

**UNDERGROUND STORAGE TANK (UST) AGREEMENT**  
**FOR FORT RICHARDSON**

WHEREAS, the State of Alaska, Department of Environmental Conservation, (ADEC) and the United States Army (Army) desire to bring Fort Richardson into compliance with Underground Storage Tank (UST) regulations and avoid the expense of formal enforcement proceedings, it is hereby covenanted and agreed as follows:

**Jurisdiction**

1. The Army enters this Agreement following its obligations under 42 U.S.C. § 6991f (federal facility compliance with state underground storage tank regulation), 33 U.S.C. § 1323 (federal facility compliance with state water pollution standards), 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. ADEC enters the Agreement under the above authorities and Alaska Statutes 46.03, 46.04, 46.08, and 18 Alaska Administrative Code ("AAC") 62, 18 AAC 70, 18 AAC 75, 18 AAC 78 and 18 AAC 80.

**Purpose**

3. The Parties enter this Agreement to perform necessary inventory, recordkeeping, registration, upgrading or closure, tightness testing, site assessment, release reporting, release investigation, and corrective action (remediation) associated with USTs at Fort Richardson (excluding Alaska Department of Military and Veterans Affairs and Army National Guard USTs). These activities will follow the schedules in 40 CFR 280 and 18 AAC 78; unless

ADEC has approved a different schedule in the UST Management Plan (USTMP) attached as an appendix to this Agreement.

Findings and Conclusions

4. The United States of America owns and the Army operates Fort Richardson located within the Municipality of Anchorage, Alaska.

5. The Army owns and operates numerous USTs, regulated by 40 CFR 280 and 18 AAC 78, at Ft. Richardson.

6. ADEC finds: the Army has not properly installed all tanks as required by 40 C.F.R. 280 subsequent to 1988; the Army has not maintained all records as required by state and federal regulations; the Army has not registered all USTs; the Army has not upgraded, or closed, all existing USTs which do not meet requirements for leak detection, spill and overflow prevention and corrosion protection; and the Army has not conducted tank system tightness tests, site assessments, release investigations, and corrective action (remediation) as required by 40 CFR 280 and 18 AAC 78.

7. ADEC finds that releases of petroleum products and oil within the meaning of AS 46.03.826, AS 46.03.740 and 18 AAC 75.990(35) have occurred at UST sites at Ft. Richardson, which have contaminated the land and waters of the State of Alaska.

8. Therefore, ADEC alleges the initiation of proceedings under AS 46.03.850 is justified.

### Schedule of Actions

9. The Army shall submit the documents and complete the actions set forth in this Agreement and the USTMP, to be developed under this Agreement. The USTMP will address the schedule to complete the following tasks, if applicable: compile, maintain and update UST records, inventory all USTs at Ft. Richardson, register all regulated USTs at Ft. Richardson, conduct Site Assessments or Tank System Tightness Tests on all regulated USTs, upgrade existing USTs to meet design standards stated by 40 CFR 280 and 18 AAC 78 or permanently close the USTs, report all known past releases not previously reported to ADEC, conduct Release Investigations, and conduct Corrective Actions as required by 40 CFR 280 and 18 AAC 78.

10. The USTMP addresses each of the items in paragraph 9.

### Review and Comment on Documents

11. The Army shall complete and send each draft document to ADEC by the corresponding deadline established in the USTMP. All draft final work plans for field work, release investigations or corrective actions (both interim and final) must be submitted to ADEC a minimum of 45 days prior to the start of field work or construction. Site Assessment, Release Investigation and Corrective Action draft reports must be submitted to ADEC within 120 days after completion of field work.

12. Unless the Parties mutually agree to another time period, all draft documents shall be subject to a thirty (30) day period for review and comment. Review of any document by ADEC may concern all aspects of the document (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with state and federal laws and ADEC guidance documents. Comments by ADEC

shall be provided with adequate specificity so that the Army can respond to the comments and, if appropriate, make changes to the draft document. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and upon request of the Army, ADEC shall provide a copy of the cited authority or reference. ADEC may extend the thirty (30) day comment period for an additional twenty (20) days by written notice to the Army prior to the end of the 30 day period. On or before the close of the comment period, ADEC shall transmit written comments to the Army.

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

14. Following the close of the comment period for a draft document, the Army shall give full consideration to all written comments on the draft document submitted during the comment period. Within thirty (30) days of the close of the comment period on a draft document, the Army shall transmit to the ADEC a draft final document that shall include the Army's response to all written comments received during the comment period. While the resulting draft final document shall be the responsibility of the Army, it shall be the product of consensus to the maximum extent possible.

15. The Army may extend the thirty (30) day period for either responding to comments on a draft document or for issuing a draft final document for an additional twenty (20) days by providing notice to ADEC. In appropriate circumstances, this time period may be further extended in accordance with paragraphs 72-77.

16. Project Managers may agree to extend by fifteen (15) days the period for finalization of the draft final documents in order to discuss and/or modify draft final documents as necessary to resolve potential disputes.

17. Dispute resolution shall be available to the Parties for draft final documents as set forth in paragraphs 48-50.

18. The draft final document shall serve as the final document if no Party invokes dispute resolution regarding the document. If dispute resolution is invoked and the Army's position is not sustained in the dispute resolution process, the Army shall prepare, within not more than thirty-five (35) days, a revision of the draft final document that conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision may be extended in accordance with paragraphs 72-77.

#### Subsequent Modifications

19. Following finalization of any document pursuant to paragraphs 11-18 above, any Party may seek to modify the document, including seeking additional field work, or other supporting technical work, only as provided in Paragraphs 20 and 21.

20. A Party may seek to modify a document after finalization if it determines, based upon new information (i.e., information that became available, or conditions that became known, after the document was finalized) that the requested modification is necessary. A party may seek such a modification by submitting a concise written request to the other Project Manager.

21. In the event that a consensus among the Parties is reached, the modification shall be incorporated by reference and become fully enforceable under the Agreement. In the

event that a consensus is not reached by the Project Managers on the need for a modification, any Party may invoke dispute resolution.

