

Attachment 5
Additional Navy Actions in MEW Study Area

(The deadlines in this Attachment 5 are enforceable and although Target Dates are only for the purpose of projecting an overall schedule and are not enforceable, all Parties will endeavor to complete all tasks as quickly as practical.)

<u>Action</u>	<u>Deadline</u>	<u>Target Dates</u> ^[2]
<u>SITE INVESTIGATIONS FOR INFERRED SOURCES IS8 & IS9</u> ^[1]		
Contract Award for Site Investigations at Inferred Sources IS8 & IS9	Awarded 7 March 1990	-----
Work Plans for Inferred Sources IS8 & IS9 ^[2]	15 July 1990	-----
Site Investigation Report for Inferred Sources IS8 & IS9 ^[3]	90 days following completion of field work	1 March 1991
<u>PHASE I REMOVALS AT SITES 12 & SITE 14 (TANKS 19 & 20)</u> ^[4]		
Draft Action Memorandum for Phase I Removal at Site 12 & Site 14 (Tanks 19 & 20)	1 July 1990 ^[17]	-----
Final Action Memorandum for Phase I Removal at Site 12 & Site 14	Per Consultation Section ^[5]	1 September 1990
35% Design Work Plan for Phase I Removal at Site 12 & Site 14 ^[6]	Submit 35% Design 90 days following submission of Draft Action Memorandum	1 November 1990
100% Design Work Plan for Phase I Removal at Site 12 & Site 14 ^[7]	Submit 100% Design 120 days after receipt of comments from agencies on 35% Design)	1 March 1991
Final Design Removal Work Plan for Phase I Removal at Site 12 & Site 14 ^[8]	Per Consultation Section. Final Design submitted 45 days after receipt of comments from agencies on 100% Design.	15 May 1991
Construction Start for Phase I Removal at Site 12 & Site 14	60 days after final design approval ^[9]	15 July 1991
Start-Up Date for Phase I Removal at Site 12 & Site 14	5 months after construction start date	15 December 1991

REPRODUCED AT GOVERNMENT EXPENSE

PHASE II REMOVALS AT SITES 8 & 9 [10]

Phase II Removal Contract Award at Sites 8 & 9[11]	90 days after initiation of Phase II Groundwater Sampling	Complete
Draft Action Memorandum for Phase II Removal at Sites 8 & 9[12]	1 March 1991[17]	-----
Final Action Memorandum for Phase II Removal at Sites 8 & 9	Per Consultation Section	1 May 1991
35% Design Work Plan for Phase II Removal at Sites 8 & 9[13]	Submit 35% Design 90 days following submission of Draft Action Memorandum	1 July 1991
100% Design Work Plan for Phase II Removal at Sites 8 & 9[14]	Submit 100% Design 120 days after receipt of comments from agencies on 35% Design	1 December 1991
Final Design Removal Work Plan for Phase II Removal at Sites 8 & 9[15]	Per Consultation Section Final design submitted 45 days after receipt of comments from agencies on 100% Design	15 February 1992
Construction Start for Phase II Removal at Sites 8 & 9	60 days after final design approval[9]	15 April 1992
Start-Up Date[16] for Phase II Removal at Sites 8 & 9	5 months after construction start date	15 September 1992

[1] Inferred Sources IS8 & IS9 are those sources identified in the MEW RI/FS for which groundwater data indicates contamination levels in excess of plume "background" levels, but for which no known source can be identified. IS 8 and IS 9 are not associated with sites 8 and 9 of the NAS Moffett Field RI/FS.

[2] The work plans for the site investigation are considered Secondary Documents under this agreement.

[3] The site investigation report shall be considered a Primary Document under this Agreement. Further work, if necessary, shall be addressed within the context of the on-going RI/FS at NAS Moffett Field.

[4] Tanks 19 and 20 have already been removed. Documents under Phase I Removals at Sites 12 & 14 are considered Primary Documents for the purposes of this attachment (except as noted otherwise). Review times have been agreed upon by the signatories to this Agreement as thirty (30) days for Draft Primary Documents. A Draft Final Primary Document becomes a Final

Primary Document 30 days after the receipt of a Draft Final Primary Document by the EPA, DHS and RWQCB, if Section 10, Resolution of Disputes, is not invoked.

[5] See Section 9, Consultation with EPA, DHS and RWQCB, of the Agreement for discussion of review time periods, response time periods, and consultation procedures. See footnote [4] above for agency review times.

[6] The 35% Design Work Plan for Phase I Removals at Sites 12 & 14 is a Secondary Document under this Agreement. Comments received on this plan will be addressed in the 100% Design Work Plan for Phase II Removals at Sites 12 & 14.

[7] The 100% Design Work Plan for Phase I Removals at Sites 12 & 14 is a Draft Primary Document. Comments received on the 35% and 100% will be addressed in the Final Design Work Plan for Phase I Removals at Sites 12 & 14.

[8] The Final Design Work Plan for Phase I Removals at Sites 12 & 14 is a Draft Final Primary Document. A Draft Final Primary Document becomes a Final Primary Document 30 days after the receipt of the Draft Final by EPA, DHS and RWQCB if Section 10, Resolution of Disputes, is not invoked.

[9] Initiation of specifications for the source control will begin following incorporation of 100% design comments.

[10] Documents under Phase II Removals at Sites 8 & 9 are considered Primary Documents for the purposes of this attachment (except as noted otherwise). Review times have been agreed upon by the signatories to this Agreement as thirty (30) days for Draft Primary Documents. A Draft Final Primary Document becomes a Final Primary Document 30 days after the receipt of a Draft Final Primary Document by the EPA, DHS and RWQCB, if Section 10, Resolution of Disputes, is not invoked.

[11] Site 9 shall mean the area west of Hangar 1 at Moffett Field which lies directly over the MEW plume depicted in the July 1989 MEW Study Area Record of Decision. The tanks and sumps identified in the Tank and Sump Removal Action (2, 14, 43, 47, 48, 49, 50, 51, 52, 53, 56A-D, 60, 61, 66, 67) of this attachment are located within this Site 9 area. Any groundwater source control, if required, from the Tank and Sump Removal Action shall be addressed in this action.

