Parties are unable to reach agreement on the D1 Record(s) of Decision, the selection of the remedial action shall be made by the Administrator of EPA, or his delegatee, and EPA shall then prepare the EPA signed Record(s) of Decision. The final selection of the remedial action(s) by the Administrator shall be final and shall not be subject to dispute under Section XXVI (Resolution of Disputes). Notice of the final Record(s) of Decision shall be published by the DOE with EPA's concurrence and shall be made available to the public prior to the commencement of the remedial action(s), in accordance with Sections 117(b), (c), and (d) of CERCLA, 42 U.S.C. §§ 9617(b), (c), and (d). The EPA and/or TDEC shall propose any modifications necessary to the corrective action provisions of the DOE's RCRA permit in conjunction with the notice of the Proposed Plan(s) and the approved ROD(s).

XV. REMEDIAL DESIGN(S)/REMEDIAL ACTION(S)

Following final selection of the remedial action(s), the DOE shall submit a Remedial Design Work Plan(s) and Remedial Action Work Plan(s) for the completion of the selected remedial action(s), to EPA and TDEC for review in accordance with Appendix E and Section

XXI (Review/Comment) of this Agreement. The Remedial Design Work Plan(s) and Remedial Action Work Plan(s) shall meet the purposes set forth in Section III (Purposes of Agreement) of this Agreement. Upon approval of the Remedial Design Reports(s) and Remedial Action Work Plan(s) by EPA and TDEC, the DOE shall implement the remedial action(s) in accordance with the then approved requirements and timetables and deadlines and documented in the Appendix E.

XVI. DELIVERABLES

The DOE agrees to submit to EPA and TDEC certain deliverables to fulfill the obligations and meet the purposes of this Agreement. The schedule for the deliverable submittals are specified in Appendix E to this Agreement.

XVII. GUIDANCE

The EPA and TDEC agree to provide DOE with guidance and to give a timely response to requests for guidance to assist DOE in the performance of the requirements under this Agreement.

XVIII. SCOPING WORK PRIORITIES

A. The DOE agrees to use the procedures set forth in Appendix G to this Agreement as the primary tool in establishing priorities annually for implementing the work required under this Agreement. The establishment of priorities under this Agreement shall be coordinated with the schedules and milestones for corrective action contained in the DOE's RCRA permit(s) and outstanding administrative orders and consent agreements entered into between the DOE and TDEC and/or EPA.

B. Through an annual update process as set forth in Section XIX. TIMETABLES AND DEADLINES milestones will be established

for a three year rolling period consisting of the currently funded fiscal year (FY) plus two additional fiscal years (FY+1 and FY+2) as follows:

1. Enforceable milestones shall be established to cover a three fiscal year period. In addition, DOE will provide in Appendix J, the preliminary FY+3 non-enforceable projected milestones annually on March 15. Included with the March 15 submittal will be the updated FY+4 and out table of all remaining CERCLA decision projects' start, decision document, and completion years. After the expiration of the current fiscal year, what was previously FY+1 will become the current fiscal year (FY), FY +2 will become FY+1, and FY+3 will become FY+2. The projected milestones falling within the FY+3 time period shall be automatically converted to FY+2 milestones unless, by September 15, DOE notifies TDEC and EPA of any proposed changes. Nothing in this section precludes DOE, EPA, or TDEC from proposing or requesting changes to milestones at other times.

2. In adjusting milestones pursuant to this section, funding availability, site priorities, cost estimates, new or emerging technologies, and other new information shall be considered.

XIX. TIMETABLES AND DEADLINES

A. Enforceable timetables and deadlines established by the Parties for the submittal of D1 primary documents and/or milestones required under this Agreement are contained in Appendix E of this Agreement. These timetables and deadlines are subject to modification in accordance with Section XLI (Modification of Agreement).

B. DOE shall make good faith efforts to comply with the enforceable commitments of the Agreement prior to proposing changes

to existing enforceable milestones. Such good faith efforts shall include developing and implementing new productivity and/or cost-saving measures. The DOE shall submit the projected FY+1 funding profile and any proposed changes to the existing FY+1 milestones to the EPA and TDEC by August 1 each year. This submittal must include the most recent estimated cost of conducting proposed activities under this Agreement, information concerning the projected upcoming FY budget allocation and documentation of the good faith efforts as defined above in this paragraph.

C. Within thirty (30) business days after the DOE-OR receives its annual allocation from DOE-HQ, if DOE-OR does not request modification to the existing FY+1 milestones, such milestones will automatically become the current year (FY) milestones. If DOE believes that adequate allocations are not available to meet existing FY+1 milestones, DOE shall make good faith efforts to comply with the enforceable commitments of the Agreement prior to proposing changes to existing enforceable milestones. Such good faith efforts may include one or more of the following actions: rescoping or rescheduling the work being performed under this Agreement consistent with the enforceable commitments, developing and implementing new productivity or cost-saving measures, requesting re-allotments or reprogramming of appropriated funds, and if deemed appropriate by DOE, seeking supplemental appropriations. In the event the DOE does request modifications to the FY+1 milestones within thirty business days of receiving its annual budget allocation and after DOE good faith efforts, as defined above in this paragraph, and in the event EPA

and/or TDEC cannot approve such modification within thirty (30) business days of receiving the request, then the procedures of Section XXVI (Resolution of Disputes) and XLIV.B (Stipulated Penalties) of this Agreement shall be followed. In the event of formal dispute and until such time as DOE may have the dispute settled in its favor the DOE will recognize the milestones previously negotiated for the FY+1 as enforceable current FY milestones.

XX. ADDITIONAL WORK

A. Except as provided in Section XXI (Review/Comment) of this Agreement, either EPA or TDEC may at any time request additional work, including field modifications, remedial investigatory work, or engineering evaluations, which they determine necessary to accomplish the purposes of this Agreement. Such requests shall be in writing to the DOE, with copies to the other Party. The DOE agrees to give full consideration to all such requests. The DOE may either accept or reject any such requests and shall do so in writing, together with a statement of reasons, within forty-five (45) days of receipt of any such request. If there is not agreement concerning whether or not the requested additional work or modification to work should be conducted, then dispute resolution may be invoked only at the time of review of the subsequent corresponding primary document, in accordance with the procedures set forth in Section XXI (Review/ Comment) of this Agreement.

B. Should additional work be required pursuant to this Section, deadlines and schedules for the submission of primary documents (or modifications of primary documents relating to that

work) and the target dates for any secondary documents, as well as schedules for implementation of any remedial activity (including proposed operable units), shall be proposed by the DOE and reviewed and approved by the EPA and TDEC and shall be included in Appendix E to this Agreement and shall become enforceable parts of this Agreement, subject to stipulated penalties under Section XLIV (Stipulated Penalties).

C. The discovery of previously unknown sites, releases of hazardous substances, contamination, or other significant new site conditions may be addressed as additional work under this Section.