22. Nothing in paragraphs 19-21 shall alter ADEC's ability to request the performance of additional work that was not contemplated by this Agreement. The Army's obligation to perform such work must be established by either a modification of a document or by amendment to this agreement.

#### Inventory of USTs

23. The Army shall compile a complete inventory of all USTs regulated under 18 AAC 78 located at Ft. Richardson. The inventory shall be completed and submitted to ADEC under the schedule in the USTMP.

#### Registration of USTs

24. The Army will use Inventory data submitted under paragraph 23 above for completing registration of USTs pursuant to 18 AAC 78. ADEC will assist the Army with registration of all USTs utilizing the inventory data.

#### Upgrading of USTs

25. The Army shall upgrade, or permanently close, existing USTs to meet requirements for spill and overfill prevention, leak detection and corrosion protection as outlined in 40 CFR 280 and 18 AAC 78.022 through 18 AAC 78.090. Upgrades and closures will be completed within the time frames specified in law or, as a means for coming into compliance, in accordance with the ADEC approved USTMP. UST upgrade and closure work will be conducted by a certified UST worker as required by 18 AAC 78.030 and 18 AAC 78.400.

### Installation

26. Any new USTs installed by the Army shall be installed in accordance with 40 CFR 280 and 18 AAC 78. The Army will notify ADEC at least 30 days prior to initiating installation of an UST. UST installation work will be conducted by a certified UST worker as required by 18 AAC 78.

### Release Detection

27. The Army shall install and perform release detection in accordance with the schedules outlined in 18 AAC 78.060 and 40 CFR 280.40 or as agreed in the USTMP. All tightness testing performed to satisfy these requirements will be conducted by a certified UST worker as required by 18 AAC 78.400.

### Operation and Maintenance of Corrosion Protection

28. The Army shall meet the requirements of 18 AAC 78.045 and 40 CFR 280.31 for any steel USTs that have corrosion protection systems. The testing of the corrosion protection systems shall be done by a certified UST worker as required by 18 AAC 78.400.

### Site Assessment or System Tightness Test

29. The Army shall conduct a site assessment or a system tightness test, as required by AS 46.03.380(b) and 18 AAC 78.015(i)(3), on all USTs located at Ft. Richardson, or permanently close the USTs in accordance with 40 CFR 280 and 18 AAC 78. If site assessments or system tests have been conducted, the Army shall submit proof of compliance by

the deadlines set forth in the USTMP. Site Assessments or System Tightness Tests shall be conducted under the schedules in 18 AAC 78.015(i)(3) or, in order to come into compliance, as scheduled in the USTMP. All tightness testing work will be conducted by a certified UST worker as required by 18 AAC 78.400. Site Assessment work will be conducted pursuant to 18 AAC 78 and an ADEC-approved Quality Assurance Program Plan (QAPP). With respect to UST recordkeeping requirements, the Army shall compile all required records by the date set forth in the USTMP and shall thereafter maintain and update those records as required by 18 AAC 78 and 40 CFR 280.

#### Release Investigation Work Plans

30. After consultation with the project managers, the Army shall conduct initial abatement, containment, and free product recovery in a manner and time frames required in 18 AAC 78.230(a) for LUST sites. The Army shall submit Release Investigation work plans under the schedules in the USTMP. These plans outline the course of the site investigation to delineate the vertical and horizontal level and extent of petroleum hydrocarbon contamination in soil and groundwater at each site. Field work will be conducted by a qualified person as defined in 18 AAC 78.995. Each Release Investigation Plan shall incorporate data in the possession of the Army or its consultants and provide for gathering other data required under 18 AAC 78.230, site investigation requirements for corrective action under 18 AAC 78.240(c) and this Agreement.

#### Release Investigation Reports

31. The Army shall submit to ADEC a Release Investigation report for each UST site having a documented release of petroleum products or hazardous substances. These reports will be submitted by the deadlines in the USTMP. The Release Investigation report shall



contain all information required by 18 AAC 78.230(b), 18 AAC 78.240(c) and the following: a detailed written or, if applicable, visual description of all work performed and summary of all pertinent data prepared by the Army and its consultants, monitoring well construction data and soil boring logs; site maps detailing existing improvements and (if known) the location of former fuel dispensing equipment, water table elevation maps, petroleum-product level and thickness (isopleth) maps, organic-contaminant concentration maps, aquifer interpretations, other potential source areas within 1/4 mile, data deliverables as outlined in 18 AAC 78, interpretations of field observations and analytical data, a completed Site Assessment/Release Investigation Summary Form, and recommendations for any follow up work.

32. If upon review of a Release Investigation report the ADEC reasonably determines additional contamination assessment is required, ADEC shall notify the Army in writing. This writing will set forth the reason(s) the ADEC concluded that additional assessment is required.

#### Clean up Levels

33. LUST sites will be remediated according to 18 AAC 78.

#### Corrective Action Plans

34. Time frames for starting corrective action will follow schedules in 18 AAC 78, or the USTMP. The Army shall submit to ADEC for its approval corrective action plans for UST sites with documented releases of petroleum or hazardous substances. Each corrective action plan will address, where applicable, Free Product Recovery and Soil Remediation as detailed in paragraphs 37-41, and Groundwater Remediation and Monitoring as detailed in paragraphs 42-45.

35. Each Corrective Action Plan shall include individual site plans for: cleanup, restoration, and for long-range monitoring of soil and waters identified as being contaminated.

36. Corrective Action will be conducted by a qualified person, as defined in 18 AAC 78.995.

Free Product Recovery and Soil Remediation

37. The corrective action plan for free product recovery, at sites with free product, and the cleanup, removal, treatment and disposal of all contaminated soil above levels set in 18 AAC 78 will address the following parameters:

A. Free product recovery and soil remediation plans shall contain the following information: a schedule for implementation, support for choice of remedial technology, engineered system plans (where applicable), available equipment and skilled personnel, efficiency, reliability (life and difficulty of maintenance, costs and other associated impacts), compatibility of proposed actions with other reasonably foreseeable requirements, need for an on-site pilot scale study, third-party field supervision of remedial actions, procedures for equipment monitoring during remediation, contaminant media analysis to ensure remediation is progressing, and provisions for work documentation. Each plan shall reference the QAPP that will be followed and shall address any site specific modifications necessary to conduct field work.