[12] If after three rounds of Phase II sampling it can be determined that a Removal can be established, an Action Memorandum will be generated. However, if three rounds of sampling are insufficient, an additional round of sampling and analysis will be taken and a Letter of Notification shall be submitted as required to the Parties amending the Action Memorandum.

[13] The 35% Design Work Plan for Phase II Removal at Sites 8 & 9 is a Secondary Document under this Agreement. Comments received on this plan will be addressed in the 100% Design Work Plan for Phase II Removal at Sites 8 & 9.

[14] The 100% Design Work Plan for Phase II Removal at Sites 8 & 9 is a Draft Primary Document. Comments received on the 35% and 100% will be addressed in the Final Design Work Plan for Phase II Removal at Sites 8 & 9.

[15] The Final Design Work Plan for Phase II Removal at Sites 8 & 9 is a Draft Final Primary Document. A Draft Final Primary Document becomes a Final Primary Document 30 days after the receipt of the Draft Final by EPA, DHS and RWQCB if Section 10, Resolution of Disputes, is not invoked.

[16] Actual clean up operations begin.

[17] Parties recognize that this date may be extended pursuant to Section 27.

ATTACHMENT ONE
AMENDMENTS TO THE FFA

FEDERAL FACILITY AGREEMENT UNDER CERCLA SECTION 120

BETWEEN

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
REGION 9

AND

THE UNITED STATES DEPARTMENT OF THE NAVY

AND

THE STATE OF CALIFORNIA

REPRESENTED BY

THE CALIFORNIA DEPARTMENT OF HEALTH SERVICES

AND

THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,
SAN FRANCISCO BAY REGION

(AUGUST 1990)

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ATTACHMENTS

1. Maps
2. Outline for Management Plan
3. Timetables and Deadlines
4. Navy Actions in MEW Study Area
5. Additional Navy Actions in MEW Study Area

considered as submitted on time if mailed by that date by certified mail return receipt requested, registered mail, or next day mail. Any other means of submission must arrive on the due date to be considered as timely delivered.

1.21 "Timetables and deadlines" shall refer to the specific schedules for performance of described tasks to be implemented pursuant to this Agreement. Timetables and deadlines will be contained in the Attachments to this Agreement and may also be contained in other parts of this Agreement or in documents prepared pursuant to this Agreement.

1.22 "MEW Regional Groundwater Remediation Program" shall mean the regional groundwater extraction, treatment and reuse program to be implemented as part of the remedy selected by the MEW Site Record of Decision signed by the EPA Regional Administrator of Region IX on June 9, 1989.

2 JURISDICTION

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

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

1. Currently, there are no existing or proposed RCRA treatment, storage or disposal facilities at NASMF.

2.2 U.S. EPA, Region IX, enters into those portions of this Agreement that relate to remedial actions pursuant to Section 120(e)(2) of CERCLA/SARA, Sections 6001, 3008(h) and 3004(u) and (v) of RCRA and Executive Order 12580;

2.3 The U.S. Department of the Navy (Navy) enters into those portions of this Agreement that relate to the RI/FS pursuant to Section 120(e)(1) of CERCLA, Sections 6001, 3008(h) and 3004(u) and (v) of RCRA, Executive Order 12580, the National Environmental Policy Act, 42 U.S.C. § 4321, and the Defense Environmental Restoration Program (DERP), 10 U.S.C. § 2701 et seq;

2.4 The Navy enters into those portions of this Agreement that relate to remedial actions pursuant to Section 120(e)(2) of CERCLA, Sections 6001, 3004(u), 3004(v) and 3008(h) of RCRA, Executive Order 12580 and the DERP.

2.5 The California Department of Health Services (DHS) and the California Regional Water Quality Control Board (RWQCB) enter into this Agreement pursuant to Sections 120 and 121 of CERCLA, California Health and Safety Code Division 20, Chapters 6.5 and 6.8, and Division 7 of California Water Code.

3 STIPULATED DETERMINATIONS

For purposes of this Agreement, and as a basis therefore, the Navy, EPA, DHS, and RWQCB have determined that:

3.1 The Naval Air Station Moffett Field (NASMF), located in Santa Clara County, constitutes a facility within the meaning of 42 U.S.C. § 9601(9).

3.2 NASMF is a federal facility within the meaning of 42 U.S.C. § 9620 and is subject to all guidelines, rules, regulations, and criteria in the same manner and to the same extent as other facilities, as specified in 42 U.S.C. § 9620(a).

3.3 There are areas within NASMF boundaries where hazardous substances, as defined in 42 U.S.C. § 9601(14), have been deposited, stored, placed or otherwise come to be located [in accordance with 42 U.S.C. § 9601(14)].

3.4 There have been releases of hazardous substances, pollutants or contaminants into the environment, within the meaning of 42 U.S.C. §§ 9601(22), 9604, 9606 and 9607, California Health and Safety Code §§ 25316 and 25320 and Division 7 of the California Water Code, at NASMF.

3.5 With respect to those releases, the Navy is an owner and[/or] operator, as defined in 42 U.S.C. § 9601(20), subject to the provisions of [and/or person within the meaning of] 42 U.S.C. § 9607, Health and Safety Code § 25323.5(a) and California Water Code § 13050.

3.6 Pursuant to 42 U.S.C. § 9604(b), E.O. 12580 and Health and Safety Code § 25355.5(a)(1)(c), the Navy is the agency responsible for implementing the RI/FS.

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

3.8 The Navy, RWQCB, and DHS recognize that for purposes of Section 36 (Cost Reimbursement), DHS shall be the lead state agency, responsible for collecting reimbursable cost, and distributing portions as identified by the Navy to the RWQCB. The Navy, DHS, and RWQCB recognize that the RWQCB has had, and shall continue to have, substantial technical lead for all activities

incidental and consequential to this Agreement. Notwithstanding RWQCB's role, the Parties recognize the DHS shall not be limited in any way in the participation or consultation under this Agreement, or in asserting or carrying out authorities under state or federal laws. However, DHS and RWQCB will in good-faith endeavor to minimize any duplication of effort.