D. Any additional work or modifications to work proposed by DOE shall be proposed in writing to the other Parties and shall be subject to review in a primary document (or modification to an existing primary document) in accordance with Section XXI (Review/Comment) of this Agreement. The DOE shall not initiate such work prior to review and approval by EPA and TDEC.

E. Any additional work or modification to work agreed to under this Section, shall be completed in accordance with the standards, specifications, and schedules determined or approved by EPA and TDEC and shall be governed by the provisions of this Agreement.

XXI. REVIEW/COMMENT ON RI/FS and RD/RA FINAL DOCUMENTS

A. Applicability:

The provisions of this Section establish the procedures that shall be used by the DOE, EPA and TDEC 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 Section 120 of CERCLA, 42 U.S.C. § 9620, the DOE shall be responsible for issuing primary and secondary documents to EPA and TDEC. As of the effective date of this Agreement, all reports for any deliverable document identified herein shall be prepared, distributed, and subject to dispute in accordance with Subsections B through J, below, and Section XXVI (Resolution of Disputes).

The designation of a document as D1 or D2 is solely for purposes of consultation with EPA and TDEC in accordance with this Section. Such designation does not affect the obligation of the Parties to issue documents 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. D1 primary documents are initially issued by the DOE subject to review and comment by EPA and TDEC. Following receipt of comments on a particular D1 primary document, the DOE will respond to comments received and issue a D2 primary document subject to dispute resolution. The D2 primary document will become the approved primary document either after the period of time established for review of a D2 document if dispute resolution is not invoked or as modified by decision of the dispute resolution process.

2. Secondary documents include those reports that are discrete portions of the primary documents and are typically feeder documents. D1 secondary documents are issued by the DOE subject to

review and comment by EPA and TDEC. Although the DOE will respond to comments received, the D1 secondary documents may be finalized in the context of the corresponding primary documents. A secondary document may be disputed at the time the corresponding D2 primary document is submitted.

3. The Parties agree that plans and reports prepared by the DOE for SWMUs subject to the corrective action requirements of its RCRA permit, as well as the review of such plans and reports by the EPA and TDEC, shall be combined into a single document designed to meet the requirements of both the RCRA permit and this Agreement.

C. Primary Reports:

1. The DOE shall complete and transmit D1 reports for the following primary documents to EPA and TDEC for review and comment in accordance with the provisions of this Section:

a. Community Relations Plan;
b. Remedial Site Evaluation Report(s);
c. RI/FS Work Plan(s);
d. RI Report(s);
e. FS Reports(s);
f. Proposed (Remedial Action) Plan(s);
g. Record(s) of Decision;
h. Remedial Design Work Plan(s);
i. Remedial Design Report(s);
j. Remedial Action Work Plan(s);
k. Phased Construction Completion Report(s)*;
l. Remedial Action Report(s);
m. LLLW Tank Implementation Plans & Schedules;
n. Remediation Effectiveness Report**;
o. Waste Acceptance Criteria Attainment Plan (EMWMF);
p. Waste Handling Plan(s) per Appendix I-14 (Waste Handling Plan Operating Instruction).

* These PCC reports will be produced when reporting the completion of major units of remediation activities specified in signed RODs and where multiple phased remediation activities are deemed appropriate. For each signed ROD there will be only one Remedial Action Report reporting the completion of all ROD required remediation work. This document will contain all information reported in the RAR.

** The RER Outline is contained in Appendix I-12.

2. The Remedial Design(s) may be submitted in phased packages when necessary to expedite construction work under this Agreement. In such cases, the ROD(s) shall describe the phase submittals and identify the Remedial Design submittals which shall be considered primary documents for purposes of Section XLIV (Stipulated Penalties) under this Agreement.

3. Only the D2 reports for the primary documents identified above shall be subject to dispute resolution. The DOE shall complete and transmit D1 primary documents in accordance with Section XIX (Timetables and Deadlines) of this Agreement.

D. Secondary Documents:

1. The DOE shall complete and transmit D1 reports for the following secondary documents to EPA and TDEC for review and comment in accordance with the provisions of this Section. The following list contains examples of secondary documents:

a. Sampling and Analysis Plan(s) and QAPP(s);
b. Preliminary Risk Assessment Report(s);
c. Site Characterization Summary Report(s);
d. Baseline Risk Assessment Report(s);
e. Screening/Analysis of Alternatives; and
f. Treatability Study Report(s)

2. Although EPA and TDEC may comment on the D1 reports for the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by Subsection B hereof. Target dates shall be established for the completion and transmission of D1 secondary reports pursuant to Section XIX (Timetables and Deadlines) of this Agreement.

E. Meetings of Project Managers:

The Project Managers shall meet approximately every quarter, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the Site on the

primary and secondary documents. Prior to preparing any D1 report specified in Subsections C and D above, the Parties shall confer to discuss the report results in an effort to reach a common understanding.

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 D1 report, the Parties shall confer to identify and propose, to the best of their ability, all potential ARARs pertinent to the report being addressed. D1 ARARs determinations shall be prepared by the DOE in accordance with Section 121(d)(2) of CERCLA, 42 U.S.C. § 9621(d)(2), the NCP, and pertinent guidance issued by EPA.

2. In identifying potential ARARs, the Parties recognize that actual ARARs can be identified only on a site-specific basis and that ARARs depend upon the specific hazardous substances, pollutants or contaminants at a site, the particular actions proposed as a remedy and the characteristics of a site. The Parties recognize that ARARs identification is necessarily an iterative process and that potential ARARs must be re-examined throughout the RI/FS and RD processes until the RA is implemented.

G. Review and Comment on D1 Reports:

1. The DOE shall complete and transmit each D1 primary report to EPA and TDEC on or before the corresponding deadline established for the submittal of the report. The DOE shall complete and transmit the D1 secondary document in accordance with the target dates established for the issuance of such reports established pursuant to Section IX (Timetables and Deadlines) of

this Agreement. Additional issuance information is provided in Appendix I-2 (Document Transmittal Operating Instructions).

2. Unless the Parties mutually agree to another time period, all D1 reports, except the Proposed Plan and the Record of Decision reports, shall be subject to a ninety (90) day period for review and comment. The D1 Proposed Plan and Record of Decision reports shall be subject to a sixty (60) day period for review and comment. Review of any document by the EPA and TDEC may concern all aspects of the report (including its completeness) and should include, but is not limited to, technical evaluation of any aspect of the document and consistency with CERCLA, the NCP, and any pertinent guidance or policy promulgated by the EPA or TDEC. Comments by the EPA and TDEC shall be provided with adequate specificity so that the DOE may respond to the comment and, if appropriate, make changes to the D1 report. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of the DOE, the EPA and TDEC shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy reports, EPA and TDEC may extend the comment period for an additional thirty (30) days by email notification to the DOE Project Manager prior to the end of the comment period. On or before the close of the comment period, the EPA and TDEC shall transmit its written comments to the DOE.