38. The Army shall complete free product recovery and soil remediation, pursuant to each approved plan.

39. The Army shall submit interim corrective action reports as required by 18 AAC 78.240(e) or as otherwise agreed to by ADEC.

40. Following completion of soil remediation, the Army shall submit a final corrective action report for each site as required by 18 AAC 78.340.

41. The Army shall comply with all applicable local, state, and federal laws when removing, treating or disposing of contaminated materials. The Army shall receive ADEC approval prior to treatment or disposal of LUST cleanup materials.

Groundwater Remediation and/or Monitoring

42. Corrective Action Plans for each site with groundwater contamination shall contain the following information: a schedule for implementation, support for choice of remedial technology, engineered system plans (where applicable), available equipment and skilled personnel, efficiency, reliability (life and difficulty of maintenance, costs and other associated impacts), compatibility of proposed actions with other reasonably foreseeable requirements, need for an on-site pilot scale study, qualified third-party field supervision of remedial actions in accordance with 18 AAC 78.995(70), procedures for equipment monitoring during remediation, contaminant media analysis to ensure remediation is progressing, and provisions for work documentation. Each plan shall reference a QAPP that will be followed and shall address any site specific modifications necessary to conduct field work.

43. Army shall complete groundwater remediation and/or monitoring pursuant to each approved plan.

44. The Army shall submit interim corrective action reports as required by 18 AAC 78.240(e) or as otherwise approved by ADEC.

45. Following completion of groundwater remediation, the Army shall submit a final corrective action report for each site as required by 18 AAC 78.340 and 18 AAC 78.345

(report may be submitted in conjunction with the corrective action report for soil remediation).

#### Requests for Additional Plans or Information

46. If at any time after reviewing information submitted under this agreement the ADEC determines a threat to public safety, health or the environment exists, the ADEC may request submittal of additional information; or a corrective action plan, as stated in 18 AAC 78.250.

#### Plan Incorporation

47. When the written plans described in this Agreement are approved by the ADEC, including any modifications approved by the ADEC, the plans will be automatically incorporated into this Agreement and will be fully enforceable as if they were part of the original Agreement. If no satisfactory plan is submitted and approved by the ADEC pursuant to this Agreement, and the parties are unable to reach an informal accommodation, either party may invoke the dispute resolution procedures in paragraphs 48-50.

#### Dispute Resolution

48. The parties agree to make reasonable efforts to informally resolve all disputes at the Project Manager level. If the dispute is still unable to be resolved, the Southcentral Region Contaminated Site Programs Supervisor of ADEC and the Chief, Environmental Resources Division, Director of Public Works, Ft. Richardson will meet to resolve the dispute. If the dispute is still unable to be resolved, representatives of the Army and the ADEC will meet with the Regional Administrator of ADEC and the Director of Public Works.

49. The Regional Administrator of ADEC will issue a final determination in writing. The written decision will be final for purposes of judicial review pursuant to Alaska Rule of Appellate Procedure 602(a)(2). The Army will proceed with implementing the final determination within 21 days of ADEC's final determination subject to the reserved right of the Army to pursue any legal remedy at its disposal. The Regional Administrator's determination will remain in effect pending resolution of any judicial appeal unless a stay is sought and granted by the court on appeal; absent a stay the Army will implement the determination consistent with the ADEC's final decision.

50. The pendency of any individual dispute shall not affect the Army's responsibility for timely performance of undisputed work required by this Agreement. 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.

#### Progress Reports

51. At the written request of the ADEC and within 30 days of such request, the Army shall prepare and submit to the ADEC written progress reports describing the status of activities conducted under this Agreement. In no event shall written requests be requested more frequently than 6 times per 12 month period. Each report at a minimum shall contain the following information:

- A. A description of work performed at the site;
- B. Problems encountered along with corrective actions implemented;
- C. Projected and/or scheduled work for the next reporting period;
- D. Copies of laboratory/monitoring data.

### Periodic Briefings

52. ADEC and the Army shall meet quarterly, in accordance with the schedule outlined in the USTMP, to provide updates and briefings concerning the status of activities conducted pursuant to this Agreement.

### Annual Reports

53. The Army shall prepare and submit to the ADEC an annual report summarizing the progress at each site until remediation and/or monitoring is complete. The schedule for these annual reports may be staggered so as not to require submission of all reports simultaneously. The schedule for submission of annual report(s) will be set forth in the USTMP.

54. The annual reports shall contain, if applicable, water level measurements and inferred groundwater flow direction, groundwater quality data, analytical results from samples of vapor extraction system (VES) emissions and air stripper emissions, influent and effluent water quality data for groundwater treatment systems, operational data such as air flow rates from vapor extraction or sparging systems and pump rates for groundwater treatment, results from ambient air monitoring in the area of potential receptors of discharged vapors, any problems encountered during field work, periods of shutdown, plans for the next year and other pertinent information. Annual reports may be substituted for interim corrective action reports covered in paragraphs 39, 44 if agreed upon by the Project Managers.

### Project Managers

55. ADEC and the Army shall each designate a Project Manager and Alternate (jointly referred to as Project Manager) to oversee the implementation of this Agreement. Within five days of the effective date of this Agreement, each Party shall provide the other Party with

the name and address of its Project Manager. Any party may change its designated Project Manager by notifying the other Party, in writing, within five (5) days of the change. Any party may designate different project managers for different sites addressed pursuant to this Agreement. Communications between the Parties concerning the terms and conditions of this Agreement shall be directed through the Project Managers as set forth in paragraphs 67-68 of this Agreement. Each Project Manager shall be responsible for assuring that all communications from the other Project Manager are appropriately disseminated and processed by their respective Agencies.

56. Project Managers shall have the authority to: (1) take samples, request split samples, and to ensure work is properly performed and in accordance with the terms of any final Plan; (2) observe all activities performed pursuant to this Agreement, take photographs, and make other such reports on the progress of the work as the Project Managers think appropriate; (3) review records, files, and documents relevant to this Agreement; (4) recommend and request minor field modifications to the work performed pursuant to this Agreement, or in techniques, procedures, or designs utilized in carrying out this Agreement; and (5) redefine the sites covered by this agreement; (6) act in accordance with paragraph 90 (Modification); and (7) exercise the authorities granted to them in this part.