4 PARTIES BOUND

4.1 The Parties to this Agreement are the EPA, Navy, and the State of California as represented by DHS, and RWQCB. The terms of this Agreement shall apply to and be binding upon the Parties and all subsequent owners, operators and lessees of NASMF. Each Party will notify all other Parties of the identity and assigned tasks of each of its contractors performing work under this Agreement upon their selection. This Section shall not be construed as an agreement to indemnify any person. Each Party shall provide copies of this Agreement to its contractors who are performing any work called for by this Agreement. The Navy shall require compliance with this Agreement in any contracts it executes for work performed under this Agreement.

4.2 No change in ownership of NASMF shall in any way alter the status or responsibility of the Parties under this Agreement. Should the Navy transfer ownership of any or all of the property which constitutes NASMF, the notice and remedial action responsibilities specified in Section 28 of this Agreement (Transfer of Real Property) shall apply.

mitigate, or abate the release or threatened release of hazardous substances, pollutants or contaminants at the Site in accordance with CERCLA;

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

5.2.4 implement the selected interim and final remedial action(s) in accordance with CERCLA and meet the requirements of Section 120(e)(2) of CERCLA for an interagency agreement among the Parties;

5.2.5 assure compliance, through this Agreement, with RCRA and other federal and state laws and regulations for matters covered herein;

5.2.6 coordinate response actions at the Site with the mission and support activities at NASMF;

5.2.7 expedite the cleanup process to the extent consistent with protection of human health and the environment; [and]

5.2.8 conduct operation and maintenance of remedial action(s) selected and implemented pursuant to this Agreement; and

5.2.9 adequately characterize source areas of contamination at the Site and identify and implement removal actions to control such source areas in accordance with Attachments 4 and 5 prior to and in coordination with the implementation of the MEW Regional Groundwater Remediation Program. The purpose of such source control removals is to eliminate any impediment to the effective implementation of the MEW Regional Groundwater Remediation Program North of Highway 101 that otherwise would be caused by the failure to implement such source control removals.

6 STIPULATED FACTS

For the purposes of this Agreement, the following constitutes a summary of the facts upon which this Agreement is based. None of the facts related herein shall be considered admissions by any Party.

comment based on public response. When public comment has been properly considered, the Navy shall submit its draft Record of Decision (ROD) in accordance with Section 9, Attachment 2 and Attachment 3. At the time of submittal of the draft [ROD] Proposed Plan, the Navy shall submit a proposed schedule for implementation of the selected remedial action(s) to the other Parties in accordance with Section 9, and Attachment 3. In the event the Parties cannot reach agreement on selection of the Final Remedial Action, the EPA Administrator shall select the Final Remedial Action in accordance with Section 10 (Resolution of Disputes). After approval in accordance with Section 9, the ROD shall be published by the Navy before commencement of the remedial action, in accordance with CERCLA §§ 117(b), (c), and (d). The Navy shall implement the remedial action(s) in accordance with approved time schedules. The Navy shall conduct operation and maintenance to maintain the effectiveness of response actions at the Site.

7.4 Removal Actions

7.4.1 The provisions of this Subsection shall apply to all removal actions as defined in CERCLA Section 101([3]23), 42 U.S.C. § 9601(23), and Health and Safety Code Section 25323, including all modifications to, or extensions of, the ongoing removal actions, and all new removal actions proposed or commenced following the effective date of this Agreement, including those removal actions undertaken pursuant to the schedules contained in Attachments 4 and 5.

7.4.2 Any removal actions conducted on the Site shall be conducted in a manner consistent with CERCLA, the NCP, and 10 U.S.C. § 2705.

7.4.3 Except for the specific review and comment process that applies to removals undertaken pursuant to Attachment 5, and the provisions of Subsection 7.4.9, [N]othing in this Agreement shall alter the Navy's authority with respect to removal actions conducted pursuant to

request.

7.4.9 Any dispute among the Parties as to the adequacy of the Navy's design, implementation or operation of the source control removals at the Site described in Attachment 5 shall be resolved pursuant to Section 10 of this Agreement (Resolution of Disputes).

7.5 Document Submittal

The Navy agrees to submit to the other Parties certain documents to fulfill the obligations and meet the purposes of this Agreement. A description of these documents and the schedule for their submittal are specified in Section 9 (Consultation with EPA, DHS, and RWQCB), and the Attachments [2 and Attachment 3] to this Agreement.

7.6 Guidance

EPA, DHS, and RWQCB agree to 1) assist the Navy in identifying applicable guidance and, whenever practicable, supply the Navy with copies of such guidance and; 2) give a timely response to requests for guidance to assist the Navy in the performance of the requirements under this Agreement.

7.7 On-Site Contamination Originating Off-NASMF

The Parties recognize that releases of hazardous substances originating off-NASMF, including certain groundwater plumes comingled with plumes originating on-NASMF, may be addressed pursuant to a separate agreement entered into by the responsible parties and the regulatory agencies.

8 STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

8.1 The Parties intend to integrate the Navy's CERCLA response obligations and RCRA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes, pollutants or contaminants covered by this Agreement into this com-

2. Sampling and Analysis Plan(s) (Final Phase I and II Sampling and Analysis Plan already submitted)
3. Work Plan Phase I & II (Final already submitted)
4. Community Relations Plan (Final already submitted)
5. Management Plan
6. Known Abandoned Wells Closure Report
7. Suspected Abandoned Wells Closure Report
8. Initial Screening of Remedial Alternatives
9. RI Report(s)
10. FS Report(s) (including Baseline Risk Assessment)
11. Proposed Plan(s)
12. Record(s) of Decision
13. Remedial Design(s)
14. Remedial Action Operations Plan(s)
15. Action Memoranda relating to Attachment 5.