3. Representatives of the DOE shall make themselves readily available to the EPA and TDEC during the comment period for purposes of informally responding to questions and comments on D1 reports. Oral comments made during such discussions need not be the subject of a written response by the DOE at the close of the comment period.

4. In commenting upon a D1 report which contains a proposed ARARs determination, EPA or TDEC shall include a reasoned statement of whether it objects to any portion of the proposed ARAR determination. To the extent that the EPA and/or TDEC objects, it shall explain the bases for its objection in detail and shall identify any ARARs which it believes were not properly addressed in the proposed ARAR determination.

5. Following the close of the comment period for a D1 report, the DOE shall give full consideration to all written comments on the D1 report submitted during the comment period; on a D1 secondary report, the DOE shall transmit to EPA and TDEC its written response to comments received within the comment period. Within sixty (60) days of the receipt of comments on a D1 primary report, except the Proposed Plan and the Record of Decision reports, the DOE shall transmit to EPA and TDEC the D2 primary report, which shall include the DOE's response to all written comments received within the comment period, with comment resolutions identified per Appendix I-2 (Document Transmittal Operating Instructions). Within thirty (30) days of the receipt of comments on a D1 Proposed Plan and Record of Decision primary report, the DOE shall transmit to EPA and TDEC the D2 primary report, which shall include the DOE’s response to all written comments received within the comment period, with comment resolutions identified per Appendix I-2 (Document Transmittal Operating Instructions). While the resulting D2 report shall be the responsibility of the DOE, it shall be the product of consensus to the maximum extent possible unless the Parties mutually agree to another time period, all D2 reports shall be subject to a thirty (30) day period for review and comment.

6. The DOE may extend the sixty (60) day period for either responding to comments on a D1 report or for issuing the D2 primary report for an additional thirty (30) days by providing email notification to EPA and TDEC FFA Project Managers. This time period may be further extended in accordance with Section XXX (Extensions) of this Agreement.

H. Availability of Dispute Resolution for D2 Primary Documents:

1. Dispute resolution shall be available to the Parties for D2 primary reports as set forth in Section XXVI (Resolution of Disputes).

2. When dispute resolution is invoked on a D2 primary report, work may be stopped in accordance with the procedures set forth in Section XXVI (Resolution of Disputes).

I. Finalization of Reports:

The D2 primary report shall become the approved or finalized primary report if no Party invokes dispute resolution regarding the document in accordance with the procedures set forth in Section XXVI (Resolution of Disputes) of this Agreement or, if invoked, at completion of the dispute resolution process should the DOE's position be sustained. If the DOE's determination is not sustained in the dispute resolution process, the DOE shall prepare, within not more than sixty (60) days, a revision of the D2 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 XXX (Extensions) of this Agreement.

J. Subsequent Modifications of Final Reports:

Following finalization of any primary report pursuant to

Subsection I, above, the EPA, TDEC, or the DOE may seek to modify the report, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in Subsections J.1 and 2, below.

1. The EPA, TDEC, or the DOE 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. The EPA, DOE, or TDEC may seek such a modification by submitting a concise written request to the Project Manager of the other Parties. The request shall specify the nature of the requested modification and how the request is based on new information. Additional information is provided in Appendix I-12 (Post Decision Document Requirements Operating Instructions).

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

3. Nothing in this Subsection shall alter either EPA's or TDEC's ability to request the performance of additional work pursuant to Section XX (Additional Work) of this Agreement

which does not constitute modification of a final document.

XXII. PERMITS

A. The Parties recognize that under Sections 121(d) and 121(e)(1) of CERCLA, 42 U.S.C. §§ 9621(d) and 9621(e)(1), and the NCP portions of the response actions called for by this Agreement and conducted entirely on-site are exempted from the procedural requirements to obtain Federal, State, or local permits but must satisfy all the applicable or relevant and appropriate Federal and State laws, standards, requirements, criteria, or limitations which would have been included in any such permit. When the DOE proposes a response action (including a Work Plan pursuant to this Agreement) to be conducted entirely on-site, which in the absence of Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1) and the NCP would require a Federal or State permit, the DOE shall include in the submittal:

1. Identification of each permit which would otherwise be required;

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

3. Explanation of how the response action proposed will meet the standards, requirements, criteria, or limitations identified in Subsection A.2, above; and

4. All information necessary for EPA and TDEC to determine the standards, requirements, criteria, or limitations that are applicable or relevant and appropriate for the proposed remedial action (e.g., relevant RCRA Part B information).

Upon request of the DOE, the EPA and TDEC will provide their positions with respect to Subsections A.2 and 4, above.

B. Subsection A above, is not intended to relieve the DOE of the requirements to obtain Federal, State, or local permits whenever it proposes a response action involving the shipment or movement of hazardous or radioactive waste or hazardous substances to or from the ORR.

C. The DOE shall notify the Commissioner of the TDEC and the Regional Administrator of EPA in writing of any permits required for off-site activities as soon as it becomes aware of such requirements. Upon request, the DOE shall provide the Commissioner of the TDEC and the Regional Administrator of EPA copies of all such permit applications and other documents related to the permit process.

D. If a permit which is necessary for implementation of this Agreement is not issued, or is issued or renewed in a manner which is materially inconsistent with the requirements of this Agreement, the DOE agrees it shall notify the Commissioner of the TDEC and the Regional Administrator of EPA of its intention to propose modifications to this Agreement (or modifications to primary or secondary documents required by this Agreement) to obtain conformance with the permit (or lack thereof). Notifications by the DOE of its intention to propose modifications shall be submitted within seven (7) calendar days of receipt by the DOE of notification that: (1) a permit will not be issued;

(2) a permit has been issued or reissued; or (3) a final determination with respect to any appeal related to the issuance of a permit has been entered. Within thirty (30) days from the date it submits its notice of intention to propose modifications, the DOE shall submit to the Commissioner of the TDEC and the Regional Administrator of EPA its proposed modifications to this Agreement with an explanation of its reasons in support thereof.

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

F. Except as otherwise provided in this Agreement, the DOE shall comply with applicable State and Federal hazardous waste management requirements at the ORR.

G. Notwithstanding the provisions of this Section, the TDEC specifically reserves any rights it may have under Section 121(e) of CERCLA, 42 U.S.C. § 9621(e) or other federal or state laws to require permits for activities conducted on the ORR by the DOE.

XXIII. CREATION OF DANGER

In the event that the Commissioner of the TDEC or the Regional Administrator of EPA determines that activities conducted pursuant to this Agreement may present an imminent and substantial endangerment to the health or welfare of the people on the Site or in the surrounding areas or to the environment, the Commissioner

of the TDEC or the Regional Administrator of EPA may order the DOE to stop any work being implemented under this Agreement for such period of time as needed to abate the danger or may require the DOE to take necessary action to abate the danger or both. In the event that the DOE determines that any on-site activities or work being implemented under this Agreement may create an immediate threat to human health or the environment from the release or threat of release of a hazardous substance, pollutant or contaminant, it may stop any work or on-site activities for such period of time as needed to respond to or abate the danger. In the event the DOE makes a determination to stop work under this Section, it shall immediately notify the EPA and TDEC. The DOE shall submit a written summary of events to EPA and TDEC within five (5) days of making a determination under this Section.