57. Each Project Manager shall be, or rely on, a qualified person as defined in 18 AAC 78.995. The project manager will be competent in UST site investigations and remedial action and have the skills necessary to implement this agreement.

58. The Project Managers may, in accordance with paragraph 55 of this Agreement, make modifications to the work performed under this Agreement, or in techniques, procedures, or designs utilized in carrying out this Agreement. Any modification proposed

pursuant to this paragraph by any party must be approved orally, be reduced to writing and within 10 days be signed by both Project Managers. The Army project manager shall make a contemporaneous record of such modification and approval in a written log, and a summary of the log entry will be contained in the next progress report. Even after approval of the proposed modification, no Project Manager will require implementation by a government contractor without approval of the appropriate Government Contracting Officer.

59. The Project Manager for the Army shall be responsible for day-to-day activities at the sites. The Project Manager for Army shall be physically present at Ft. Richardson, or reasonably available to supervise work, during all hours of work performed at Ft. Richardson pursuant to this Agreement.

60. The Project Managers shall be reasonably available to consult on work performed pursuant to this Agreement and shall make themselves available to each other for the pendency of this Agreement. The absence of Army or ADEC Project Managers from the sites shall not be a cause for work stoppage or delay.

#### Access

61. Without limitation on any authority conferred on them by law, ADEC and its authorized representatives shall have authority to enter Ft. Richardson at all reasonable times with notice to the project managers for the purposes of, among other things: (1) inspecting records, operating logs, contracts, and other documents relevant to implementation of this Agreement; (2) reviewing the progress of the Army, its response action contractors, or agents in implementing this Agreement; (3) conducting such tests as ADEC Project Manager thinks necessary; and (4) verifying the data submitted to ADEC by the Army. The Army shall honor



all requests for such access by ADEC, subject only to any statutory or regulatory requirement as may be necessary to protect national security or mission-essential activities. If access requested by ADEC is denied by the Army, the Army shall, within forty-eight (48) hours, provide a written explanation of the reason for the denial, including reference to the applicable regulations, and, upon request, a copy of such regulations. The Army shall not restrict the access rights of ADEC to any greater extent than the Army restricts the access rights of its contractors performing work pursuant to this Agreement.

62. To the extent that this Agreement requires access to property not owned and controlled by the Army, the Army shall make every reasonable effort to facilitate access Agreements for itself, its contractors, agents, and ADEC, and provide ADEC with copies of such agreements. With respect to non-Army property upon which monitoring wells, pumping wells, treatment facilities, or other response actions are to be located, the access agreements should provide that no conveyance of title, easement, or other interest in the property shall be consummated without provisions for the continued operation of such wells, treatment facilities, or other response actions on the property. The access agreements should also provide to the extent practicable that the owners of any property where monitoring wells, pumping wells, treatment facilities, or other response actions are located shall notify the Army and ADEC by certified mail, at least thirty (30) days prior to any conveyance, of the property owner's intent to convey any interest in the property and of the provisions made for the continued operation of the monitoring wells, treatment facilities, or other response actions installed pursuant to this Agreement.

Sampling and Data/Document Availability

63. The Parties shall make available to each other quality-assured results of sampling, tests, or other data generated by or on behalf of any Party under this Agreement within sixty (60) days of the submittal of samples to the laboratory. If quality assurance is not completed within sixty (60) days, preliminary data or results shall be made available within the sixty (60) day period and quality assured data or results shall be submitted as they become available but in no event later than one hundred and twenty (120) days after the submittal of samples to the laboratory. These periods can be extended upon mutual agreement among the Project Managers.

64. At the request of the ADEC Project Manager, the Army shall allow split or duplicate samples to be taken by ADEC during sample collection conducted during the implementation of this Agreement. The Army's Project Manager shall notify the ADEC Project Manager not less than fourteen (14) days in advance of any well drilling, sample collection, corrective action or other monitoring activity, conducted pursuant to this Agreement. The fourteen (14) day notification can be waived upon mutual agreement among the Project Managers.

65. If preliminary analysis indicates a potential imminent and substantial endangerment to the public health, all Project Managers shall be immediately notified.

66. Laboratory reports shall be made available at Ft. Richardson for the review of the Parties immediately upon receipt.

Notice to Parties

67. All Parties shall expeditiously transmit all documents and notices required herein. Time limitations shall commence upon receipt.

68. Unless otherwise provided, notice to the individual Parties shall be provided under this Agreement to the following addresses:

- A. For the Army:  
Directorate of Public Works  
6th Infantry Light and US Army Garrison  
APVR-PW-ENV  
Fort Richardson, AK 99505-5500  
(907) 384-3000
  
- B. For ADEC:  
Southcentral Regional Office  
Alaska Department of Environmental  
Conservation  
3601 "C" Street, Suite 1334  
Anchorage, Alaska 99503  
(907) 563-6529

Permits

69. Nothing in this Agreement relieves the Army from obtaining an applicable permit or other authorization when conducting work pursuant to this Agreement.

Breach

70. Time is of essence in this Agreement. The Army understands that any deviation from the terms or deadlines set forth herein, other than short term violations or violations caused by Force Majeure, may at ADEC's option be deemed a breach of this Agreement and may result in prompt legal action to enforce the terms and deadlines of this Agreement as well as all other applicable legal and regulatory requirements.

### Existing or Future Obligations

71. Nothing in this Agreement shall be construed as altering the Army's existing or future obligations to monitor, record, or report information required under applicable environmental laws, statutes, regulations or permits, or to allow ADEC access to such information. Nothing in this Agreement shall alter ADEC's authority to request and receive any relevant information under applicable environmental laws or in administrative or judicial proceedings.

### Extensions/Force Majeure

72. Either a deadline or a schedule shall be extended upon receipt of a timely request for extension and good cause exists for the requested extension. Any request for an extension by a Party shall be submitted to the Project Managers and shall specify:

- a. The deadline or the schedule that is sought to be extended;
- b. The length of the extension;
- c. The good cause(s) for the extension; and
- d. Any related deadline that would be affected if the extension were granted.