9.3.2 Only the draft final reports for the primary documents identified above shall be subject to dispute resolution. The Navy shall complete and submit draft primary documents in accordance with the timetables and deadlines established in Attachment 3 and Attachment 5 of this Agreement.

9.4 Secondary Documents:

9.4.1 The Navy shall complete and submit draft reports for secondary documents to the other Parties for review and comment in accordance with the provisions of this Section. The secondary

tion, the progress reports shall identify anticipated delays in meeting schedules, the reason(s) for the delay and actions taken to prevent future delays. However, formal extensions required, if any, must still be requested pursuant to Section 27 (Extensions). The Project Managers may agree to make the progress reports quarterly rather than monthly.

14 NOTIFICATION AND DISTRIBUTION LIST

14.1 Unless otherwise specified by a Party, any report or submittal provided pursuant to a schedule identified in or developed under this Agreement shall be hand delivered, sent by certified mail, return receipt requested, or sent by next day mail, and addressed as follows:

U.S. Environmental Protection Agency, Region 9
1235 Mission St., Mail Code H-7-3
San Francisco, CA 94103
Attn: (Project Manager)

California Department of Health Services
Toxic Substances Control Program, Region 2
2151 Berkeley Way, Annex 9
Berkeley, CA 94704
Attn: (Project Manager)

Regional Water Quality Control Board
San Francisco Bay Region
1800 Harrison St., Suite 700
Oakland, CA 94612
Attn: (Project Manager)

Naval Facilities Engineering Command
Western Division, Code 18
Office of Environmental Management
900 Commodore Dr., Bldg. 101
P.O. Box 727
San Bruno, CA 94066-0720
Attn: (Project Manager)

state law, or (b) those that could otherwise be withheld pursuant to the Federal Freedom of Information Act, Federal Privacy Act, or California Public Records Act, unless expressly authorized for release by the originating Party. Documents or information so identified shall be handled in accordance with those regulations. Except for draft primary and secondary documents, no document marked draft may be made available without prior consultation and approval by the originating Party. If the document is final and no confidentiality claim accompanies information which is submitted to any Party, the information may be made available to the public without further notice to the originating Party.

24 AMENDMENT OF AGREEMENT

This Agreement may be amended only upon written agreement by all Parties to this document.

25 COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

25.1 In consideration for the Navy's compliance with this Agreement, and based on the information known to the Parties on the effective date of this Agreement, the Navy, EPA, DHS, and RWQCB agree that compliance with this Agreement shall stand in lieu of any administrative, legal and equitable remedies against the Navy available to EPA, DHS or RWQCB regarding the currently known releases or threatened releases of hazardous substances in-

26 STIPULATED PENALTIES

26.1 In the event that the Navy fails to submit a primary document to the other Parties pursuant to the appropriate timetable or deadline established in Section 9.3.2 and the Attachments in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement which relates to an operable unit or final remedial action, EPA, after consultation with DHS and RWQCB, may assess a stipulated penalty against the Navy. DHS or RWQCB may also recommend that a stipulated penalty be assessed. A stipulated penalty may be assessed in an amount not to exceed \$5,000 for the first week (or part thereof), and \$10,000 for each additional week (or part thereof) for which a failure set forth in this Paragraph occurs.

26.2 Upon determining that the Navy has failed in a manner set forth in Paragraph 26.1, EPA shall so notify the Navy in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the Navy 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 Navy shall not be liable for the stipulated penalty assessed by EPA or DHS 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.

26.3 The annual reports required by Section 120(e)(5) of CERCLA

der the "Environmental Restoration, Defense" appropriation in the Department of Defense Appropriation Act and allocated by the Deputy Assistant Secretary of Defense (Environment) (DASD(E)) to the Navy will be the source of funds for activities required by this Agreement consistent with § 211 of CERCLA, 10 U.S.C. Section 2703. However, should the Environmental Restoration, Defense appropriation be inadequate in any year to meet the total Navy CERCLA implementation requirements, the DoD shall employ and the Navy shall follow a standardized DoD prioritization process which allocates that year's appropriations in a manner which maximizes the protection of human health and the environment. A standardized DoD prioritization model shall be developed and utilized with the assistance of EPA and the States.

33 TERMINATION DATE

Following the completion of all remedial response actions and upon written request by the Navy, EPA, with the concurrence of DHS and RWQCB, will send to the Navy 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, DHS, and RWQCB, the Navy has satisfied all of the terms of this Agreement in accordance with the requirements of CERCLA, the NCP, RCRA §§ 3004(u) and (v), 42 U.S.C. §§ 6924 (u) and (v), [and] pertinent RCRA regulations, related guidance, and applicable State laws, and that the work performed by the Navy was consistent with the agreed-to remedial actions.

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

IT IS SO AGREED:

Date

Jacqueline E. Schafer
Assistant Secretary (Installations
and Environment)
United States Department of
the Navy

Date

Daniel W. McGovern
Regional Administrator
United States Environmental
Protection Agency, Region 9

Date

John J. Kearns
Acting Deputy Director
Toxic Substances Control
Program
California Department of
Health Services

Date

Steven R. Ritchie
Executive Officer
California Regional Water Quality
Control Board
San Francisco Bay Region

**Attachment 4
Navy Actions in MEW^[1] Study Area**

(The deadlines in this Attachment 4 are enforceable and although Target Dates are only for the purpose of projecting an overall schedule and are not enforceable, all Parties will endeavor to complete all tasks as quickly as practical.)