XXIV. REPORTING

The DOE agrees that it shall submit to the TDEC Project Manager and the EPA Project Manager, annual written progress reports which describe the remedial and removal actions which the DOE has taken during the previous year to implement the requirements of this Agreement including the S&M Program activities. In addition, the annual report shall identify any anticipated delays in meeting time schedules, the reason(s) for the delay and actions taken to prevent or mitigate the delay. The annual report will be due on or before January 31, and will cover activities for the preceding fiscal year.

XXV. NOTIFICATION

A. Unless otherwise specified, any report or submittal provided pursuant to a schedule or deadline identified in or developed under this Agreement shall be sent by certified mail, return receipt requested, or similar method (including electronic transmission) which provides a written record of the sending and receiving dates or hand delivered to the following persons:

U. S. Environmental Protection Agency, Region 4
Oak Ridge Reservation Federal Facility Agreement
Project Manager (4WD-FFB)
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-8909

Tennessee Department of Environment and Conservation
Federal Facility Agreement Project Manager
761 Emory Valley Road
Oak Ridge, TN 37830-7072

U. S. Department of Energy
Oak Ridge Operations
Federal Facility Agreement Project Manager
Oak Ridge Reservation Remediation Management Group
Box 2001
Oak Ridge, TN 37831

Unless otherwise specified or requested, all routine correspondence, other than a report or submittal as described above, may be sent via regular mail or electronically transmitted to the above persons.

XXVI. RESOLUTION OF DISPUTES

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, then the procedures of this Section shall be implemented to resolve a dispute.

A. Within thirty (30) days after: (1) the period established for review of a D2 primary document pursuant to Section XXI (Review/Comment) of this Agreement or (2) any action which leads to or generates a dispute (including a failure of the informal dispute resolution process), the disputing Party shall submit to the other Parties a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute, and the information the disputing Party is relying upon to support its position.

B. 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 the informal dispute resolution process, the Parties shall meet as many times as are necessary to discuss and attempt resolution of the dispute.

C. If agreement cannot be reached on any issue during the informal dispute resolution process, the disputing Party shall

forward the written statement of dispute to the Dispute Resolution Committee (DRC), thereby elevating the dispute to the DRC for resolution.

D. The DRC will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at a policy level (Senior Executive Service or equivalent). The EPA designated member on the DRC is the Waste Management Division (WMD) Director of EPA's Region IV. The DOE's designated member is the Assistant Manager for Environmental Restoration and Waste Management, Oak Ridge Field Office. The TDEC designated member is the Administrator, Bureau of Environment.

E. Following elevation of a dispute to the DRC, the DRC shall have twenty-one (21) days to unanimously resolve the dispute and issue a written decision. If the DRC is unable to unanimously resolve the dispute within this twenty-one (21) day period, the written statement of dispute shall be forwarded to the Senior Executive Committee (SEC) for resolution.

F. The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The EPA representative on the SEC is the Regional Administrator of EPA's Region IV. The DOE representative on the SEC is the Manager, Oak Ridge Operations. The TDEC representative on the SEC is the Commissioner. The SEC members shall, as appropriate,

confer, meet, and exert their best efforts to resolve the dispute and issue a written decision. If unanimous resolution of the dispute is not reached within twenty-one (21) days, EPA's Regional Administrator shall issue a written position on the dispute. The DOE or TDEC may, within twenty-one (21) days of the Regional Administrator's issuance of EPA's position, issue a written notice elevating the dispute to the Administrator of EPA for resolution in accordance with all applicable laws and procedures. In the event that neither the DOE nor the TDEC elect to elevate the dispute to the EPA Administrator within the designated twenty-one (21) day elevation period, the DOE and the TDEC shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.

G. Upon elevation of a dispute to the EPA Administrator pursuant to Subsection F, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request and prior to resolving the dispute, the Administrator shall meet and confer with any of the following parties; the Secretary of the DOE or the Commissioner of the TDEC to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide all Parties with a written final decision setting forth resolution of the dispute. The duties of the Administrator set forth in this Subsection shall not be delegated.

H. The pendency of any dispute under this Section shall not affect the DOE's responsibility for timely performance of the work required by this Agreement, except that the time period for

completion of work affected by such dispute shall be extended for a period of time usually not to exceed the actual time taken to resolve any good faith dispute in accordance with the procedures specified herein. All elements of the work required by this Agreement which are not affected by the dispute shall continue and be completed in accordance with the applicable schedule.

I. When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Waste Management Division Director for EPA's Region IV 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 effect 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 shall give DOE prior notification that a work stoppage request is forthcoming. After stoppage of work, if DOE believes that the work stoppage is inappropriate or may have potential significant adverse impacts, then the DOE may meet with the WMD to discuss the work stoppage. The final written decision of the WMD may be subjected to formal dispute resolution immediately. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the DOE or the TDEC.

J. Within thirty-five (35) days of resolution of a dispute pursuant to the procedures specified in this Section, the DOE shall incorporate the resolution and final determination into

the appropriate plan, schedule or procedures and proceed to implement this Agreement according to the amended plan, schedule or procedures.

K. Resolution of a dispute pursuant to this Section of this 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. Any resolution of a dispute pursuant to this Agreement shall be incorporated into this Agreement and shall become a term and condition of this Agreement.

L. Resolution of disputes may include a determination of the length of any time extensions which are necessary.

M. Pursuant to this Section, all or a portion of a dispute may be elevated.

N. Authorities set forth to members of the DRC or SEC may be delegated only to those person acting for the designated member during a designated member's absence.

XXVII. DESIGNATED PROJECT MANAGERS

A. The EPA, DOE, and the TDEC will each designate Project Managers to coordinate the implementation of this Agreement and shall notify each other in writing of the designation. Each party may change its designated Project Manager by notifying the other Parties in writing.

B. To the maximum extent possible, communications between the EPA, DOE, and the TDEC and all documents, including reports, agreements, and other correspondence, concerning the

activities performed pursuant to the terms and conditions of this Agreement, shall be directed through the Project Managers. Each Project Manager shall be responsible for assuring the internal dissemination and processing of all communications and documents received from the other Project Managers.

XXVIII. QUALITY ASSURANCE/SAMPLING AVAILABILITY/DATA MANAGEMENT

A. The Parties shall make available to each other, upon request, results of sampling, tests, or other data generated pursuant to this Agreement or any other environmental protection statute, regulation, or order. All quality-assured data contained in reports submitted to EPA and/or TDEC pursuant to this agreement shall be made available to the EPA and/or TDEC in electronic format within 30 days after report submission. All other environmental data generated pursuant to this Agreement or any other environmental protection statute, regulation, or order shall be made available, to a requesting party in hard copy or electronic format within 30 days after receipt of written request.