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

- a. An event of Force Majeure;
- b. A delay caused by another Party's failure to meet any requirement of this Agreement;
- c. A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;
- d. A delay caused, or that is likely to be caused by the grant of an extension in regard to another deadline or schedule; and

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

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

74. Within seven (7) days of receipt of a request for an extension of a deadline or a schedule, the other Party shall advise the requesting party, in writing, of its position on the request. Any failure by the other Party to respond within fourteen (14) days shall be deemed to constitute concurrence in the request for an extension. If a Party does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

75. If there is agreement between the Parties that the requested extension is warranted, the affected deadline or schedule shall be extended. If there is not agreement between the Parties as to whether all or part of the requested extension is warranted, the deadline or schedule shall not be extended except in accordance with a determination resulting from the dispute resolution process.

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

77. An act of Force Majeure shall mean any event arising from causes beyond the control of Army that causes a delay in or prevents the performance of any obligation under this Agreement, including, but not limited to, acts of God; fire; war; insurrection; civil disturbance; explosion; unanticipated breakage or accident to machinery, equipment, or lines or

pipe despite reasonably diligent maintenance; adverse weather conditions that could not be reasonably anticipated; unusual delay in transportation; restraint by court order or order of public authority; inability to obtain, at 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 Army; delays caused by compliance with applicable statutes or regulations governing contracting, procurement, or acquisition procedures, despite the exercise of reasonable diligence; and insufficient availability of appropriated funds, if Army shall have made timely request for such funds as part of the budgetary process as set forth in paragraphs 78-81 of this Agreement. A Force Majeure shall also contain any strike or other labor dispute, whether or not within the control of the Parties affected thereby. Force Majeure shall not contain increased costs or expenses of response actions, whether or not anticipated at the time such response actions were initiated.

#### Funding

78. It is the expectation of the Parties to this Agreement that all obligations of the Army arising under this Agreement will be fully funded. Ft. Richardson shall request, through the Department of the Army and the Department of Defense, all funds and/or authorizations necessary to meet the conditions of this Agreement.

79. Although failure to obtain approval of authorization and/or appropriations from Congress may alter the established timetable and schedules in accordance with paragraph 77 (Force Majeure), it does not release the Army from its obligations of compliance with state environmental requirements. If sufficient funds are not appropriated by Congress as requested and existing funds are not available to achieve compliance with the schedules provided in this

Agreement, and the Army reports the lack of funds in accordance with paragraph 80, then the compliance schedule shall be revised as necessary. If appropriated funds are not available to fulfill the Army's obligations under this Agreement, ADEC reserves the right to initiate any action against any other person, or to take any response action, which would be appropriate absent this Agreement. In the event that the Army's obligations under this Agreement are not fulfilled for 12 consecutive months, ADEC shall have the option of terminating the provisions of this Agreement affecting its rights and obligations, and ADEC may thereafter seek any appropriate relief. However, in no case would ADEC terminate the Agreement without providing ten (10) days notice of the intention to terminate to the Army.

80. Ft. Richardson shall keep ADEC apprised of significant budget events related to this Agreement so that the Project Managers may assist in developing estimates of the resources needed to carry out this Agreement. Ft. Richardson shall notify ADEC on or about April 1 and November 1 of the availability for review of budget submittal documents. The budget documents shall clearly establish that the Army has requested all necessary funds to carry out its obligations under this Agreement for the applicable budget year. The Army shall honor all reasonable requests by ADEC to obtain review of additional documentation or information regarding the budget, and shall respond to such requests within 15 days of the request. All budget documents related to this Agreement shall be retained and shall, upon request, be provided to ADEC in the event of an extension request, Force Majeure, or other event based upon a funding limitation.

81. No provision in this document shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. If payment or

obligation of funds hereunder would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted.

Recovery of Expenses

82. The Army and ADEC agree to use the Defense/State Memorandum of Agreement signed on June 1, 1990, for the reimbursement of services provided in direct support of the Army LUST Compliance activities pursuant to this Agreement. To the extent this Agreement includes non-Defense Environmental Restoration Act eligible activities, the Army and ADEC agree to amend this paragraph at a later date in accordance with any subsequent resolution of this currently contested issue of cost reimbursement.

Stipulated Penalties

83. The Army contends that the Federal Water Pollution Control Act and the federal Solid Waste Disposal Act's UST provision does not waive the United States' sovereign immunity such that states may assess fines or penalties against the United States or the Army for the violation of state statutes and regulations involving underground storage tanks and contamination therefrom. The State disagrees. The Parties may amend this Agreement to include stipulated penalties upon agreement of the Parties.

Reservation of Rights

84. The execution of this Agreement is not an admission of liability of the Army on any issue dealt with in this Agreement. In signing this Agreement, the Army and ADEC do not admit, and reserve the right to controvert in any subsequent proceedings, the validity of or responsibility for any of the factual or legal determinations made herein; provided, however, that Army shall not controvert or challenge, in any subsequent proceedings initiated by



the State of Alaska, the validity of this Agreement or the authority of ADEC to issue and enforce this Agreement.

85. ADEC expressly reserves the right to initiate administrative or legal proceedings related to any violation not described in this Agreement. In addition, ADEC and the Department of Law expressly reserve the right to initiate administrative or legal proceedings related to violations described in this Agreement if the Army breaches this Agreement or if, in ADEC's opinion, subsequently discovered events or conditions constitute an immediate threat to public health, public safety, or the environment whether or not ADEC may have been able to discover the event or conditions prior to entering into the Agreement. The State expressly reserves the right to initiate administrative or legal proceedings if the Army does not comply with the provisions set forth herein to the satisfaction of ADEC. The Parties agree to exhaust their rights under dispute resolution prior to exercising any rights to judicial review that they may have.

#### ADEC Order

86. The Army acknowledges and agrees that this Agreement constitutes an order of ADEC for the purposes of AS 46.03.765, AS 46.03.850 and for all other purposes.

#### Parties Bound

87. This Agreement shall apply and be binding upon ADEC and the Army, their agents, successors, and assigns and upon all persons, contractors, and consultants acting on behalf of ADEC or the Army.

