

NON-REIMBURSABLE INTERAGENCY AGREEMENT  
BETWEEN THE  
NASA LEWIS RESEARCH CENTER  
CLEVELAND, OHIO  
AND THE  
U. S. ARMY CORPS OF ENGINEERS  
OHIO RIVER DIVISION  
FOR  
PLUM BROOK ORDNANCE WORKS  
HUNTINGTON DISTRICT COMMENTS

1. Office of Counsel Comments:

a. This draft must be completely rewritten. There are a number of problems in reviewing this draft, not the least of which is there is no Appendix A or B attached. It is not clear whether these are items to be negotiated in the future or are currently existing proposals. In any event, since each party is agreeing to fund or take the lead for a portion of response activities, it is clear that this is a PRP agreement and not work for others under the Economy Act.

b. I. AUTHORITY: No authority is cited for the Corps to execute this agreement. The dollar symbols should be changed to Section symbols.

c. II. PURPOSE: Despite the purpose section contained in this agreement, it is difficult to ascertain the agreement's actual purpose. Regardless of the actual intent of the agreement, the effect is that the Corps is placing NASA in a position to resolve all cleanup responsibilities with the Corps being relegated to a supporting role in the process. This is an untenable position in light of the apparent PRP liability of both NASA and USACE. CERCLA deals with "hazardous substances," which by definition includes "hazardous wastes." Change hazardous wastes to hazardous substances to be consistent with CERCLA terminology. Also, it is unclear from the lack of back-up data whether removal actions are planned in addition to remedial actions. If so, change "remedial actions" to "response actions," which under CERCLA includes both removal and remedial actions. This comment is applicable to other references to "hazardous wastes" and "remedial action" in this agreement.

d. V. REPORTING. B: "Required" in the first sentence should be changed to "requested." The second paragraph relating to FOIA compliance requires USACE to defer to NASA for document releasability, or in the alternative, that NASA must concur with releasability determinations by USACE. The Corps may not relieve itself of its FOIA obligations by separate contract. This paragraph should be stricken.

e. V. REPORTING C: Timeframes must be established if opportunity for review and comment are to be meaningful.

f. VI. FUNDING: It is difficult to analyze this paragraph in the absence of the referenced A and B appendices. In any event, this paragraph requires extensive revisions. For example, "problem" must be defined, notification procedures must be established and guidance should be provided for project continuance in the event of funding obstacles.

g. VII. MANAGEMENT ARRANGEMENTS, A: This provision is merely an agreement to agree and would be unenforceable. Also, POC arrangements should be established in this document. From a timing standpoint, it is inappropriate to address this issue now, and if so, perhaps proposal of this MOA is premature.

h. VII. MANAGEMENT ARRANGEMENTS, B: Procedures for development of a methodology should be set out in this paragraph.

i. IX. AMENDMENT AND TERMINATION, B: This paragraph states that operable units will be assigned to the parties "upon mutual written agreement." A section should be added to address the situation in which the parties are unable to mutually agree.

j. X. DISPUTE RESOLUTION: This paragraph should be rewritten to set out a clearly defined Dispute Resolution process. The Executive Order citation contained in this paragraph is incorrect and deals not with interagency disputes, but with competitive service requirements of Government employees.

k. XII. LIABILITY AND RISK OF LOSS: This paragraph is unacceptable. It attempts to place ALL risk of loss on USACE.

1. As a general statement, it should be noted that this agreement appears to lack a specific focus and does not attempt to realistically divide response action tasks between NASA and USACE. Additionally, this agreement necessarily covers PRP issues relating to ultimate cleanup liability.

2. Engineering Division Comments:

a. IV. RESPONSIBILITIES B.1, B.2, B.3.: These three sections of the agreement state that the USACE is responsible for providing support to NASA and regulatory agencies. The type of support should be better defined. The support responsibilities should be quantified and qualified as much as possible at this stage of the project.

b. IV. RESPONSIBILITIES B.4: It is difficult to comment on the agreement since Appendix A and B were not provided. Appendix B defines the units for which the USACE will be the responsible Lead agency. Also, what is the relationship between the units