<u>Action</u>	<u>Deadline</u>	<u>Target Dates</u>^[2]
<u>TANK & SUMP REMOVALS</u> ^[3]		
Field work for Removals at Site 19 (Tanks 2,14, 43, 53); Site 14 (Tank 67);Site 18 (Sump 66) ^[4]	Initiated 7 May 1990	-----
EE/CA for Additional Removals & Monitoring Well Installations at Site 9 (Tanks 47, 48, 49, 50 ^[5] , 56A-D); Site 10 (Tanks 51, 52); Site 16 (Sump 60); Site 17 (Sump 61) ^[6]	1 August 1990 (Submit EE/CA ^[7] to agencies and public for 30 day review and comment ^[8])	-----
Action Memorandum for Additional Removals and Monitoring Well Installation at Site 9, Site 10, Site 16 & Site 17	Submit Action Memorandum 30 days after the end of the public comment period and agency review	1 October 1990
Additional Removals and Monitoring Well Installation at Site 9, Site 10, Site 16 & Site 17	Initiate field work 60 days after receipt of comments from both the agencies and the public	1 November 1990
Summary Report for Tank and Sump Removals ^[9]	6 months after initiation of field work for additional tank/sump removal or 30 days after the last tank/sump is removed, whichever is sooner	1 May 1991

[1] Middlefield, Ellis and Whisman.

[2] Estimated dates are calculated only for the purpose of projecting an overall schedule and are not enforceable. Actual dates of finalization of documents may vary depending on actual document review times of EPA, DHS, and RWQCB, and actual response times of the Navy.

[3] Documents associated with Tank and Sump Removals are considered Secondary Documents under this Agreement. The purpose of this task is to locate and remove leaking or abandoned underground storage tanks within the MEW Study Area and address possible source loading to groundw via soil.

[4] Existence of Tanks 47,48,49,& 50 have not as yet been confirmed.

REPRODUCED FROM THE ORIGINAL DOCUMENT

[5] Removal Action Plan for Tanks 2, 14, 43, 53, 67, 68, and Sump 66 was submitted to the agencies on 17 August 1988 which satisfies the requirements of an Engineering Evaluation and Cost Analysis (EE/CA). Sufficient monitoring well coverage exists at these sites, however if additional wells are required based on new soil and groundwater analysis they will be installed under the subsequent removal contract.

[6] Monitoring wells shall be installed as necessary based upon soil and groundwater analysis following tank removal should sufficient coverage not already exist.

[7] Engineering Evaluation/Cost Analysis.

[8] The EE/CA will be submitted to the signatories for review and comment concurrent with the public comment period required for non-time critical removals. Concurrent reviews will shorten the total review time thereby expediting the total schedule for removal of the tanks and sumps.

[9] The summary report will set out the findings developed in the course of implementing this action. Groundwater source control, if any, will be addressed in the Phase II Removals at Sites 8 & 9. Final cleanup measures will be determined in the Record of Decision for the Phase I & II RI/FS.

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Site Investigation Report for Inferred Sources IS8 & IS9 ^[3]	90 days following completion of field work	1 March 1991
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Final Action Memorandum for Phase I Removal at Site 12 & Site 14	Per Consultation Section ^[5]	1 September 1990
35% Design Work Plan for Phase I Removal at Site 12 & Site 14 ^[6]	Submit 35% Design 90 days following submission of Draft Action Memorandum	1 November 1990
100% Design Work Plan for Phase I Removal at Site 12 & Site 14 ^[7]	Submit 100% Design 120 days after receipt of comments from agencies on 35% Design)	1 March 1991
Final Design Removal Work Plan for Phase I Removal at Site 12 & Site 14 ^[8]	Per Consultation Section. Final Design submitted 45 days after receipt of comments from agencies on 100% Design.	15 May 1991
Construction Start for Phase I Removal at Site 12 & Site 14	60 days after final design approval ^[9]	15 July 1991
Start-Up Date for Phase I Removal at Site 12 & Site 14	5 months after construction start date	15 December 1991

PHASE II REMOVALS AT SITES 8 & 9 [10]

Phase II Removal Contract Award at Sites 8 & 9[11]	90 days after initiation of Phase II Groundwater Sampling	Complete
Draft Action Memorandum for Phase II Removal at Sites 8 & 9[12]	1 March 1991[17]	-----
Final Action Memorandum for Phase II Removal at Sites 8 & 9	Per Consultation Section	1 May 1991
35% Design Work Plan for Phase II Removal at Sites 8 & 9[13]	Submit 35% Design 90 days following submission of Draft Action Memorandum	1 July 1991
100% Design Work Plan for Phase II Removal at Sites 8 & 9[14]	Submit 100% Design 120 days after receipt of comments from agencies on 35% Design	1 December 1991
Final Design Removal Work Plan for Phase II Removal at Sites 8 & 9[15]	Per Consultation Section Final design submitted 45 days after receipt of comments from agencies on 100% Design	15 February 1992
Construction Start for Phase II Removal at Sites 8 & 9	60 days after final design approval[9]	15 April 1992
Start-Up Date[16] for Phase II Removal at Sites 8 & 9	5 months after construction start date	15 September 1992

[1] Inferred Sources IS8 & IS9 are those sources identified in the MEW RI/FS for which groundwater data indicates contamination levels in excess of plume "background" levels, but for which no known source can be identified. IS 8 and IS 9 are not associated with sites 8 and 9 of the NAS Moffett Field RI/FS.

[2] The work plans for the site investigation are considered Secondary Documents under this agreement.

[3] The site investigation report shall be considered a Primary Document under this Agreement. Further work, if necessary, shall be addressed within the context of the on-going RI/FS at NAS Moffett Field.

[4] Tanks 19 and 20 have already been removed. Documents under Phase I Removals at Sites 12 & 14 are considered Primary Documents for the purposes of this attachment (except as noted otherwise). Review times have been agreed upon by the signatories to this Agreement as thirty (30) days for Draft Primary Documents. A Draft Final Primary Document becomes a Final

Primary Document 30 days after the receipt of a Draft Final Primary Document by the EPA, DHS and RWQCB, if Section 10, Resolution of Disputes, is not invoked.

[5] See Section 9, Consultation with EPA, DHS and RWQCB, of the Agreement for discussion of review time periods, response time periods, and consultation procedures. See footnote [4] above for agency review times.

[6] The 35% Design Work Plan for Phase I Removals at Sites 12 & 14 is a Secondary Document under this Agreement. Comments received on this plan will be addressed in the 100% Design Work Plan for Phase II Removals at Sites 12 & 14.