B. At the request of the EPA and/or the TDEC Project Manager, the DOE shall allow split or duplicate samples to be taken by EPA or TDEC during sample collection conducted pursuant to this Agreement. All such sampling locations or samples will be subject to review by the DOE's Classification and Technical Information Office. If the locations or samples are determined to be of a sensitive nature, then the packaging, handling, transport, analysis, and disposal of such samples must be carried out in a manner consistent with security concerns. The samples

and resulting data must be analyzed and stored in a secure facility meeting DOE security requirements and the data reviewed for classification. Notwithstanding this provision or any other provision of law, all requirements of the AEA, 42 U.S.C. § 2011, et seq., and all Executive Orders concerning the handling of unclassified controlled nuclear information, restricted data, and national security information, including "need to know" requirements, shall be applicable to any grant of access to classified information (including sample collection under this Section) under the provisions of this Agreement.

C. The Parties intend to integrate all data and release characterization studies generated pursuant to this Agreement with all data generated pursuant to the RFA/RFI being conducted pursuant to the corrective action requirements contained in DOE's RCRA permit for the Oak Ridge facility. The DOE shall maintain the Oak Ridge Environmental Information System (OREIS) as one consolidated data base for the Site which includes all data/studies generated pursuant to this Agreement and those generated under Federal and State environmental permits. All data and studies produced under this Agreement shall be managed and presented in accordance with written OREIS operating procedures that are periodically reviewed and revised when system modifications and changes in operating practices occur. This data may be maintained in electronic form, provided that hard copies of all data/studies and related documents are made available upon request.

XXIX. ACCESS/DATA/DOCUMENT AVAILABILITY

A. The EPA and TDEC will be permitted to enter the

Site at reasonable times previously arranged and coordinated for the purpose of inspecting records, logs, and other documents relevant to implementation of this Agreement; reviewing the progress of the DOE, its contractors, and lessees in carrying out the activities under this Agreement; conducting, with prior notice to the DOE, tests which EPA or TDEC deem necessary; and verifying data submitted to EPA and TDEC by DOE. The DOE shall honor all reasonable requests for access to the Site made by EPA or TDEC. When on-site, the EPA and TDEC shall comply with OSHA Hazardous Waste Operations and Emergency Response rules, where applicable, and the DOE's site health and safety requirements. The EPA and TDEC access shall be subject to the applicable requirements of the AEA, 42 U.S.C. § 2011, et seq., and Executive Orders concerning the handling of unclassified controlled nuclear information, restricted data, and national security information. Upon request by EPA or TDEC, the DOE shall submit to EPA and TDEC copies of records, and other documents, including sampling and monitoring data, that are relevant to oversight activities.

B. To the extent that activities pursuant to this Agreement must be carried out on property other than ORR property, the DOE agrees to use its best efforts, including exercising its authority, if necessary, to obtain access pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), from the present owners and/or lessees. The DOE shall use its best efforts to obtain access agreements which shall provide reasonable access for DOE, EPA, and TDEC and their representatives, and other appropriate state regulatory agencies.

C. The DOE shall use its best efforts to obtain written access agreements with respect to non-DOE property upon which pumping wells, treatment facilities, or other facilities may be located to carry out response actions under this Agreement. In the event DOE is unable to obtain access within sixty (60) days after the access is sought, the DOE shall promptly notify EPA and the TDEC regarding both the lack of access and the efforts undertaken to obtain such access. If appropriate, the DOE shall submit proposed modification(s) to this Agreement to EPA and TDEC in response to such inability to obtain access.

D. Information, records, or other documents (including D1 primary and secondary documents) produced under the terms of this Agreement by EPA, TDEC, and DOE shall be available to the public except (a) those identified to EPA and TDEC by DOE as classified within the meaning of and in conformance with the AEA or (b) those that could otherwise be withheld pursuant to the Freedom of Information Act or the Privacy Act, unless expressly authorized for release by the originating agency. Documents or information so identified shall be handled in accordance with those regulations. D1 documents may be made available to the public subject to the requirements of the Freedom of Information Act and the Tennessee Public Records Act, Tennessee Code Annotated Section 10-7-503.

XXX. 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 an extension shall be made prior to the deadline or scheduled deliverable date to EPA, TDEC or DOE, as appropriate, either in writing or orally with a written follow-up request, within ten (10) business days. Any oral or written request shall be provided to the other Parties pursuant to Section XXV (Notification) and in Appendix I-1 (Appendix E Extension Request Operating Instructions). The written request shall specify:

1. The timetable and deadline or the schedule that is sought to be extended;

2. The length of the extension sought;

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

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

B. 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;

5. A delay caused by additional work agreed to by the Parties; and

6. 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 Parties may seek and obtain a determination through the dispute resolution process of whether or not good cause exists.

D. For extension requests by DOE, the EPA and TDEC shall use the following procedures:

1. Within fourteen (14) days of receipt of a written request for an extension of a timetable and deadline or a schedule, the EPA and TDEC shall advise all Parties in writing of their positions on the request. Any failure by EPA and TDEC to respond within the 14-day period shall be deemed to constitute concurrence with the requested extension. If EPA or TDEC do not concur with the requested extension, they shall include in their statement of nonconcurrence an explanation of the basis for their position.

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

3. Within fourteen (14) days of receipt of a statement of nonconcurrence with the requested extension, the DOE may invoke dispute resolution. If DOE does not invoke dispute resolution within fourteen (14) days of receipt of a statement of nonconcurrence, then DOE shall be deemed to have accepted EPA's or TDEC's nonconcurrence and the existing schedule shall remain in force.

4. 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 disputed timetable, deadline, or schedule. Following the grant of an extension, an assessment of stipulated penalties, as defined in Section XLIV (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.

E. For extension requests by EPA and the TDEC, if no Party invokes dispute resolution within fourteen (14) days after written notice of the requested extension, the extension shall be deemed approved.

XXXI. FIVE YEAR REVIEW

Consistent with Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and in accordance with this Agreement, the DOE agrees

that if the selected remedial action(s) result in hazardous substances, pollutants or contaminants remaining at the Site, the EPA and TDEC will review the remedial action(s) no less often than once every five (5) years after the initiation of the final remedial action(s) to assure that human health and the environment are being protected by the remedial action(s) being implemented. If, upon such review, it is the judgment of EPA or TDEC that additional action or modification of a remedial action is appropriate in accordance with Sections 104 or 106 of CERCLA, 42 U.S.C. §§ 9604 or 9606, then EPA or TDEC shall require DOE to submit a proposal to implement such additional or modified action(s), which shall be subject to review and approval by EPA and TDEC.

Any dispute under this Section shall be resolved under Section XXVI (Resolution of Disputes) of this Agreement.