State not a Party to Contracts

88. The State of Alaska shall not be held as a party to any contract entered into by the Army related to activities conducted pursuant to this Agreement.

Effective Date

89. The effective date of this Agreement shall be the date the Agreement is executed by both the Army and ADEC and will continue in effect until a ADEC decision on the application is rendered.

Modification

90. Modifications, extensions, and/or actions taken pursuant to paragraphs 9-10 (Schedule of Actions); 11-18 (Review and Comment on Documents); 19-22 (Subsequent Modification); 51 (Progress Reports); 63-66 (Sampling and Data/Document Availability); 72-77 (Extensions/Force Majeure) and the USTMP may be effected by the agreement of the Project Managers. Except as specifically provided for in this Agreement, the terms of this Agreement may only be modified by the written agreement of the parties. The Army agrees to modify this Agreement to contain new UST sites at the request of ADEC. Except as specifically provided in this Agreement, no amendment is valid unless approved in writing by the Southcentral Regional Administrator of ADEC or his/her written designee.

### Property Transfer

91. If the Army transfers, sells, or leases the property described in Section 4 to another party (including another agency or department of the United States Government) prior to the Army's fulfillment of the provisions of this Agreement, the Army shall incorporate a copy of this Agreement into the documents of transfer or lease, and shall provide in those documents that the new owner(s) or lessee(s) shall take or lease subject to the provisions of this Agreement.

### Copies

92. Upon retention, the Army shall provide a copy of this Agreement to all contractors, sub-contractors, and consultants retained to conduct any portion of the work performed pursuant to this Agreement.

### Severability

93. It is the intent of the parties hereto that the clauses of this Agreement are severable and should any part of it be declared by a court of law to be invalid and unenforceable, the other clauses shall remain in full force and effect.

### Waiver

94. A failure to enforce any provision of this Agreement in no way implies a waiver of ADEC's right to insist upon strict performance of the same or other provisions in the future.

### Definitions

95. Unless specified, the terms used in this agreement shall have the meaning specified in Alaska Statutes Title 46 and Alaska Administrative Code Title 18.

96. "ADEC" shall mean the Alaska Department of Environmental Conservation, its employees, and authorized representatives.

97. "Agreement" shall mean this document and shall contain all Attachments to this document. All such Attachments shall be incorporated by reference and are in integral and enforceable part of this document.

98. "Ft. Richardson" shall mean the physical boundaries (fence-to-fence) of Fort Richardson, excluding the Alaska Department of Military and Veterans Affairs and Army National Guard facilities.

99. "Containment and cleanup" shall have the meaning in AS 46.04.900 and AS 46.09.900.

100. "Corrective action" shall have the meaning in AS 46.03.450.

101. "Days" shall mean calendar days, unless otherwise specified. Any submittal that under the terms of this Agreement would be due on a Saturday, Sunday, or federal or state holiday shall be due on the following business day.

102. "Hazardous substance" shall have the meaning in AS 46.03.826.

103. "LUST" shall mean an underground petroleum storage tank system as defined herein that has petroleum contamination adjacent to it from spills, leaks, overfills or other releases of product.

104. "Oil" shall have the meaning in AS 46.03.826.

105. "Paragraph" shall mean a numbered paragraph of this Agreement, designated by an Arabic numeral.

106. "Parties" shall mean the Army and ADEC.

107. "Petroleum" shall mean crude oil or any fraction of crude oil that is liquid at 60 degrees Fahrenheit and pressure of 14.7 pounds per square inch absolute; "petroleum" includes petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

108. "Quality Assurance Program Plan or 'QAPP'" shall mean a comprehensive program plan, reviewed and approved by ADEC, establishing standard operating procedures, quality control measures and data quality objectives for conducting site assessments, release investigations and sampling, and interpreting and reporting data, as required by 18 AAC 78.090.

109. "RCRA" shall mean the Resource Conservation and Recovery Act as amended by the Hazardous and Solid Waste Amendments of 1984 ("HSWA").

110. "Release" shall have the meaning in AS 46.03.826.

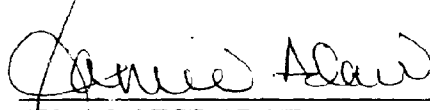
111. "Site" shall mean a distinct area of contamination or potential contamination.

112. "Site assessment" shall mean the investigation of suspected contamination resulting from an unpermitted release of oil or hazardous substance as further defined in 18 AAC 78.090

113. "U.S. Army" shall mean the United States Army Ft. Richardson Alaska and, to the extent necessary to effectuate the terms of this Agreement (including appropriations and congressional reporting requirements), its employees, agents, successors, assigns, and authorized representatives.

114. "UST" or "Underground petroleum storage tank system" shall have the meaning in AS 46.03.450.

STATE OF ALASKA  
DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION



BY: JANICE ADAIR  
Regional Administrator  
Southcentral Regional Office

Dated: Nov. 12, 1993

FOR THE UNITED STATES ARMY  
FORT RICHARDSON ALASKA

BY: 

Title/Rank: Colonel, U.S. Army  
Garrison Commander

Date: 2 Nov 93

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## **Attachment A - Registration**

The Army will obtain the services of a contractor, no later than October 30, 1993, to review and update UST information for Fort Richardson. The contractor shall input the UST information into the Army's new Tankman Database.

The Army will have its contractor mentioned above review the ADEC UST database information for Fort Richardson and compare it with information available from the Army. The Army will submit any necessary UST registration amendments to the ADEC no later than December 30, 1993.

The Army shall submit registration amendments for any additional USTs, and any new information about its known USTs, identified during its contractor's field investigation. These amendments will be submitted by no later than September 30, 1994.

The Army will comply with the registration requirements of 18 AAC 78 for all USTs installed subsequent to signing this agreement.

## Attachment B - Sites Requiring Investigation and Possible Corrective Action

This list is used in conjunction with Attachment C (UST Timeline). The dates listed with each site below indicate the date the Army will provide a report or workplan to the ADEC. The sites will then enter the respective location in the timeline. As new sites are identified site investigations and corrective actions will follow the schedule outlined in this USTMP. If at anytime an UST listed on this page is incorporated in a Federal Facility Agreement, it shall no longer be considered part of this USTMP with regard to site investigation and corrective action.