[7] The 100% Design Work Plan for Phase I Removals at Sites 12 & 14 is a Draft Primary Document. Comments received on the 35% and 100% will be addressed in the Final Design Work Plan for Phase I Removals at Sites 12 & 14.

[8] The Final Design Work Plan for Phase I Removals at Sites 12 & 14 is a Draft Final Primary Document. A Draft Final Primary Document becomes a Final Primary Document 30 days after the receipt of the Draft Final by EPA, DHS and RWQCB if Section 10, Resolution of Disputes, is not invoked.

[9] Initiation of specifications for the source control will begin following incorporation of 100% design comments.

[10] Documents under Phase II Removals at Sites 8 & 9 are considered Primary Documents for the purposes of this attachment (except as noted otherwise). Review times have been agreed upon by the signatories to this Agreement as thirty (30) days for Draft Primary Documents. A Draft Final Primary Document becomes a Final Primary Document 30 days after the receipt of a Draft Final Primary Document by the EPA, DHS and RWQCB, if Section 10, Resolution of Disputes, is not invoked.

[11] Site 9 shall mean the area west of Hangar 1 at Moffett Field which lies directly over the MEW plume depicted in the July 1989 MEW Study Area Record of Decision. The tanks and sumps identified in the Tank and Sump Removal Action (2, 14, 43, 47, 48, 49, 50, 51, 52, 53, 56A-D, 60, 61, 66, 67) of this attachment are located within this Site 9 area. Any groundwater source control, if required, from the Tank and Sump Removal Action shall be addressed in this action.

[12] If after three rounds of Phase II sampling it can be determined that a Removal can be established, an Action Memorandum will be generated. However, if three rounds of sampling are insufficient, an additional round of sampling and analysis will be taken and a Letter of Notification shall be submitted as required to the Parties amending the Action Memorandum.

[13] The 35% Design Work Plan for Phase II Removal at Sites 8 & 9 is a Secondary Document under this Agreement. Comments received on this plan will be addressed in the 100% Design Work Plan for Phase II Removal at Sites 8 & 9.

[14] The 100% Design Work Plan for Phase II Removal at Sites 8 & 9 is a Draft Primary Document. Comments received on the 35% and 100% will be addressed in the Final Design Work Plan for Phase II Removal at Sites 8 & 9.

[15] The Final Design Work Plan for Phase II Removal at Sites 8 & 9 is a Draft Final Primary Document. A Draft Final Primary Document becomes a Final Primary Document 30 days after the receipt of the Draft Final by EPA, DHS and RWQCB if Section 10, Resolution of Disputes, is not invoked.

[16] Actual clean up operations begin.

[17] Parties recognize that this date may be extended pursuant to Section 27.

ATTACHMENT TWO
JOINT RESPONSES

**RESPONSES OF THE PARTIES
TO THE PUBLIC COMMENTS
TO THE FEDERAL FACILITY AGREEMENT
FOR NAVAL AIR STATION MOFFETT FIELD, CALIFORNIA
(AUGUST 1990)**

1. Several commenters suggested that the clean-up of Naval Air Station Moffett Field (NAS Moffett) be handled in a regional context, with state and federal officials working in coordination with private industry to address the sites at NAS Moffett in coordination with those south of NAS Moffett.

The clean-up of NAS Moffett and the clean-up of the regional groundwater plume from the Middlefield-Ellis-Whisman (MEW) Superfund site are each being overseen by the Environmental Protection Agency (EPA), Region IX, and the California Department of Health Services (DHS) and the California Regional Water Quality Control Board (RWQCB), San Francisco Bay Region, representing the State of California. The regulatory agencies are carefully reviewing clean-up plans for both NAS Moffett and the regional groundwater plume from the MEW Superfund site in order to assure that the clean-up for each site is consistent with the other.

2. Several commenters suggested amending the Federal Facility Agreement (FFA) for NAS Moffett to provide for accelerated response actions, including the identification and control of sources of contamination at NAS Moffett. Some of these commenters suggested that the accelerated response actions would be a means to facilitate the clean-up of the regional groundwater plume at the MEW Superfund site.

The United States Department of the Navy, as part of its obligations under the FFA, has agreed to identify and control the sources of contamination at NAS Moffett. In response to public comments regarding identification and control of sources, the Navy has agreed to amend the FFA to include a schedule that provides for the implementation of source control actions as soon as practicable. See, Attachments 4 and 5 to the FFA. Soil analyses and the removal of abandoned and potentially leaking underground storage tanks are currently underway. Potential vertical conduits (abandoned wells) are being located and destroyed in compliance with applicable laws and regulations. The Navy has focused its current investigation efforts on the area of NAS Moffett nearest the regional groundwater plume from the MEW Superfund site. The Navy's investigations will lead to response actions facilitating the efforts of the potentially responsible parties (PRPs) at the MEW Superfund site to remediate the regional groundwater contamination. This systematic approach is necessary because a source control of any groundwater plume undertaken without sufficient information regarding the source, extent and chemical constituents of the contamination could risk spreading the contamination, resulting in a more complicated clean-up and in an increase in the time and expense of the remediation of the groundwater plume.

3. Several commenters noted that the clean-up of NAS Moffett should begin as soon as technically possible (and particularly before

1995). The commenters further suggested that the FFA should provide opportunities to accelerate the clean-up at NAS Moffett, -rather than provide grounds for extending the schedule for remediation.

The Parties to the FFA agree that groundwater clean-up efforts at NAS Moffett should begin as soon as practicable. To that end, the Parties have amended the FFA to provide enforceable schedules for the performance of certain source control measures before 1995. In addition, the Navy has committed to undertake significant clean-up activities before 1995. For example, the FFA's schedules provide for the closing of abandoned wells located throughout NAS Moffett within the next two years. The FFA schedules also provide for the taking of interim control measures to prevent any further contamination of the groundwater from Navy sources. The source control measures should allow the PRPs at the MEW Superfund site to install an effective and environmentally sound regional groundwater extraction and treatment system. The schedules incorporated into the FFA provide maximum time limits for completion of the required tasks. The Parties may perform the tasks and submit or review the required documents within shorter time periods.