XXXII. RETENTION OF RECORDS

The DOE shall preserve, during the duration of this Agreement and for a minimum of ten (10) years after the termination and satisfaction of this Agreement, the complete Administrative Record, post-Record of Decision, primary and secondary documents and reports required by Section XXIV. After this ten (10) year period, the DOE shall notify EPA and TDEC at least ninety (90) days prior to the destruction of any such records or documents. Upon request by EPA or TDEC, the DOE shall make available any such records or copies of such records.

XXXIII. ADMINISTRATIVE RECORD

A. The DOE shall establish and maintain both an on-site and off-site Administrative Record File and Administrative Record for each Record of Decision-Final, Record of Decision-Interim, and Removal Action performed on the Site. The off-site copy of the Administrative Record Files and Administrative Records shall be available to the public at the Information Resource Center in Oak Ridge, Tennessee. The DOE shall establish and maintain a database of the Administrative Record File and Administrative Record Indexes that can be accessed electronically by the Parties and the public. Hard copies of these indexes and any publicly available documents identified in the electronic indexes shall be made available at the Information Resource Center.

B. The selection of each response action shall be based on the Administrative Record, in accordance with Section 113(k) of CERCLA, 42 U.S.C. § 9613(k), any regulations promulgated pursuant to that Section and any applicable guidance. A complete index of each Administrative Record shall be maintained at EPA's Region IV office, currently at 345 Courtland Street, N. E., Atlanta, Georgia 30365.

C. The DOE shall provide EPA and TDEC with copies of documents generated or possessed by DOE which are included in the Administrative Record Files and Administrative Records. The EPA and TDEC shall provide DOE with copies of documents generated by each agency which should be included within the Administrative Record Files and Administrative Records.

D. The DOE shall submit to the EPA and TDEC for review and approval, both an electronic and hard copy index of the

proposed Administrative Record with the D1 version of the Record of Decision document and each subsequent revision.

E. The EPA and TDEC shall review the proposed Administrative Record and notify the DOE, in writing, of any recommendations or comments concerning the contents of the proposed Administrative Record.

F. Following issuance of the Record of Decision, the EPA and TDEC shall issue written approval of the proposed Administrative Record contents and the DOE will establish the Administrative Record, and provide the EPA and TDEC with a copy of the official Administrative Record Index.

G. The EPA shall provide the DOE with guidance on establishing and maintaining the Administrative Record as the Agency develops guidance.

H. The DOE shall provide to the EPA and TDEC, upon request and with the appropriate clearance level, review of Administrative Record File or Administrative Record documents identified as Privileged and therefore, not available for public review at the Information Resource Center.

XXXIV. PUBLIC PARTICIPATION

A. The Parties agree that work conducted under this Agreement and any subsequent proposed remedial action alternative(s) and subsequent plan(s) for remedial action at the Site arising out of this Agreement shall comply with the public participation requirements of CERCLA, including Section 117 of CERCLA, 42 U.S.C. § 9617, the NCP, all applicable guidance developed by EPA, and all applicable State laws. This shall be achieved through implementation of the approved Community

Relations Plan prepared and implemented by DOE. When appropriate, the Parties intend to coordinate public participation activities under this Agreement with those required under other State and Federal environmental laws regulating activities at the Oak Ridge facility.

B. Excluding imminent hazard situations, any Party issuing an official press release to any publication with reference to any of the work required by this Agreement shall advise the other Parties of such official press release and the contents thereof at least two (2) business days before the issuance of such press release.

C. Nothing in this Agreement shall be construed to preclude any Party from responding to public inquiries at any time.

XXXV. RECOVERY OF EXPENSES

A. Reimbursement of EPA Expenses

The EPA and DOE agree to amend this Section at a later date in accordance with any subsequent resolution of the currently contested issue of EPA cost reimbursement.

B. Reimbursement of TDEC Expenses

1. The DOE agrees to reimburse the TDEC for its costs specifically related to the implementation of this Agreement at the Site and that are not inconsistent with the NCP.

2. A separate funding agreement between DOE and TDEC will be executed contemporaneously with this Agreement. The separate funding agreement between DOE and TDEC shall be the

specific mechanism for the transfer of funds between DOE and TDEC for payment of the costs referred to in Subsection B.1.

3. For the purposes of budget planning only, the TDEC shall provide to DOE, on or before February 15th of each year, a written estimate of TDEC's projected oversight costs in implementing the Agreement for two succeeding fiscal years. For example, on February 15, 1990, the TDEC will provide an estimate for fiscal years 1991 and 1992.

4. The State reserves all rights it has to recover any other past and future costs incurred by TDEC in connection with activities conducted at the Site.

5. In the event of a substantial increase in TDEC's costs incurred specifically related to the implementation of this Agreement, the TDEC and DOE agree to negotiate the amount established in the separate funding agreement to reflect such increase proportionate to the circumstances. The amount and schedule of payment of these costs will be negotiated with consideration for DOE's multi-year funding cycle.

6. Any dispute arising under this Section (e.g., a disputed cost item) is not subject to the process established by Section XXVI (Resolution of Disputes) of this Agreement, but will be resolved under the dispute resolution procedures established in the separate funding agreement between DOE and TDEC. If any disputes arising under the separate funding agreement cannot be resolved, the TDEC reserves any rights it may have to recoup costs not reimbursed by DOE under applicable law. In any event, the

TDEC shall at all times retain all of its legal and equitable remedies to recover any costs that are not reimbursed by DOE, and DOE shall retain all legal and equitable defenses available under Federal and State law.

XXXVI. CLAIMS AND PUBLICATION

A. The DOE agrees to assume full responsibility for the remediation of the Site in accordance with CERCLA, the NCP, and applicable Tennessee State law. However, nothing in this Agreement shall constitute or be construed as a release by TDEC, DOE, or EPA of any claims, causes of action, or demand in law or equity against any person, firm, partnership, or corporation not a signatory to this Agreement for any liability which it may have arising out of or related in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

B. This Agreement does not constitute any decision or preauthorization by EPA of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2) for any person, agent, contractor, or consultant acting for DOE.

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

D. This Agreement shall not restrict EPA or TDEC from any legal, equitable, administrative, or response action for any matter not part of the work covered by this Agreement.

E. Nothing in this Agreement shall be considered an admission by any Party with respect to any unrelated claims by any Party or any claims by persons not a Party to this Agreement.

XXXVII. ORDER OF PREFERENCE

In the event of any inconsistency between the Sections of this Agreement and the Appendices to this Agreement, the Sections of this Agreement shall govern unless specifically stated otherwise in this Agreement.

XXXVIII. FUNDING

DOE shall, in good faith, take all necessary steps to obtain sufficient funding to comply with the provisions of this Agreement. This shall be accomplished, as set forth in this Section, through consultation with the EPA and TDEC and submission of timely budget requests.