<u>BUILDING</u>	<u>DESCRIPTION</u>	<u>TANK #S</u>	<u>DATE</u>	<u>POSITION</u>
45590	OLD AUTO CRAFT SHOP	59	20 JAN 93	CAP
750	MOTOR POOL	108	20 SEP 93	RI Report
755	AUTO AND CRAFT CENTER	17	20 SEP 93	RI Report
756	MOTOR POOL	18	20 SEP 93	RI Report
974	SPECIAL PURPOSE EQUIPMENT REPAIR SHOP	35	20 SEP 93	RI Report
796	VEHICLE AND WEAPONS REPAIR SHOP	28	20 SEP 93	RI Report
47811	VETERINARY CLINIC	72	20 SEP 93	RI Report
47438	BRYANT ARMY AIRFIELD FUEL FACILITY	65,67,68,69	20 SEP 93	RI Report
47642	FORMER AERO CLUB	94	20 SEP 93	RI Report
28004	CHLORINATION FACILITY	111	20 SEP 93	RI Report
955	USED POL HOLDING FAC.	43	20 SEP 93	RI Report
702	VEHICLE STORAGE GAS PUMP BUILDING	5	20 SEP 93	CAP
908	1117th SIGNAL BATTALION STOCKROOM	33,82	20 SEP 93	CAP
55804	AMMO AREA "A"	74	20 SEP 93	CAP
710	PX GAS STATION	10	30 OCT 93	CAP
986	POL LABORATORY	44	30 SEP 93	SA
987	PUMP HOUSE	45	30 NOV 93	RI Report
36012	CENTRAL HEATING AND POWER PLANT	56	30 DEC 93	RI Report
770	MOTOR POOL	21	30 DEC 93	CA Report
47633	FLYING CLUB OFFICE	83	1 APR 94	RI Plan
47662	HANGER	70,89,90,91	1 APR 94	RI Plan
762	GAS STATION	20	1 APR 94	RI Plan
7&2	GAS STATION	23,24	1 APR 94	RI Plan
736	VEHICLE AND WEAPONS REPAIR SHOP	27,29	1 APR 94	RI Plan
798	MOTOR POOL	30	1 APR 94	RI Plan
45726	MOTOR POOL	62,63	1 APR 94	RI Plan
732	MOTOR POOL	13	1 APR 94	RI Plan
27001	GOLF COURSE	47	1 APR 94	RI Plan
740	DEH MAINTENANCE SHOP	14	1 APR 94	RI Plan
8102	ARCTIC VALLEY	46	1 APR 94	RI Plan