4. A commenter expressed concern over the definition of the regional groundwater plume from the MEW Superfund site, inquiring particularly as to whether that plume may affect the City of Sunnyvale.

The Navy's Site Investigations and those of the PRPs at the MEW Superfund site have defined the approximate boundaries of the regional groundwater plume from the MEW Superfund site. The Navy will continue to monitor that portion of the plume underlying NAS Moffett during Phase 2 of its Remedial Investigation (RI) and will continue to more precisely define and monitor the extent of the plume. The regional groundwater plume from the MEW Superfund site is migrating in a northerly direction, away from the City of Sunnyvale. As a result, it should have no impact on the City of Sunnyvale.

5. A commenter suggested that storm drains located on NAS Moffett be monitored during the clean-up in order to ensure that the treatment and discharge of effluent does not have an adverse impact on off-site water treatment plants or on the San Francisco Bay.

As part of the Management Plan required by the FFA, the Navy will conduct detailed studies of the vertical and horizontal conduits, which include the storm drains. The studies will determine the nature, source and extent of contaminants, if any, that might be migrating through the storm sewers. Based on the results of this study, the Navy will undertake appropriate response actions. At present, as part of its clean-up of NAS Moffett, the Navy does not intend to discharge any effluent, treated or otherwise, into storm drains. Any decision to discharge effluent,

treated or otherwise, would only be made as part of the Remedial Investigation/Feasibility Study (RI/FS) process and would receive public comment and regulatory review. The RI/FS process will ensure that any discharge into the storm drains would only be allowed if it were protective of human health and the environment. If effluent, treated or otherwise, were to be discharged into storm drains, such discharge would have to comply with all appropriate discharge limitations and monitoring requirements of the Federal Water Pollution Control Act (which would also be applicable or relevant and appropriate requirements (ARARs) under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)).

6. Two commenters noted that the regulatory agencies appeared to have traded away their enforcement authority over NAS Moffett in exchange for the Navy agreeing to enter into the FFA.

The Parties recognize that absent an FFA, disputes among the Parties could lead to lengthy administrative or judicial enforcement actions. The consultation and dispute resolution processes in the FFA are designed to quickly focus the Parties' attention on any dispute and to resolve any disputes expeditiously, without resorting to the time consuming administrative and judicial enforcement processes. See, Sections 9 (Consultation with EPA, DHS and RWQCB) and 10 (Resolution of Disputes) of the FFA. The consultation process establishes a framework for obtaining regulatory agency

concurrences on the Navy's technical documents. Moreover, the FFA places EPA in the role as the ultimate decision-maker in the dispute resolution process. The regulatory agencies view the consultation and dispute resolution scheme set forth in the FFA as an effective and enforceable means to ensure the Navy's compliance with CERCLA and with the terms and conditions of the FFA.

In exchange for the Navy's agreement to enter into the FFA, the regulatory agencies provided the Navy with a limited covenant not to sue. See, Section 25 (Covenant Not to Sue and Reservation of Rights) of the FFA. The covenant not to sue covers only currently known releases or threatened releases that are within the scope of the FFA and that are the subject of any RI/FS to be conducted pursuant to the terms of the FFA. Should the Navy violate a term or condition of the FFA, the regulatory agencies retain their rights to pursue administrative or judicial enforcement actions, concerning releases or threatened releases that are not part of an RI performed pursuant to the the terms of the FFA. An example of such a release would be a release or threatened release that becomes known after an RI/FS required by the FFA is completed. Also, the covenant not to sue pertains only to a release or threatened release of a hazardous substance that will be adequately addressed by a remedial action provided for in the FFA. The regulatory agencies will narrowly construe the application of the covenant not to sue in Section 25 of the FFA.

In addition, the FFA specifically provides that EPA, DHS or RWQCB may exercise any administrative, legal or equitable remedies available to each to require the Navy to take additional response actions, should previously unknown conditions or information demonstrate the need for such actions. Also, the regulatory agencies may require additional response actions if the actions called for by the FFA are no longer protective of human health or the environment. See, Section 25.1 of the FFA.

EPA may assess, and DHS or RWQCB, acting on behalf of the State of California, may recommend that EPA assess, a stipulated penalty against the Navy in the event that the Navy fails to submit a draft final primary document pursuant to the appropriate timetable or deadline, or fails to comply with a term or condition of the FFA relating to an operable unit or final remedial action. See, Section 26 (Stipulated Penalties) of the FFA. The Parties have amended Section 26 to clarify that the section applies to the enforceable deadlines for the Navy's submission of draft final primary documents. Under the terms of the FFA, EPA may assess a stipulated penalty in an amount not to exceed \$5,000 for the first week (or part thereof) and \$10,000 for each additional week (or part thereof) that the failure occurs. In addition to the enforcement powers of the regulatory agencies, any person may be able to seek to enforce certain provisions of the FFA pursuant to the citizen-suit provision of CERCLA, 42 U.S.C. § 9659.

7. Several commenters recommended that the Parties amend the FFA to more clearly define remediation goals and the ARARs for the clean-up at NAS Moffett. Some commenters also sought amendments to the FFA making clean-up goals and ARARs more enforceable.

The Navy agrees to conduct all investigations, remedial actions and removal actions at the site in a manner consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (also known as the National Contingency Plan or the NCP), 55 Fed. Reg. 8665 (March 8, 1990). The NCP requires the Navy, as part of the RI/FS process, to identify remedial action objectives, preliminary remediation goals, remediation goals, as well as ARARs. Consistent with the requirements of the NCP, the Navy will establish remedial action objectives specifying contaminants and media of concern, potential exposure pathways and remediation goals. See, NCP, 55 fed. Reg. at 8713. The Navy will develop preliminary remediation goals based on readily available information, such as chemical-specific ARARs or other reliable information. The Navy then will modify the preliminary remediation goals, as necessary, during the RI/FS. The Navy will establish final remediation goals, specifying the acceptable exposure levels that are protective of human health and the environment, by considering ARARs and other factors.