A. DOE shall consult with EPA and TDEC in formulating its annual DOE-OR Environmental Management budget requests as set forth in this section. By February 15 of each year, DOE shall provide EPA and TDEC with information, including the Priority List, or a briefing on the proposed DOE-OR Environmental Management budget request, including appropriate supporting documents. In the process of formulating its annual budget request, DOE may be subject to target funding guidance directed by the Office of Management and Budget (OMB). The information or briefing will address the impacts of such OMB target funding guidance. Budget information which is designated by DOE as proprietary information, pursuant to T.C.A. 68-212-109, will not be released to any other

person or entity prior to submission by the President of his budget request to Congress unless authorized by DOE or unless the EPA and/or TDEC is required to do so by court order. DOE may seek to intervene in any proceeding brought to compel or enjoin release of this information. If allowed to intervene, DOE shall assert its interest in, and the legal basis for, maintaining the confidentiality of this information.

B. The parties shall attempt to reach agreement regarding work scope, priorities, schedules/milestones, and Program Baseline Summary (PBS) funding levels required to accomplish the purpose of the Agreement. These discussions shall be conducted before DOE-OR submits its annual budget request and supporting PBS to DOE-HQ. EPA and TDEC shall, to the extent practicable, identify in its comments to DOE whether additional or accelerated activities recommended by the EPA and/or TDEC are believed by the EPA or TDEC to be outside of target funding levels for the activities covered under this Agreement.

C. DOE shall revise its budget request and supporting documents to resolve the comments of the EPA and TDEC to the extent agreed by the Parties. DOE-OR will submit to DOE-HQ its budget request with detail PBS and shall forward with it the target budget level funding and any unresolved issues regarding funding for additional or accelerated activities submitted by the EPA or TDEC, and any other unresolved issues raised by the EPA or TDEC. If these issues are not subsequently resolved prior to DOE's submission of its budget request to OMB, DOE-HQ shall forward with

its budget request any such unresolved issues and related funding information to OMB. If the EPA, TDEC and DOE are unable to agree on milestones by the time of DOE-HQ's receipt of the initial OMB passback, or submittal of the President's budget request to Congress, whichever occurs first, the issues shall be elevated to Dispute Resolution. Failure to agree on adjustments to FY+1 or FY+2 milestones, or FY+3 non-enforceable projected milestones in one year shall not prejudice DOE's right to request adjustments to these milestones in subsequent fiscal years or to dispute any decision of the EPA or TDEC regarding such future request.

D. Upon receipt of funding for the fiscal year, DOE shall determine whether it can meet the milestones for that fiscal year based on funding received. If funds appropriated to DOE are not sufficient for its nationwide environmental management activities, then within fifteen (15) business days of receipt of field allocation, DOE shall provide information on the allocation process and results to EPA and TDEC. If, within sixty(60)business days of receipt of field allocation, the Parties cannot agree to the adjustments of the milestones or plan based on funding received, the issue will be elevated to Dispute Resolution.

If no agreement can be reached then the TDEC and DOE agree that in any action by the TDEC to enforce any provision of this Agreement, the DOE may raise as a defense that its failure or delay was caused by the unavailability of appropriated funds. The TDEC disagrees that the lack of appropriations or funding is a valid defense. However, the TDEC and DOE agree and stipulate that

it is premature at this time to raise and adjudicate the existence of such a defense. Acceptance of this provision (or any other specific reservation of rights by TDEC) does not constitute a waiver by DOE that its obligations under this Agreement are subject to the provisions of the Anti-Deficiency Act, 31 U.S.C § 1341.

E. Nothing herein shall affect DOE's ultimate authority to formulate and submit to the President appropriate budget requests and to allocate appropriated funds to serve DOE's missions.

XXXIX. COMPLIANCE WITH LAWS

All actions undertaken pursuant to this Agreement by the Parties, or their representative(s), shall be done in accordance with all applicable Federal laws, regulations and Executive Orders, and all applicable State and local laws and regulations.

XL. FORCE MAJEURE

A. 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:

1. Acts of God; fire; war; insurrection; civil disturbance; or explosion;

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

3. Adverse weather conditions that could not be reasonably anticipated; unusual delay in transportation;

4. Restraint by court order or order of public authority;

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

6. Delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence.

B. A Force Majeure shall also include any strike or other labor dispute, not within the control of the Parties affected thereby. Force Majeure shall not include increased costs or expenses of Response Actions, whether or not anticipated at the time such Response Actions were initiated.

C. The DOE and TDEC agree that Subsection A.2 (entirely), Subsection A.3 ("delay in transportation"), Subsection A.4 ("order of public authority"), Subsection A.5 ("at reasonable cost"), and Subsection A.6 (entirely) above, do not create any presumptions that such events arise from causes beyond the control of a Party. The TDEC specifically reserves the right to withhold its concurrence to any extensions which are based on such events which TDEC contends are not entirely beyond the control of DOE

pursuant to terms of Section XXX (Extensions), or to contend that such events do not constitute force majeure in any action to enforce this Agreement.

XLI. MODIFICATION OF AGREEMENT

A. This Agreement may be modified by agreement of all the Parties. All major modifications shall be in writing and shall become effective upon the date on which such modifications are signed by all Parties. EPA shall be the last signatory on any modifications to this Agreement.

B. Except as provided in Subsection C, no informal advice, guidance, suggestions, or comments by EPA or TDEC regarding reports, plans, specifications, schedules, and any other written submittal by DOE shall be construed as relieving DOE of its obligation to obtain such formal approval as may be required by this Agreement.

C. Modifications shall be considered major modifications under Subsection A, if designated "major" by any Party. A major modification is subject to public participation to the extent required by the DOE's Community Relations Plan under Section XXXIV (Public Participation) of this Agreement. All other modifications (including field modifications) shall not be considered major and can be made informally upon consent of the Project Managers. Informal modifications shall be confirmed in writing within ten (10) days following the consent of the Project Managers.

D. Any modification to this Agreement, its appendices, or any primary or secondary document which incorporates new

innovative technology shall be considered a major modification to this Agreement. The Parties agree that such modifications will be made in the future where appropriate to incorporate those new technologies which achieve compliance with this Agreement, either at reduced cost, or in a shorter period of time.

XLII. COVENANT NOT TO SUE/RESERVATION OF RIGHTS

A. In consideration for DOE's compliance with this Agreement, and based on the information known to the Parties on the effective date of this Agreement, the EPA agrees that compliance with this Agreement shall stand in lieu of any administrative, legal and equitable remedies against the DOE available to it regarding the currently known releases or threatened releases of hazardous substances including hazardous wastes, pollutants or contaminants at the Site which are the subject of the RI/FS(s) and which will be addressed by the remedial action(s) provided for under this Agreement; the TDEC agrees to exhaust fully any remedies provided in Section XXVI (Resolution of Disputes) of this Agreement prior to taking any other enforcement action available to it regarding the currently known releases or threatened releases of hazardous substances including hazardous wastes, pollutants or contaminants at the Site which are the subject of the RI/FS(s) and which will be addressed by the remedial action(s) provided for under this Agreement. Nothing in this Agreement shall preclude either the EPA or TDEC from exercising any administrative, legal and equitable remedies available (including the assessment of civil penalties and damages

if such are otherwise legally assessable) to require additional response actions by the DOE in the event that the implementation of the requirements of this Agreement is no longer protective of public health and the environment.