## Attachment C - UST Timeline for Release Investigation and Corrective Action

SUSPECTED RELEASE

CONFIRM RELEASE WITHIN 7 DAYS OF SUSPECTED  
RELEASE

PERFORM RELEASE NOTIFICATION AND RESPONSE WITHIN 24  
HOURS OF CONFIRMATION

INITIATE SA WITHIN 30 DAYS OF CONFIRMATION

SUBMIT SITE ASSESSMENT S/A TO ADEC WITHIN 60  
DAYS OF COMPLETION OF FIELD WORK

SUBMIT DRAFT RELEASE INVESTIGATION WORK PLAN WITH  
SCHEDULES TO ADEC WITHIN 120 DAYS OF SUBMITTAL OF SA

ADEC REVIEW

SUBMIT FINAL RELEASE INVESTIGATION WORK PLAN TO ADEC  
WITHIN 30 DAYS OF COMMENT SUBMITTAL

SUBMIT DRAFT RELEASE INVESTIGATION REPORT TO ADEC WITHIN  
100 DAYS OF COMPLETION OF FIELD WORK

ADEC REVIEW

SUBMIT FINAL RELEASE INVESTIGATION REPORT (RI) TO ADEC  
WITHIN 30 DAYS OF COMMENT SUBMITTAL

SUBMIT DRAFT CORRECTIVE ACTION PLAN WITH SCHEDULES TO  
ADEC WITHIN 120 DAYS OF THE RI SUBMITTAL

ADEC REVIEW

SUBMIT FINAL CORRECTIVE ACTION PLAN (CAP) TO ADEC WITHIN 30  
DAYS OF COMMENT SUBMITTAL

OBTAIN SERVICES FOR CORRECTIVE ACTION (CA) WITHIN 150 DAYS  
OF CAP SUBMITTAL

SUBMIT DRAFT CORRECTIVE ACTION REPORT TO ADEC 120 DAYS  
FROM COMPLETION OF FIELD WORK

ADEC REVIEW

SUBMIT FINAL CORRECTION REPORT TO ADEC WITHIN 30 DAYS OF  
COMMENT SUBMITTAL

### Attachment D - UST System Compliance Schedule for Upgrade or Closure

<u>TANK ID NUMBER</u>	<u>BUILDING</u>	<u>DESCRIPTION</u>	<u>EXPECTED COMPLETION DATE</u>
26	786	DRIVER'S TRAINING	30-Sep-93
40	979	POL GAS STATION	30-Sep-93
41	979	POL GAS STATION	30-Sep-93
57	39600	SITE SUMMIT	30-Sep-93
92	732	RESERVE MOTOR POOL	30-Sep-93
4	702	GAS STATION	30-Sep-94
15	750	MOTOR POOL	30-Sep-94
16	750	MOTOR POOL	30-Sep-94
19	762	GAS STATION	30-Sep-94
20	762	GAS STATION	30-Sep-94
22	778	MOTOR POOL	30-Sep-94
25	784	MOTOR REPAIR SHOP	30-Sep-94
32	812	MOTOR POOL	30-Sep-94
36	974	EQUIPMENT REPAIR SHOP	30-Sep-94
37	974	EQUIPMENT REPAIR SHOP	30-Sep-94
38	975	MOTOR POOL	30-Sep-94
42	980	MOTOR POOL	30-Sep-94
43	955	USED OIL TRANSFER POINT	30-Sep-94
48	28008	WATER TREATMENT PLANT	30-Sep-94
49	28008	WATER TREATMENT PLANT	30-Sep-94
62	45726	MOTOR POOL	30-Sep-94
63	45726	MOTOR POOL	30-Sep-94
84	955	SLOP TRANSFER POINT	30-Sep-94
93	47203	MOTOR POOL	30-Sep-94
95	920	WAREHOUSE	30-Sep-94
96	926	WAREHOUSE	30-Sep-94
97	932	WAREHOUSE	30-Sep-94
98	934	WAREHOUSE	30-Sep-94
99	936	WAREHOUSE	30-Sep-94
100	944	WAREHOUSE	30-Sep-94
101	946	WAREHOUSE	30-Sep-94
102	950	WAREHOUSE	30-Sep-94
103	952	WAREHOUSE	30-Sep-94
104	956	WAREHOUSE	30-Sep-94
105	962	WAREHOUSE	30-Sep-94
106	972	WAREHOUSE	30-Sep-94
107	976	WAREHOUSE	30-Sep-94
109	756	WASH RACK	30-Sep-94
110	47	?	30-Sep-94
112	39600	UPPER SITE SUMMIT	30-Sep-94
117	45726	MOTOR POOL	30-Sep-94
124	730	PUBLIC WORKS	30-Sep-94
73	55295	AMMO INCINERATOR	30-Sep-94
2	604	DISPENSARY	30-Sep-94

## ATTACHMENT E - CATHODIC PROTECTION (CP)

The Army will provide cathodic protection for all regulated USTs and implement testing required by 18 AAC 78 for existing CP systems no later than September 30, 1994. Testing will continue as established in 18 AAC 78.

## ATTACHMENT F - RECORDS

The Army will maintain files at the Fort Richardson Environmental Compliance Office for each regulated UST. The files shall contain the following:

1. Operation and Maintenance Manual for Respective Release Detection System
2. Tank Tightness Testing Records
3. Release Detection Testing and Calibration Records
4. Cathodic Protection Testing Records

The Army will maintain file at the Fort Richardson roads and Grounds Office for each regulated UST. The files shall contain the following:

1. Maintenance Performed on each UST System

Information for existing USTs will be obtained and files will be established for each by March 30, 1994. For USTs installed after the effective date of this USTMP USTs files will be established prior to the systems being put into service.

For each UST installed subsequent to December 22, 1988, the following additional records will be established at the Fort Richardson Environmental Compliance Office by March 30, 1994:

1. certificate of installation
2. leak detection manufacturer's performance claims
3. manufacturer's schedule of required calibration and maintenance of the leak detection equipment.

For each UST installed prior to December 22, 1988 and still in use on September 30, 1994 the following additional records will be established at the Fort Richardson Environmental Compliance Office by September 30, 1994 and a copy will be submitted to the Department to complete the registration of the UST:

1. record of successful completion of tank tightness testing or a site assessment as required by 18 AAC 78.015.

## **Attachment G - Release Detection**

The Army will provide a Release Detection method for each regulated UST as required by 18 AAC 78 no later than September 30, 1994.

## **Attachment H - Spill and Overfill Protection**

The Army will provide Spill and Overfill Protection for each regulated UST as required by 18 AAC 78 no later than September 30, 1994.

## Attachment I - Petroleum Contaminated Soil Stockpiles Located at Landfill

The Army will complete treatment of the existing stockpiles of petroleum contaminated soil located at landfill, listed below, no later than the date shown below. Treatment of petroleum contaminated soil will be conducted in a manner approved by the Department. Any additional stockpiles of petroleum contaminated soil placed on the landfill will be contained in accordance with the Guidance Manual for Underground Storage Tank Regulations 18 AAC 78. Treatment of any additional stockpiles placed in the landfill will be initiated within one year of placement at landfill.

<u>Existing Petroleum Contaminated Soil Stockpiles:</u>			<u>Estimated</u>	<u>Completion</u>
<u>Soil Pile</u>	<u>Building #</u>	<u>Description</u>	<u>Volume</u>	<u>Date</u>
SP 1	8102	Arctic Valley	600	10/30/93
SP 3B	796	Vehicle Maintenance	150	10/30/93
SP 4	908S	1117th Signal Battalion	300	10/30/93
SP 5	908N	1117th Signal Battalion	800	10/30/93
SP 6	702	Gas Pump Building	500	10/30/93
SP 7		Flying Club	70	10/30/93
SP 8	733		300	10/30/93
SP 9	798	Motor Pool	130	10/30/93
SP 10	782	Gas Station	400	10/30/93
SP 11		Fuel Depot	100	10/30/93
SP 12	47622	Bryant Army Air Field	800	10/30/93
SP 13			400	10/30/93
SP 15	55804	Ammo Area A	600	10/30/93
	710	PX Gas Station		9/30/94
	756	Motor Pool		9/30/94
	755	Auto and Craft Shop		9/30/94
	750	Motor Pool		9/30/94
	796	Vehicle Maintenance		9/30/94
	47642	Former Aero Club		9/30/94
	974	Equipment Repair Shop		9/30/94
	28004	Chlorination Facility		9/30/94
SP 14	55804	Ammo Area A	3000	9/30/94

A corrective action report summarizing the treatment and/or disposal of petroleum contaminated soil which was stockpiled at the Landfill in 1992 and 1993 and treated prior to October 30, 1993, will be submitted to ADEC no later than December 30, 1993.

A corrective action report for soil treated in 1994 will be submitted to ADEC by not later than December 30, 1994.

## **ATTACHMENT J - PERIODIC BRIEFINGS**

Project managers for the Army and ADEC shall meet on at least a quarterly basis as described in the UST Compliance Agreement. Meetings will be held as outlined below, or upon agreement of the project managers at an alternative time.

### **Quarterly Meetings:**

The second week of January

The second week of April

The second week of July

The second week of November



## **ATTACHMENT K - ANNUAL REPORTS**

The army shall submit, by not later than December 31 of each year, an annual report summarizing the status (a brief summary of actions that were conducted during the year and work projected for the next year) of each LUST site which has not been closed out as meeting the corrective action requirements of 18 AAC 78. This annual report is in addition to site specific reports that will be submitted in accordance with schedules in approved work plans.