The Navy will determine the ARARs based upon an analysis of the requirements that are applicable or relevant and appropriate to the specific circumstances and actions contemplated at NAS Moffett. The NCP requires attainment of ARARs during the implementation of a remedial action, at the completion of a remedial action and to the extent practicable, considering the exigencies of the situation, during removal actions. See, NCP, 55 Fed. Reg. at 8741. Section 9.6 of the FFA establishes the process for the identification of ARARs for any remedial action taken at NAS Moffett. This process requires the Parties to cooperate in the ARAR identification stage and acknowledges that ARAR identification is an iterative process and that the Navy must re-examine potential ARARs throughout the RI/FS, until a Record of Decision (ROD) is signed.

Pursuant to the terms of the FFA, the Navy agrees to perform all remedial actions consistent with CERCLA and the NCP. The Parties have the ability to enforce this obligation. In addition to the regulatory agencies' enforcement powers, any person may seek to enforce certain provisions of the FFA pursuant to the citizen-suit provision of CERCLA. In addition, Section 121(e)(2) of CERCLA establishes a mechanism for a State to enforce any ARAR. Further, Section 121(f)(3) of CERCLA provides an opportunity for the State to concur in or dissent from any remedial action selected by the Navy that waives compliance with an ARAR pursuant to Section 121(d)(4) of CERCLA.

In light of the lengthy and complex process for establishing clean-up goals and ARARs, it is not possible to identify with greater specificity the clean-up objectives and ARARs in the FFA.

8. Several commenters noted that the Technical Review Committee (TRC) had never met and asked that it be activated immediately.

The TRC for NAS Moffett held its first meeting on February 12, 1990. Meetings will be conducted once every 90 days, or as appropriate. The Navy planned to convene the TRC before the end of calendar year 1989. However, the October 1989 earthquake and subsequent complications delayed matters until the beginning of 1990.

The TRC is chaired by the Commanding Officer, NAS Moffett, and is comprised of designated representatives from the following member agencies and organizations: the Department of the Navy, National Aeronautics and Space Administration (NASA), Ames Research Center, EPA, Region IX, DHS, RWQCB, Bay Area Air Quality Management District, Santa Clara County Board of Supervisors, Mountain View Chamber of Commerce, Sunnyvale Chamber of Commerce, League of Women Voters, Silicon Valley Toxics Coalition, and the MEW Area Study Group.

9. A commenter stated that he had requested copies of the technical data related to the RI and clean-up activities at NAS Moffett but that he had never been provided a copy of those documents.

Due to the enormous volume of documents pertaining to the RI/FS at NAS Moffett (most of which have large engineering maps and fold-out pages), the Navy is unable to provide free photocopies of this material to all requesters. However, in compliance with the public participation requirements of Section 117 of CERCLA, these documents are available for review by the public at the Mountain View Public Library. In addition, interested persons may make an appointment to review this material at the offices of the Public Works Environmental Division at NAS Moffett. Finally, a request for these records can be made pursuant to the Freedom of Information Act or the California Public Records Act.

10. With respect to the regional groundwater plume from the MEW Superfund site, several commenters wanted to modify the FFA to include provisions that would require the following: (1) coordination of the Navy's RI with remedial activities undertaken by the PRPs at the MEW Superfund site, (2) joint remedial design/remedial action by the Navy and the PRPs at the MEW Superfund site to address merged plumes, (3) cost allocation and dispute resolution between the Navy and the PRPs at the MEW Superfund site, (4) access by the PRPs for the MEW Superfund site to Moffett, (5)

determination of ARARs, remediation technology and remediation goals that are consistent with EPA's ROD for the MEW Superfund site, and (6) coordination of termination rights and obligations. One commenter offered to enter into the FFA as a Party, or to enter into a separate agreement with the Navy, the regulatory agencies and the other PRPs for the MEW Superfund site, in order to facilitate the coordination of the overall clean-up efforts.

The Parties to an FFA are the federal department or agency (in this case, the Navy), EPA, and the State (in this case, DHS and RWQCB representing the State of California). Therefore, an FFA cannot address all potential issues relating to non-Parties. The Navy has been and is willing to negotiate an agreement with the parties responsible for the groundwater contamination flowing from the MEW Superfund site. Such an agreement would resolve the issues raised by the commenter.

To the extent that the Navy will be addressing specific sources within the regional groundwater plume flowing from the MEW Superfund site, the FFA's consultation provisions give EPA and the State the opportunity to identify ARARs and appropriate remediation goals as well as the ability to comment on proposed remediation technology. Moreover, as the clean-up of both sites is being overseen by EPA and the State, the regulatory agencies will be able to ensure that ARAR determinations and remediation goals strategies and technologies will not conflict with one another.

11. A commenter suggested that the deadline for closing abandoned wells at NAS Moffett be accelerated from the proposed August 1991 date to August 1990.

Deadlines for initiation and completion of field work have been added to Attachment 3 of the FFA to ensure timely closure of abandoned wells. The estimated dates in Attachment 3 to the FFA have been changed to reflect more accurately the time that is necessary to evaluate and close the wells. Most of the unknowns (for example, the location, depth or condition of the well) have been factored into the estimated dates so completion of the work should not go beyond these new dates. In June 1990, the Navy started field work to close the abandoned wells at NAS Moffett. Based on current schedules, the three known wells should be sealed by October 1990, and all associated reports submitted by August 1991. Investigation to locate the presence of suspected wells will begin in October 1990.

12. One commenter inquired as to who was responsible for coordinating the NAS Moffett clean-up effort with the Bay Area Air Quality Management District (BAAQMD).

The BAAQMD is a member of the Technical Review Committee for NAS Moffett. As such, the BAAQMD receives copies of major reports generated in the course of the RI/FS. In addition, under the FFA,