B. Except to the extent expressly provided in Subsection A of this Section, this Agreement shall not be construed as waiving any right or authority that TDEC may have and shall not be construed as a bar or release of any claim, cause of action or demand in law or equity including any right TDEC may have to assess penalties for DOE's failure to comply with any term or condition of this Agreement or any timetable or deadline established pursuant to this Agreement. Notwithstanding the provisions of Section XXVI.K., or any other Section of this Agreement, in the event that TDEC is dissatisfied with any final decision issued by the Administrator pursuant to Section XXVI (Resolution of Disputes) TDEC may take any action concerning the disputed matter which would be available in the absence of this Agreement.

C. Notwithstanding this Section, or any other Section of this Agreement, the TDEC shall retain the right to obtain judicial review of any final decision of EPA on selection of a remedial action pursuant to any authority the TDEC may have under Sections 113, 121(e)(2), 121(f), and 310 of CERCLA, 42 U.S.C. §§ 9613, 9621(e)(2), 9621(f), and 9659.

D. This Agreement does not affect any claims TDEC may have for natural resource damage assessments or for damages to natural resources.

XLIII. PROPERTY TRANSFER

In the event that DOE determines to enter into any contract for the sale or transfer of any of the Site, the DOE shall comply with the requirements of Section 120(h) of CERCLA, 42 U.S.C. § 9620(h), in effectuating that sale or transfer, including all notice requirements. In addition, the DOE shall include notice of this Agreement in any document transferring ownership or operation of the Site to any subsequent owner and/or operator of any portion of the Site and shall notify EPA and TDEC of any such sale or transfer at least ninety (90) days prior to such sale or transfer. No change in ownership of the Site or any portion thereof or notice pursuant to Section 120(h)(3)(B) of CERCLA, 42 U.S.C. § 9620(h)(3)(B), shall relieve the DOE of its obligation to perform pursuant to this Agreement. No change of ownership of the Site or any portion thereof shall be consummated by the DOE without provision for continued maintenance of any containment system, treatment system, or other response action(s) installed or implemented pursuant to this Agreement. This provision does not relieve the DOE of its obligations under 40 C.F.R. Part 270.

XLIV. STIPULATED PENALTIES

A. In the event that DOE fails to submit a primary document, as identified in Section XXI (Review/Comment), to EPA and/or TDEC pursuant to the appropriate timetable or deadline in

accordance with the requirements of this Agreement, or any extensions granted pursuant to 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 and/or TDEC may assess a stipulated penalty against DOE. A stipulated penalty may be assessed in an amount not to exceed $5,000 (total amount of EPA and TDEC assessment) for the first week (or part thereof), and $10,000 (total amount of EPA and TDEC assessment) for each additional week (or part thereof) for which a failure set forth in this Subsection occurs.

B. Upon determining that the DOE has failed in a manner set forth in Subsection A, above, EPA and/or TDEC shall so notify DOE in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, then DOE shall have fifteen (15) days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. The DOE shall not be liable for the stipulated penalty assessed by EPA or TDEC 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 DOE annual report to Congress required by Section 120(e)(5) of CERCLA, 42 U.S.C. § 9620(e)(5), shall include, with

respect to each final assessment of a stipulated penalty against DOE under this Agreement, 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 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 Substances Response Trust Fund from funds authorized and appropriated for that specific purpose.

E. Stipulated penalties assessed by TDEC pursuant to this Section shall be payable, as TDEC may direct, to the Tennessee Remedial Action fund, The Tennessee Environmental Protection Fund or the Solid Waste Disposal Site Restoration Fund.

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

G. This Section shall not affect DOE's ability to obtain an extension of a timetable, deadline, or schedule pursuant to Section XXX (Extensions) of this Agreement.

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

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

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

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 interim or final remedial actions, shall be enforceable by any person pursuant to Section 310(c) of CERCLA, 42 U.S.C. § 9659(c), and any violation of such terms or conditions

will be subject to civil penalties under Sections 310(c) and 109 of CERCLA, 42 U.S.C. §§ 9659(c) and 9609; and

4. Any final resolution of a dispute pursuant to Section XXVI (Resolution of Disputes) of this Agreement which establishes a term, condition, timetable, deadline, or schedule shall be enforceable by any person pursuant to Section 310(c) of CERCLA, 42 U.S.C. § 9659(c), and any violation of such term, condition, timetable, deadline or schedule will be subject to civil penalties under Section 310(c) and 109 of CERCLA, 42 U.S.C. §§ 9659(c) and 9609.

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 provisions of CERCLA, including Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

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

D. Appendix H to this Agreement is a letter from the U.S. Department of Justice to the State of Tennessee which sets forth the Department of Justice's position on the enforceability of this Agreement.

XLVI. TERMINATION AND SATISFACTION

A. To the extent that remedial response actions are conducted in operable units under the provisions of this Agreement, following completion of all response actions at an operable unit and upon written request by DOE, the EPA, with the concurrence of the TDEC, will send to DOE a written notice that the operable unit has been completed in accordance with the requirements for that operable unit. This notice shall not be construed to be written notice of termination and satisfaction under Subsection B of this Section.

B. To the extent that remedial response actions are conducted pursuant to the provisions of this Agreement, following the completion of all remedial response actions and upon written request by DOE, the EPA, with the concurrence of the TDEC will send to DOE a written notice of satisfaction of the terms of this Agreement within ninety (90) days of the request. The notice shall state that, in the opinion of EPA and TDEC, the DOE has satisfied all the terms of this Agreement in accordance with the requirements of CERCLA, the NCP, Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), and related guidance, and applicable State laws and that the work performed by DOE is consistent with the agreed-to remedial actions and in compliance with the ARARs identified pursuant to this Agreement.

C. The TDEC may withdraw as a Party to this Agreement by providing at least ninety (90) days written notice of its intent to withdraw to each of the other Parties. Such withdrawal by TDEC

will terminate all of the duties and responsibilities which TDEC would otherwise have under this Agreement. After any such withdrawal, this Agreement shall not be construed as waiving any right or authority that TDEC may have and shall not be construed as a bar or release of any claim, cause of action or demand in law or equity.

XLVII. EFFECTIVE DATE

This Agreement shall become effective after it is executed by all the Parties and upon the date set by EPA in written notification to all Parties that the Agreement has been finally-executed and is effective.

IT IS SO AGREED:

11/8/91
DATE

J. W. Luna, Commissioner
Tennessee Department of
Environment and Conservation

11/13/91
DATE

Joe La Grone, Manager
Department of Energy
Oak Ridge Operations

OCT 16 1991
DATE

Greer C. Tidwell
Regional Administrator
United States Environmental
Protection Agency